

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 371/90
T.A. No.

199

DATE OF DECISION 16.7.1990.

Shri Tarsem Lal Verma	Petitioner
Shri A.K. Bahera	Advocate for the Petitioner(s)
Versus	
Union of India & Others	Respondent
Shri K. S. Dhingra, Sr. Adm. Officer	Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakraverty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal?

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The applicant, who is working as a Photographic Officer in the Office of the Armed Forces Films & Photo Division, Ministry of Defence, New Delhi, filed this application under Section 19 of the Administrative Tribunal Act, 1985, praying for quashing the impugned order dated 31.10.1989, whereby the period of his probation was extended upto 15th July, 1990. He has further prayed that he should be removed from probation w.e.f. 15.7.1988, and that the respondents be directed to declare him permanent in the post of Photographic Officer w.e.f. 15.7.1988.

2. The pleadings in the case are complete. The application has not been admitted. We feel that the

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application could be disposed of at the admission stage itself.

3. The Union Public Service Commission advertised one post of Photographic Officer which was exclusively reserved for Scheduled Tribes. The applicant applied for the said post and was selected by the U.P.S.C. The U.P.S.C. also recommended to give him five advance increments. He was appointed as Photographic Officer w.e.f. 16.7.1986 on probation for a period of two years from the date of appointment. He was also given the advance increments recommended by the U.P.S.C.

4. The relevant recruitment rules which were notified in 1986, prescribe a period of probation of two years for the post of Photographic Officer. As regards confirmation, the recruitment rules provide that the proceedings of the Departmental Promotion Committee shall be sent to the U.P.S.C. for approval. If these are not approved by the U.P.S.C., a fresh meeting of the D.P.C. to be presided over by the Chairman or a Member of the U.P.S.C., shall be held.

5. In the offer of appointment sent to the applicant vide Memorandum dated 11th July, 1986, it has been stated, inter alia, that he will be on probation for a period of two years from the date of appointment which may be extended at the discretion of the competent authority and that failure to complete the period of probation to the satisfaction of the competent authority, will render him liable to discharge from service.

6. The contention of the applicant is that after the expiry of two years from the date of appointment, he must

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be deemed to have completed the period of probation satisfactorily, and that he must be deemed to have been confirmed in the post of Photographic Officer from 15.7.1988. His period of probation was not extended within the period of two years from the date of his appointment. It was extended by the impugned order dated 31.10.1989, after a lapse of 550 days from the date of completion of the probationary period.

7. The probation period of the applicant was extended on the ground that the D.P.C. which met on 18th October, 1989, assessed him as 'not fit' for removal from probation and recommended extension of his probation upto 15th July, 1990. The recommendation of the D.P.C. was based on scrutiny of the service record of the applicant, including his Annual Confidential Reports.

8. The applicant has been communicated adverse remarks in his confidential reports for the years 1986, 1987 and the Assessment Report for the period 16.7.1986 to 15.7.1988. The applicant had also made representations against the said remarks. The competent authority had ordered expunction of some of the adverse remarks in his A.C.R. for the year 1987 vide letter dated 28.12.1988. The competent authority also ordered expunction of the adverse remarks contained in the Assessment Report vide letter dated 22nd September, 1989. The adverse remarks in his A.C.R. for the year 1986 had not been expunged before the D.P.C. made its recommendation to extend his probation, mentioned above.

9. The contention of the respondents is that there is no infirmity in the impugned order of extension of probation period of the applicant and that it was issued on the recommendation of the D.P.C.

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10. We have carefully considered the rival contentions and have gone through the records of the case carefully. We have also considered the judicial pronouncements^{*} cited by both the parties.

11. We are not impressed by the contention of the applicant that by mere efflux of two years from the date of appointment, he must be deemed to have completed the period of probation satisfactorily, or that he must be deemed to have been confirmed. Similarly, we are not impressed by his contention that the period of probation cannot be extended after the initial period of two years had expired.

12. There is no stipulation in the relevant recruitment rules that the maximum period of probation is only two years on the expiry of which, the appointee will be deemed to have been confirmed in the post. In the instant case, the applicant was allowed to continue in service even after the expiry of the period of two years specified in the order of appointment. No order of confirmation or satisfactory completion of probation was issued by the respondents. In our opinion, in such a case, it will be

* Decisions relied upon by the Applicant:

1986 (1) A.T.C. 95; A.T.R. 1987 (2) C.A.T. 8;
1987 (4) A.T.C. 641; A.T.R. 1986 (1) S.C. 61;
1985 (1) S.L.R. 322; 1983 (2) S.L.R., S.C. 1;
1987 (3) A.T.C. 496; A.T.R. 1988 (1) 501.

Decisions relied upon by the Respondents:

A.T.C. 1986 (6) 655; SLJ 1984 (2) 451; 1987 (4) S.C.C. 492; A.I.R. 1972 S.C. 873; A.I.R. 1966 S.C. 175; A.I.R. 1962 S.C. 1711.

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inferred that the probation period has been extended by conduct. The delay in issuing the impugned order of extending the period of probation has been due to the delay involved in taking a decision on the representations made by the applicant against the adverse remarks for the year 1987 and the Assessment Report for the period from 16.7.1986 to 15.7.1988. The impugned order cannot, therefore, be faulted on the ground of delay. As the relevant recruitment rules did not provide any optimum period of probation, the stipulations contained in the offer of appointment regarding the discretion of the competent authority to extend the period of probation, must be deemed to be supplementary to the relevant recruitment rules. The validity of such a stipulation cannot be disputed (vide State of Gujarat Vs. Akhilesh C. Bhargav, 1987 (4) S.C.C. 482 at 485).

13. There is, however, another aspect of the matter. The D.P.C. which held its meeting on 18th October, 1989, had before it the ACRs of the applicant for the years 1986, 1987 and the Assessment Report for the relevant period. The respondents have stated in their counter-affidavit that before the D.P.C. had met, the competent authority had expunged some of the adverse remarks in his A.C.R. for the year 1987 and that it had expunged the adverse remarks contained in the Assessment Report for the relevant period, but the representation against the adverse remarks for the year 1986 has not been decided. In fact, his representation was pending with the competent authority at the time of the meeting of the D.P.C. and

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their decisions may have been influenced by those adverse remarks. We are not convinced by the contention of the respondents about the delay in dealing with the representation submitted by the applicant against the adverse remarks for the year 1986. Before convening the D.P.C. to consider the question of completion of the probation of the applicant, the respondents should have taken a decision on the representation of the applicant.

14. - In the facts and circumstances of the case, the application is disposed of at the admission stage with the following orders and directions:-

- (i) The respondents are directed to dispose of the representation submitted by the applicant against the adverse remarks for the year 1986 as expeditiously as possible, but in no event, later than 30th August, 1990 and communicate ^{their} ~~the~~ decision to the applicant.
- (ii) The respondents shall convene a review D.P.C. to consider the suitability of the applicant for completion of the probation period in the light of the service records of the applicant, including his Annual Confidential Reports and other documents relating to his performance which are in the personal file of the applicant. The decision of the competent authority should be superimposed and pasted over the original remarks in the Confidential Report in the light of the decision taken on the representations submitted by the applicant.

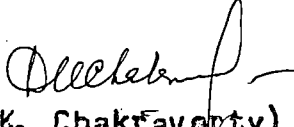
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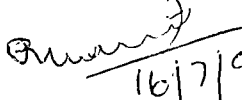
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(iii) In case the review D.P.C. finds the applicant fit for confirmation, he shall be confirmed from the due date.

15. In view of the aforesaid orders and directions, we do not consider it necessary to go into the other contentions raised by the applicant in his application.

The parties will bear their own costs.


(D. K. Chakraverty)
Administrative Member
16/7/1990


16/7/90
(P. K. Kartha)
Vice-Chairman(Judl.)