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Central Administrative Tribunal
Principal Bench, N. Delhi

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O.A. No. 1346/91

New Delhi, this the 14th Day of July, 1995.

Hon'ble Shri J.P. Sharma, Member (Judicial)
Hon'ble Shri B.K. Singh, Member (Administrative)

Rishi Dev Sharma s/o Shri Bhim Singh,
C/o Shri Jagdish Prashad r/o U-70.
Welcome, Seelampur,
Delhi (Shahdara).

...Applicant

(By Shri Shyam Babu, Advocate)

Versus

Lt. Governor of Delhi through

1. Chief Secretary,
Delhi Administration,
Delhi.
2. The Commissioner of Police Delhi,
Delhi Police Headquarters,
M.S.O. Building,
I.P. Estate,
New Delhi.
3. Deputy Commissioner of Police,
(Headquarters-I), Delhi,
Delhi Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi.

.. .. Respondents

(By Shri Arun Bhardwaj, Advocate)

ORDER (ORAL)

By Hon'ble Shri J.P. Sharma, Member (J):

The applicant who was appointed as Constable in
Delhi Police in the year 1973 was given officiating promotion
as Head Constable on 8.12.1981. His grievance is that though
persons similarly situated and junior to him were confirmed

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from 22.11.1985, the confirmation of the applicant was deferred till 22.5.1986 as a result he was down-graded in his seniority in the rank of Head Constable. He, therefore, prayed for his confirmation be antedated to the date of confirmation of his juniors i.e. 22.11.1985.

On notice the respondents contested the application and stated that the applicant suffered a penalty of censure in a departmental disciplinary proceedings on 16th October, 1984 and as such he was considered for confirmation but he was passed over for six months and so the delay in his confirmation. This decision was passed over to him in March, 1986. The applicant has also filed rejoinder reiterating the facts already stated in the application.

We have heard the learned counsel Shri ShyamBabu for the applicant who has referred to rule 5(ii) of Delhi Police (Promotion & Confirmation) Rules, 1980.

On perusal of the aforesaid rule goes to show that on promotion every person has to be placed on probation for a period of two years which may be extended further for one year more. After this extended period of one year either the probationer is to be confirmed on the availability of ^{permanent} the/post or he has to be reverted. This legal position is not disputed between the parties. Also a decision of the Full Bench of Punjab & Haryana High Court in the case of Dhan Singh where the similar rule was in the statute book and it was held that when maximum period is provided under

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the provisions of rule 5(ii) which is three years, a decision has to be taken either to confirm the probationer within that period or to revert him. There should be specific order of extension of one year of probation after two years, but in any case there is no extension, the officiating appointee continues on officiating basis as well as on probation.

The hurdle in the case of the applicant is that he has been proceeded in departmental disciplinary proceedings of probation during the period of three years/ from the date of his officiating promotion i.e. 8.4.1981. That Disciplinary enquiry ended in entry of censure by the order dated 16/10/1984. The counsel for the applicant stated that there is standing order by which this entry of censure will have its effect on future promotion only for a period of six months. This fact is confirmed by the respondents counsel on instructions from S.I.(Executive) Shri Raghu Ram. ^{it} Since ~~is~~ is not disputed by the respondents counsel, because of instructions given by the said Sub Inspector i.e. departmental representative Raghu Ram, so, the effect of this adverse censure entry will lapse by Feb., 1985 and, hence, he can very well be in zone of consideration along with juniors for confirmation. Thus, his date of confirmation cannot be postponed beyond 22.11.1985 as there was nothing against him at that relevant point of time and the vacancy was also available.

We are also fortified in our decision by the view taken

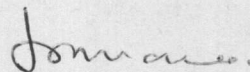
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by the Principal Bench in O.A. No. 899/92 decided on 2.4.1993 a copy of which was made available at the time of hearing. The facts of that case were also similar to the present case except that in that case the applicant was not given any punishment during the earlier three years of officiating service as Head Constable.

The application is, therefore, allowed with the direction to the respondents to antedate the confirmation of the applicant to 22.11.1985 from that of 2.5.1986, with all consequential benefits of seniority. In case of this antedating of confirmation any review D.P.C. is necessitated for next promotion a review D.P.C. be held for the applicant and the D.P.C. will consider the record of the applicant as per laid down instructions for next higher promotion. Cost on parties.



(B.K.SINGH)
MEMBER(A)



(J.P.SHARMA)
MEMBER(J)

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