

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPLE BENCH: NEW DELHI

O.A. No. 3084/1991

New Delhi this the 10th Day of Sept. 1997

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)
Hon'ble Shri S.P. Biswas, Member (A)

Shri Tek Ram
Son of Shri Ran Singh,
Resident of B-151 Shakur Pur,
New Delhi-110 034.

(By Advocate: Shri Shyam Babu)

-Versus-

1. Lt. Governor,
Delhi, through
The Chief Secretary,
Delhi Administration,
Delhi.
2. Commissioner of Police Delhi,
Delhi Police Headquarters, MSO Building,
I.P. Estate,
New Delhi.
3. D.C.P. Headquarters-I, Delhi,
Delhi Police Headquarters, MSO Building,
I.P. Estate,
New Delhi.

Respondents

(By Advocate: Shri Vijay Pandita)

ORDER

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)

The applicant in this case was appointed as Constable in Delhi Police on 15.12.1965, thereafter promoted to the rank of Head Constable (Executive) on 14.5.1982. In the normal course, according to the petitioner, he was to complete his probation by 14.5.1984.

2. The case of the petitioner is that in accordance with the rules the maximum period of probation is three years and since he has completed the maximum period of

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probation of three years by 14.5.1985, he should have been confirmed w.e.f. 14/5/1985 or any time thereafter when the vacancy arose, and his juniors were considered for confirmation.

3. It is an admitted fact that the petitioners's junior were confirmed w.e.f. 22.11.1985. The petitioner on the said basis claims that since he has completed three years of probation before by 22.11.1985 and his juniors were confirmed on the basis of the availability of vacancies on 22.11.1985, he also should be confirmed w.e.f. 22.11.1985 and not on 22.11.1986, the date on which he was actually confirmed. Thus, the case of the petitioner is to seek the relief of pre-poning the date of confirmation from 22.11.1986 to 22.11.1985 with all consequential benefits.

4. The counsel for the petitioner in support of his case stated that Rule 5(ii) of Delhi Police (Promotion and Confirmation) Rules, 1980 provides that the promotion shall be on officiating basis and the employee shall be considered for confirmation only on availability of permanent vacancy and on successful completion of probation for a period of minimum two years. The appointing authority can further extend the period of probation or revert the promoted employee or confirm the promotee. The maximum period of probation being three years, the petitioner also is entitled to confirmation w.e.f. 22.11.1985 or at least after six months due to the subsequent order of Censure passed against him, and accordingly the confirmation could have been postponed for

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six months; the petitioner is claiming, therefore, his confirmation w.e.f. six months after 22.11.1985. In any event, based on the provision of Rule 5(ii) as stated above, the applicant's probation period could not have been extended beyond three years from the date he was promoted as Head Constable. The petitioner also relied upon various decisions of this Court:

1) Narain Singh Vs. Union of India & Ors. (O.A. 899/92) decided on 2.4.1993; 2) Azad Singh Vs. Lt. Governor, Delhi & Ors. (O.A. 534/92) decided on 25.3.1994; 3) Rishi Dev Sharma Vs. Lt. Governor of Delhi & Ors. (O.A. 1346/91) decided on 14.7.1995; 4) Manoj Kumar Sharma Vs. Delhi Administration and Ors. (O.A. 2340/90) decided on 6.12.1994; 5) Gurjit Singh v. Lt. Governor of Delhi and ors. O.A. No. 3028/91 decided on 7.8.1996.

5. The respondents, on the other hand, submitted that the confirmation of a Head Constable after promotion is admittedly in accordance with the Rule 5 (ii) as stated above but that will depend upon, also on the availability of vacancy. According to them, the confirmation of the petitioner was taken up for consideration along with his juniors in the year 1985 and while his counter parts were found fit and were accordingly declared confirmed, w.e.f. 12.11.1985, the petitioner could not be confirmed for the reason that in the meantime the petitioner was awarded a penalty of one year approved service forfeited temporarily, by an order dated 25.8.1984. Even though, the effect of the said order expired on 25.8.1985, the punishment being a major penalty, the respondents decided

to extend the probation period of the petitioner for another year and subsequently his case was considered and declared confirmed w.e.f. 22.11.1986. It was also stated that during the period of these extended probations, the petitioner was also awarded another minor punishment of Censure by an order dated 28.8.1985. It is in the peculiar circumstances of this case as stated above that the petitioner could not be confirmed w.e.f. 22.11.1985 and was subsequently confirmed w.e.f. 22.12.1986. Thus, the claim that the petitioner that should be confirmed after completion of three years from the date on which his juniors were confirmed, could not be granted to the petitioner, for the reasons that in the meantime one major punishment of forfeiture of one year approved service w.e.f. 25.8.1984 and thereafter another minor punishment of Censure passed on 28.8.1985, were to be given due effect and as such the confirmation of the petitioner w.e.f. 22.11.1986 is in accordance with the rules. It was also contended that the confirmation of the petitioner was subsequently considered against the available vacancy and it was in accordance with the said consideration as per Rule 5(ii) of Delhi Police (Promotion and Confirmation) Rules, 1980 that the petitioner was rightly confirmed w.e.f. 22.11.1986.

6. We see considerable force in the statement of the counsel for the respondents and the relief sought by the petitioner that he be confirmed w.e.f. 22.11.1985, when his juniors were confirmed, cannot be granted to the petitioner for the reasons stated herein above on behalf of the respondents.

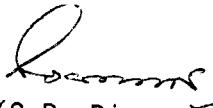
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7. The petitioner also contended that even though one year's approved service was forfeited by an order dated 25.8.1984, the effect of the said order was over by 25.8.1985 and the petitioner should have been confirmed along with his juniors w.e.f. 22.11.1985. We are unable to accept this contention for the reason that the punishment of forfeiture of one year's service was one of the major punishments in accordance with the rules, and as such even though the effect of the said penalty order was over before the completion of three years of probation, the decision of the appointing authority to extend the period of probation for another year on the basis of the fact that a penalty of major punishment was awarded, and such extension of probation was within the powers of the appointing authority and as such the extension of probation being on the basis that the petitioner had been awarded a major penalty during probation, that cannot be construed to mean that by the end of the period when the penalty being satisfied, automatically the probation would come to an end.

8. We are of the firm opinion that the disciplinary authority had rightly exercised the power/discretion to extend the probation on the ground that the petitioner had during the period of probation committed the misconduct resulting in award of major penalty. In the circumstances it is stated that the decisions cited above has no application to the present case and they are distinguishable on facts.

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9. In the premises this O.A. is dismissed as devoid of any merit and no order as to costs.



(S.P. Biswas)
Member (A)



(Dr. Jose P. Verghese)
Vice Chairman (J)

Mittal