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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

New Delhi

O.A.No 1106 of 1991

T.A. No.

Date of Decision 27.7.95

Shri Rishi Pal Applicant

Shri Shyam Babu Advocate for the Applicant

Versus

Delhi Admn. & Another Respondent

Shri S.K. Sinha, proxy counsel Advocate for the Respondent(s)
for Shri Jog Singh, Counsel

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

[Signature]
(K. MUTHUKUMAR
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No.1106 of 1991

New Delhi this the 27th day of July, 1995

Mr. A.V. Hari dasan, Vice-Chairman
Mr. K. Muthukumar, Member (A)

Shri Rishi Pal (543 Security)
 S/o Shri Malkhi Ram,
 R/o Village & Post Office
 Mahipalpur,
 New Delhi-110037.

..Applicant

By Advocate Shri Shyam Babu

Versus

1. Delhi Administration, Delhi through its Chief Secretary, 5, Sham Nath Marg, Delhi-110054.
2. Commissioner of Police, Police Headquarters, I.P. Estate, New Delhi-110033.

..Respondents

By Advocate Shri S.K. Sinha, proxy counsel for
 Shri Jog Singh.

ORDERORDERMr. K. Muthukumar, Member (A)

The applicant was appointed as a Constable (Driver) in Delhi Police with effect from 04.10.1979. As a criminal case was reported to be pending against the applicant, the respondents deferred consideration for declaration of confirmation by the order dated 03.08.1993. In 1985 also he was passed over for confirmation till the decision of the criminal case pending against him. His representation against his non-confirmation and non-promotion to the next higher rank was also rejected by the respondents, who by their impugned order dated 17.09.90 informed him that his case for confirmation could not be decided during the pendency of the criminal case. Aggrieved by this, the

applicant has moved the application praying that the impugned memo dated 17.09.1990 be quashed. He has also prayed for a direction to the respondents to declare that the applicant has successfully completed the period of probation and also to promote him as Head Constable (Driver) with effect from 1.1.1986 and also as Assistant Sub Inspector (Driver) and grant him all consequential benefits.

2. The applicant submits that although he was appointed as a Constable (Driver) on 4.12.1979 and had completed 2 years of probation, the respondents have not so far declared him quasi-permanent despite his satisfactory service. The applicant also submits that the respondents have denied him his further promotion on the ground that his case for quasi-permanency could not be considered as a criminal case was registered against him on 21.7.1979. The applicant submits that till date, no charge has been framed in the above mentioned case and, therefore, merely on the ground that a criminal case has been registered, the applicant has been denied the benefit of quasi-permanency, confirmation/promotion while his juniors have been promoted as Head Constables and even as Assistant Sub Inspectors. The grievance of the applicant is that although more than 10 years have passed, the respondents have not allowed him to complete the period of probation nor have they confirmed him as Constable on this arbitrary plea of a criminal case having been registered against him as far back as in 1980 for which no charge has so far been framed. The applicant contends that by virtue of Rule 5(e) of the Delhi Police (Appointment & Recruitment) Rules, 1980 as it stood then, he was required to be on probation only for a period of 2 years and in view of the satisfactory service, the applicant could be deemed to have completed

the period of probation successfully and should have been confirmed in the post of the Constable when the permanent post was also available at that time. The applicant contends that after completion of maximum period of probation of 3 years, the applicant is entitled to be granted quasi-permanency status.

3. The respondents in their counter-reply have averred that merely because the applicant has spent the maximum period of probation of 3 years, it does not mean that after the completion of 3 years period on probation, he should be automatically confirmed. In terms of Rule 5(e) of the Delhi Police (Appointment & Recruitment) Rules, 1980, the temporary employee will be allowed to be governed by the terms and conditions of such appointment, though they are eligible to be confirmed on the availability of permanent post. This rule also enjoins a specific order to be passed by the appointing authority to confirm a temporary employee and such a requirement has also been upheld by several decisions of the courts. The respondents have averred that the applicant's case for quasi-permanency was taken up after his 3 years of probation, but his quasi-permanency was held up because of the pendency of the criminal case. The respondents, however, have not made any comment on the alleged involvement of the applicant in the criminal case because of lack of knowledge and authority. The respondents further aver that the applicant's case for promotion was also considered sympathetically by the competent authority but his promotion was deferred because of the pendency of the criminal case against him. They have strongly denied the contention of the applicant that his confirmation and promotion has been deferred on arbitrary grounds. It is contended on behalf of the respondents that Rule

5(e) of the Delhi Police (Appointment & Recruitment) Rules, 1980, does not create any bar for the continuation of probation beyond a period of 3 years and have averred that the Apex Court's decision in **Shamsher Singh Vs. State of Punjab, 1974 (2) SLR 701**, wherein it was held that the rule providing for the maximum period of probation is only directory in nature. They further aver that it was wrong to contend that pendency of criminal case against the applicant cannot be a ground for withholding his promotion/confirmation in view of Rule 5(e) of the Delhi Police (Appointment & Recruitment) Rules, 1980. It is submitted on behalf of the respondents that even though the applicant has completed the maximum period prescribed for probation, he is not entitled to automatic confirmation.

4. The learned counsel for the applicant forcefully brought out the distinction in the Rule 5 as it existed then and after its amendment in 1983 by virtue of notification No.5/15-82-H(P)(Estt.) dated 2.5.1983. On this basis, he argued that the Rule 5(e) contemplates that the period of probation which is for 2 years can be extended, but in no case the period of probation can extend beyond 3 years in all (emphasis added). The learned counsel has argued that after successful completion of period of probation, the employee has no other option except to confirm the official in the Delhi Police subject to availability of permanent post. The learned counsel then argued that it is not the case of the respondents that no permanent post exists. The learned counsel also argued vehemently that merely on the ground that a FIR has been registered against the applicant as far back as in 1980, the respondents cannot withhold his confirmation indefinitely and a period of 12 years have elapsed and the respondents have not shown any consideration for the applicant. No charges have been framed against him in that case and the applicant has suffered a great deal due to his non-confirmation and non-promotion all these years.

5. The learned counsel for the respondents argued on the pleadings in the counter-reply.

6. We have carefully perused the pleadings and have

also heard the learned counsel for the parties.

7. It is undisputed that the applicant was appointed to the Delhi Police on probation with effect from 4.12.79. The Delhi Police (Appointment & Recruitment) Rules, 1980 came into force from the date of its publication with effect from 31.12.1980. It is not disputed that the applicant is governed by Delhi Police (Appointment & Recruitment) Rules, 1980 as it existed then. Rule 5(e) of the aforesaid rules, as it stood then is reproduced below:-

"All direct appointments of subordinate ranks shall be made initially on purely temporary basis. All such appointees shall be on probation for a period of 2 years. During this period their work and conduct shall be closely watched and if found unlikely to become efficient, of police employee, they shall be discharged after giving one month's pay in lieu thereof without assigning any reason. On satisfactory completion of probation, they shall be treated as temporary police employee and shall have not claim for substantive appointment. They shall continue to be governed by the terms and conditions of service of a temporary employee till they are confirmed in their appointment on availability of permanent posts. If requisite number of posts do not become available, they may be considered for grant of quasi-permanent status on satisfactory completion of 3 years service as temporary police employee".

The above rule was substituted by Rule 5(e)(i) to (iii) of the aforesaid rules by the Notification dated 2.5.1983. The substituted provision of Rule 5(e)(i) to (iii) is reproduced as under:-

"(e)(i) All direct appointments of employees shall be made initially on purely temporary basis. All employees appointed to the Delhi Police shall be on probation for a period of 2 years provided that:-

Provided that the competent authority may extend the period of probation but in no case shall the period of probation extend beyond three years in all.

(ii) The services of an employee appointed on probation are liable to be terminated without assigning any reason.

(iii) After successful completion of period of probation, the employee shall be confirmed in the Delhi Police by the competent authority, subject to the availability of permanent post".

From the foregoing it is evident that the applicant, who

was governed by the rule prior to its amendment was appointed initially on a temporary basis and was on probation for a period of 2 years. As stated in the above rule, the applicant was entitled to be treated as temporary employee on completion of period of probation till his confirmation and it is also provided that he is also to be considered for grant of quasi-permanent status as temporary police employee. Therefore, by completion of 3 years of service in December, 1982, he is clearly to be considered for grant of quasi-permanent status in terms of the aforesaid rule prior to its amendment.

8. In the counter-reply it has been stated by the respondents that the case of the applicant was taken up for declaration of quasi-permanency in 1983 but was deferred on account of the fact that a criminal case was reported to be pending against him. Then again in 1985, his case for confirmation was considered but was passed over for confirmation till the decision of the criminal case pending against him. The learned counsel for the applicant strongly argued that in terms of the decision of the Tribunal in **Ganga Ram Vs. Delhi Administration in OA No. 1143 of 1986**, the applicant should be deemed to have been confirmed on completion of 3 years from the date of his initial appointment.

9. We have seen the aforesaid case. In the aforesaid case, the learned Tribunal has also cited the decision of the Apex Court in **State of Punjab Vs. Dharam Singh, ATR SC 1210**. It was held by the Apex Court in that case as follows:-

"5. In the present case, Rule 6(3) forbids extension of the period of probation beyond three years. Where, as in the present case, the service rules fix a certain period of time beyond which the probationary period cannot be extended, and an employee appointed or promoted to a post on probation is allowed to continue in that post after

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completion of the maximum period of probation without an express order of confirmation, he cannot be deemed to continue in that post as a probationer by implication. The reason is that such an implication is negatived by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it. In such a case, it is permissible to draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication".

On the other hand, the respondents have cited the decision of the Hon'ble High Court of Mysore in **Verghese George vs. Officer Commanding, 1970 SLR 735**, wherein it is held that "it is well established that unless an express order is made declaring such status, no temporary Government servant can obtain quasi-permanency of service".

10. We have given our careful consideration to the entire issue. In terms of Rule 5(e) of the Delhi Police (Appointment & Recruitment) Rules, 1980, as amended, it is clear that competent authority cannot extend the period of probation beyond 3 years in all. But by harmonious reading of Rule 5(e)(i) and (iii) together it is evident that although the period of probation cannot be extended beyond 3 years, the confirmation of an employee in Delhi Police has to be done with reference to Rule 5(e)(iii) of the aforesaid rules. This rule states that "after successful completion of probation, the employee shall be confirmed in Delhi Police by the competent authority subject to the availability of permanent post" (emphasis added). Therefore, the confirmation by the competent authority has to be by a positive act after two conditions are satisfied; viz.(i) after successful completion of probation of the employee and (ii) after satisfying about the availability of permanent post. Once these two conditions are satisfied, then the competent authority has no other option except to confirm the official in the Delhi Police.

We cannot however, overlook the fact that under the proviso to Rule 5(e)(i), the competent authority cannot extend the period of probation beyond 3 years in all. The competent authority cannot, therefore, keep an officer on probation even beyond his maximum period without initiating necessary action as contemplated under Rule 5(e)(iii). However, in the light of the observations of the Lordships in Dharam Singh (Supra), it is to be inferred that where the competent authority fails to initiate any action, the Government servant's claim for confirmation cannot be denied.

It is, however, necessary to make a harmonious reading of not only Rule 5(e)(i) and 5(e)(iii) of the Delhi Police (Appointment & Recruitment) Rules, 1980 but also with Rule 18 of the Delhi Police (Promotion & Confirmation) Rules, 1980. Rule 18 of the Delhi Police (Promotion & Confirmation) Rules, 1980 provides as follows:-

(i) Save as otherwise provided in these rules, confirmation in all ranks shall be strictly on the basis of the seniority when permanent posts become available.

(ii) Where date of appointment of direct recruit and a promoted officer is the same, the promoted officer shall rank senior inter se.

(iii) No member of the subordinate rank who is promoted from one rank to another by a departmental promotion committee or is directly appointed shall be confirmed unless he has satisfactorily completed the period of probation and a clear vacancy against a permanent post is available.

(iv) No member of the subordinate rank, who is under suspension or facing departmental/criminal proceedings shall be eligible for confirmation. Their cases shall be decided by the Departmental Promotion Committees concerned after such proceedings are over. A departmental enquiry shall be deemed to have been initiated after the summary of allegations has been served".

It is necessary to refer specifically to Rule 18(iv) of the above rules. So by harmonious reading of both the rules, it can be safely stated without any fear of contradiction that while the official cannot be held to be on probation beyond a period of 3 years and is eligible to be confirmed and will be so confirmed after satisfying the two conditions specified in Rule 5(e)(iii) of the Delhi Police (Appointment & Recruitment) Rules, 1980, the eligibility for confirmation is also subject to provisions of Rule 18(iv) of the Delhi Police (Promotion & Confirmation) Rules, 1980, under which no member of subordinate rank who is facing departmental/criminal proceedings shall be eligible for confirmation. We are concerned in the instant case with a situation where it is alleged that the applicant is facing a criminal proceeding against him, which was the reason for the respondents in not considering his confirmation and taking positive action for such confirmation in terms of Rule 5(e)(iii). We have again carefully gone through the counter-pleadings filed by the respondents. It is stated in para 4.2 of the counter-reply as follows:-

".....It is submitted that the fact regarding the involvement of the applicant in a case under the Delhi Land Revenue Act, 1972 is not admitted and is denied for want of knowledge".

Again in reply to para 4.6, the respondents have stated as follows:-

"It is submitted with regard to the applicant's involvement in a criminal case, the deponent does not make any comment because of lack of knowledge and authority".

So from the above, it transpires that the respondents while denying any knowledge of the applicant's involvement in the criminal case registered under Delhi Land Revenue Act, 1972, have informed the applicant that due to the pending criminal case, his confirmation has not been considered. These positions ~~two~~ are obviously not reconcilable. We find that the applicant has been continuing without confirmation for almost 12 years since his appointment in the Delhi Police and has not been considered for confirmation or promotion so long on account of a so-called pending criminal case against him in which the respondents have denied any knowledge of the involvement of the applicant. Even in regard to the averments made by the applicant that although the FIR was registered on 21.09.1981, no charge has been framed in the above case till date, the respondents have not denied this, nor have they made any comment on it.

11. Having carefully considered all these aspects, we are of the considered view that the respondents have not taken any steps in regard to the FIR registered against the applicant nor have they taken any steps to investigate the involvement of the applicant in the aforesaid criminal case in which the involvement of the applicant is not within the knowledge of the respondents as per their own averment with the result that the applicant has neither been proceeded with under the relevant criminal proceedings nor has been proceeded with departmentally for any misconduct. The applicant has been languishing without any confirmation or promotion for as long as 12 years. The applicant

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has completed his 3 years of probation and there is no denial about the absence of any permanent vacancy to enable his confirmation nor there is any averment to the fact that the service of the applicant has been considered unsatisfactory.

12. In the conspectus of the above discussion, we consider it appropriate to allow the application and direct the respondents to confirm the applicant in his grade of Constable (Driver) with effect from the date his junior in the grade was confirmed. The respondents are also directed to consider the further promotion of the applicant to the grade of Head Constable and Assistant Sub Inspector subject to his being found otherwise eligible and fit for such promotions from the dates he would have clearly been considered for such promotions and on such promotions, he would be entitled to have his pay notionally fixed in the higher posts on the respective dates but would not be entitled to any arrears. We, however, make it clear that this order shall not stand in the way of the respondents taking such action as is required under the law and as may be necessary, if the criminal case is proceeded with on the ground that his culpability is established *prima facie*. No costs.


 (K. MUTHUKUMAR)
 MEMBER (A)


 (A.V. HARIDASAN)
 VICE-CHAIRMAN (J)