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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.OA 1108/91

Date of decision:16.8.1993.

Shri Jitender Kumar

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Petitioner

vs.

The Commissioner of Police &
anr.

..

Respondents

For the Petitioner

..Sh.Shaker Raju,Counsel.

For the Respondents

..Mrs.Avnish Ahlawat,
Counsel.

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. B.N. DHOUNDIYAL, MEMBER (A)

JUDGEMENT(ORAL)

(By Hon'ble Mr. Justice S.K.
Dhaon, Vice Chairman)

The order dated 16.4.1990 passed by the Deputy Commissioner of Police, Headquarters(I), Delhi confirming the petitioner with effect from 9.11.1989 is being impugned in the present OA. The petitioner along with others was recruited as a Head Constable on 3.3.1986. A Departmental Promotion Committee(DPC. .) met to consider the case of the petitioner and others for confirmation. According to the respondents, no permanent vacancy occurred before 9.11.1989. In respect of the petitioner the DPC felt that his period of probation should be extended for a period of six months with effect from 9.5.1989 due to indifferent service record.

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2. The Delhi Police (Appointment & Recruitment) Rules, 1980 are relevant. For the sake of brevity, the said Rules will ^{be} hereinafter referred to as the Rules. Rule 3(iii) defines "probation" to mean a period of trial of a person appointed temporarily or in an officiating capacity against temporary or permanent post of a police of subordinate rank. This rule therefore, emphasises that an appointment on probation has to be temporary. Rule 5(e) has many parts. In the first part, it is mandated that all direct appointments of employees shall be made initially on purely temporary basis. It is also provided that all employees appointed to the Delhi Police shall be on probation for a period of two years. There is a proviso which is relevant and, therefore, it may be extracted:

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

We may skip the second part and come to the third part which posits that 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.

3. From a reading of Rule 5(e), it is clear that the petitioner was appointed as temporary Head Constable and the initial period of his probation was for two years. There is no material on record to indicate that the competent authority either expressly or impliedly extended the period of probation. It is also quite clear from a reading of Rule 5(e), as a whole, that

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in /case of Delhi Police, the theory of automatic confirmation of a person appointed on probation is ruled out. We are saying so because in the third part of Rule 5(e), it is emphatically stated that after successful completion of period of probation, the employee shall be confirmed by the competent authority. That is not all. There is a limitation put on the exercise of ^{power of} confirmation and that is that there must be availability of a permanent post before the order of confirmation is made. It follows that a member of the Delhi Police has to await his confirmation even after successfully completing the period of probation, if a permanent post is not available.

4. The learned counsel for the petitioner attacked the proceedings of the DPC on the simple ground that it could not extend the period of probation beyond 9.5.1989. This argument appears to be correct. The period of probation of the petitioner could not be extended beyond three years and, therefore, the power of extending the period of probation after the expiry of three years could not be exercised at all. But that will not solve the problem of the petitioner. We see no reason to disbelieve the case of the respondents that the occasion for considering the case of the petitioner and others for confirmation arose only on or about the date when the DPC met as during the intervening period there was no permanent vacancy.

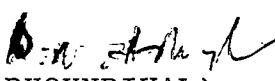
5. It is true that in the absence of any express or implied ^{order} ~~power~~ extending the period of probation under proviso to first part of Rule 5(e), the occasion for considering the

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case of the petitioner for confirmation arose immediately ~~_____~~ after the period of expiry of two years from the date of his recruitment viz.3.3.1986. But that gain will not advance the case of the petitioner as no permanent post was then in existence, as already indicated, it came into existence on or about the date when the DPC met.

6. Having considered the decision of the DPC, there can be no escape from the conclusion that the same is not happily worded at all. If the DPC had clearly stated that it has deferred the confirmation of the petitioner for a period of six months as he(the petitioner) did not have ^{an} unblemished record there would have been no occasion for questioning the legality of its decision. Admittedly, the petitioner earned a penalty of censure during the first two years of his probation. The net result is that the petitioner cannot get any relief.

7. This OA fails and is dismissed. There shall be no order as to costs.


(B.N.DHOUNDIYAL)
MEMBER(A)


(S.K.DHAON)
VICE-CHAIRMAN(J)

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