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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.534/92. 25.3.94 Date of decision.

HON'BLE SHRI S.R. ADIGE, MEMBER (ADMINISTRATION)

HON'BLE SHRI B.S. HEGDE, MEMBER (JUDICIAL)

Azad Singh
son of Shri Gopi Chand,
r/o Mohalla Deviwara,
Village and P.O. Karala,
Delhi-81.

... Applicant

(By Advocate Shri Shyam Babu)

versus

1. Lt. Governor, Delhi
through Chief Secretary,
Delhi Administration,
Delhi.

2. 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 Advocate Shri O.N. Trishal)

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[Hon'ble Shri B.S. Hegde, Member (Judicial)]

The applicant was enlisted in Delhi Police as Constable on 21.12.1971 and was confirmed on 15.2.1976. He was promoted to the rank of Head Constable on probation w.e.f. 11.10.1982 for two years. At the end of that period, neither he was confirmed nor his period of probation extended in terms of rule 5(ii) of Delhi Police (Promotion and Confirmation) Rules, 1980. He was confirmed in the year 1986. Aggrieved by the orders on his non-promotion as Head Constable w.e.f.

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11.10.1984 in terms of rule 5(ii) of the Delhi Police (Promotion and Confirmation) Rules, 1980, he prayed for the following reliefs :-

- (1) The order of his non-promotion as Head Constable w.e.f. 11.10.1984 in terms of rule 5(ii) of the Delhi Police (Promotion and Confirmation) Rules, 1980 be set aside.
- (2) The order dated 4.2.1992 vide which the applicant has not been deputed for medical examination and consequent undergoing in the intermediate School Course after admission of his name to promotion List D-I Executive be set aside.
- (3) The name of the applicant may be included to the promotion list D-I (Executive) from the date from which the names of his juniors have been deputed for the purpose etc.

2. The representation of the applicant (Annexure B) was considered and rejected by the respondents vide order dated 10.7.1991. It is contended that he came to know regarding his confirmation/seniority only when Shri Charan Singh was provisionally deputed for training and thereafter he made a representation to the Commissioner (Training) that his seniority be fixed at the appropriate place as he stood confirmed w.e.f. 11.10.1984 which has been rejected by the Commissioner vide his order dated 29.4.1992. Both these orders have been assailed in this O.A.

3. The main thrust of the arguments of the applicant

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is that ~~since~~ the respondents have neither confirmed the applicant after the expiry of his probationary period nor his period of probation was extended as required by rules, which are mandatory in nature. Rule 5(ii) of the Delhi Police (Promotion and Confirmation) Rules, 1980 is reproduced below :-

" 5(ii) All promotions from one rank to another against temporary or permanent vacancies except in the case of ad hoc arrangements shall be on officiating basis and employees shall be considered for confirmation on only availability of permanent posts and on successful completion of probation period of minimum two years provided the Appointing Authority may, by a special order in each case permitting of officiating service to count towards the period of probation. On the completion of the probationary period, the competent authority may either confirm the promotee or revert or if it so think fit, extend the period of probation by the year and on the cancellation of extended period of probation pass such order as it may deem fit provided that the period of probational shall not be further extended in any case, While on probation, an officer an officer may be reverted without departmental proceedings. Such reversion shall not be considered reduction in rank for the purpose of rule 8(b) of the Delhi Police (Punishment & Appeal) Rules, 1980."

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The import of the above rules is that the probationer be confirmed after the expiry of period of probation of

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two years if he is not found unsuitable and reverted.

4. The Respondents, in their reply, raised a plea of limitation stating that it is barred by time as this O.A. challenges the action of 1984 and denied the further contentions of the applicant. The factum of non-confirmation of the applicant with effect from 11.10.1984 and his non-deputation to undergo training are based on valid legal grounds at the relevant time because punishment of censure was passed against the applicant. They averred that his batchmates ^{who} were found fit were declared confirmed w.e.f. 22.11.1984. The promotion of the applicant was postponed for a period of six months due to censure awarded to him on 11.7.85 which falls during the probation period (Ann.F) vide order dated 28.8.85.

5. Assuming this to be correct, normal period of probation could not have been extended beyond the period of three years from 11.2.1982. Therefore, in the absence of any action or orders passed pursuant to Rule 5(ii) of the Delhi Police (Promotion and Confirmation) Rules, 1980 he should have been confirmed w.e.f. 11.10.1985.

6. The applicant was allowed to amend his O.A. vide order dated 13.4.1993. Accordingly, he amended his O.A. and prayed for the quashing and setting aside the orders dated 10.7.91 (Annexure G) and 29.4.92 (Annexure I)

or in any case the applicant is deemed to have been confirmed from the date when his juniors/batchmates were so confirmed in Delhi Police so as to enable him to count his seniority from that date.

7. It is an undisputed fact that the probationary period of the applicant has neither been extended nor he is reverted to a lower post. That being so, even assuming, that the 'censure' awarded to him is applicable in his case that was passed after the expiry of the two years probation period which does not have much bearing on the case. Assuming that to be correct, the normal period of probation could not be exceeded beyond a period of 3 years from 11.10.1982. Therefore, in the absence of any action or order passed pursuant to rule 5(ii) he should have been confirmed w.e.f. 11.10.1985. Since no vacancy was available and permanent posts were made available w.e.f. 22.11.85 from that date when his juniors/batchmates were confirmed, the applicant shall be deemed to have been confirmed on the said date i.e. 22.11.1985. In view thereof, the order of confirming the applicant dated 22.5.1986 is not sustainable.

7. The learned counsel for the respondents, Shri O.N. Trishal has drawn our attention that the application is

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barred by time. However, on perusal of the records we notice that the applicant, in fact, acquired the knowledge of the order of confirmation much later when his contemporaries were selected for training in an Intermediate Training School and have not find his name in the list of those selected. He has been told that since he has been confirmed in 1986 and was junior to those selected. Therefore, he was not considered by the DPC, thereby acquired knowledge of the order for the first time. Thereafter, he made representations which were rejected in April, 1992. As such the cause of action in the present case arose in favour of the applicant only in April 1992 and thus the contention of the respondents that the application is barred by time is not tenable. The Tribunal by its order dated 7.11.1992 directing the respondents to provisionally depute the applicant for training to the Intermediate Training School along with the current batchmate. However, it is made clear that the order was ^{made} subject to the final decision in this D.A..

8. The learned counsel for the applicant, Shri Shyam Babu, ^{has} brought to our attention, that a Division Bench of this Tribunal vide its judgment dated 2.4.1992 in D.A. No. 899/92 in the case of Narain Singh v. UOI upheld the contention of the applicant. Further, he

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present
submits that the case is exactly similar to that of
Narain Singh both on point of law and fact and as such
he is entitled to the benefit of the judgment given by
this Tribunal. He also relied another decision of this
Tribunal in support of his contention [1992(20)ATC 813]
Krishna Devi v. Lt. Governor and also cited a Supreme
in
Court decision [AIR 1968 SC 1210] State of Punjab v.
Dharam Singh in respect of extension of probation period,
the details of which are not necessary to be narrated.

9. We have heard both the parties and carefully considered the pleadings. It is an undisputed fact that the applicant along with others had been appointed as Head Constable w.e.f. 11.2.1982 (Annexure D) pursuant to Rule 5(ii) of Delhi Police (Promotion and Confirmation) Rules, 1980. Neither there was an extension nor the applicant was reverted. Therefore, the applicant should be deemed to have been confirmed w.e.f. 22.11.1985. If the Respondents have acted in accordance with relevant provisions, the applicant would have selected for training in his own turn and there would have been no occasion for him to approach this Tribunal.

10. In the circumstances, we direct the respondents
keeping in view of the interim order, they should
treat the applicant as being deputed for training in the

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Intermediate Training Course in accordance with law.

If he has completed, they shall now declare his result as if he is successful and they shall consider his seniority w.e.f. 22.11.1985 for the post of Head Constable. The mere 'censure' issued against the applicant does not dis-entitle the applicant about his right of confirmation after the expiry of his probation. The learned counsel for the respondents was not able to draw our attention any provision nor any case-law barring the applicant for confirmation in the said post keeping in view of rule 5(ii). Admittedly, the permanent posts have been made available w.e.f. 22.11.1985. In that reply, they contend by stating that though the applicant was considered for confirmation along with his batchmates, he could not be confirmed on account of pending 'censure' during the period of probation i.e. 22.11.83 to 22.11.85. As a matter of fact, the probationary period of the Applicant expires after completion of 2 years i.e. 11.10.84. In his case as stated earlier neither the order of extension nor reversion order has been passed. Hence, in view of Rule 5(ii) the probationary period was to expire on 11.10.84 and he is deemed to have been confirmed from that date. However, on account of non-availability of vacancies and his juniors have been confirmed w.e.f. 22.11.85, he has

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averred atleast that his confirmation should have been considered w.e.f. 22.11.85 and not from 22.5.1986. There is considerable force in this submission. The reason is that 'censure' was awarded to him on 11.7.85 by its order dated 28.8.85 (Annexure F) subsequent to the probationary period of 2 years, therefore, the censure would not come in the way of his confirmation in his turn in accordance with law. In the circumstance, we are of the view, that his confirmation from 22.5.86 cannot be sustained and the same is liable to be quashed.

11. Regarding 'censure', we notice that a Chandigarh Bench of this Tribunal in the case of Shiv Shankar Saxena v. UOI & others [1989(1) CAT (Chandigarh) SLR 247] held that once a Government servant, who has been awarded the minor penalty of 'censure' is considered fit for promotion 'in his turn' and not from a date following the conclusion of the departmental enquiry as has been done by the Respondents in the instant case. It is further held that a minor penalty of 'censure' is imposed, he is not only eligible for promotion, confirmation, but he is entitled to the same in his turn and not from a date following the conclusion of the departmental inquiry as has been done by the respondents in the instant case.


12. After perusal of the aforesaid two decision of the Tribunal referred to above, we are satisfied that the

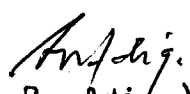
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facts of the present case is similar/identical with that of the Narain Singh's and, therefore, in accordance with the judicial precedent, that a decision of the Coordinate Bench of this Tribunal/earlier in point of time, should be given due importance and the same is binding on us.

13. In the facts and circumstances of the case, we allow the application and quash the order confirming the applicant from 22.5.86, consequently, we direct the Respondents to confirm the applicant *u.s.f.* 22.11.85, the date on which his batchmates/juniors have been confirmed in Delhi Police. Accordingly, his confirmation order from 22.5.1986 cannot be sustained and the same is hereby quashed and set aside. For the aforesaid reasons, the impugned orders dated 10.7.91 (Annexure G) and 29.4.92 (Annexure I) are quashed and set aside. He should also be assigned higher seniority as a sequel in the light of the above, The Respondents should comply with this order within *a period of* 3 months of the receipt of this order.

14. With this direction, the application is disposed of, however, in the circumstances, we allow the parties to bear their own expenses.


(B.S. Hegde)
Member (J)


(S.R. Adige)
Member (A)