

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
T.A. No.

O.A. No. 123/92
T.A. No.

199

DATE OF DECISION

DATE OF DECISION

26.4.1996

Shri Gaj Prakash

Petitioner

Applicant in person

Advocate for the Petitioner(s)

Versus

Respondent

Commission of Police & Ors.

Shri Rajinder Pandita

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. B.K. Singh, Member(A)

The Hon'ble Mr. Dr. A. Vedavalli, Member(J)

1. To be referred to the Reporter or not? *Yes*

2. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(B.K. Singh)
Member (A)
26.4.96

Central Administrative Tribunal
Principal Bench, New Delhi.

16

Q. A. No. 123/92

New Delhi this the 26th Day of April, 1996.

Hon'ble Sh. B. K. Singh, Member (A)
Hon'ble Dr. A. Vedavalli, Member (J)

Shri Jai Prakash,
S/o Sh. Murari Lal,
R/o Gr. No. F/8 Police
Station Kalkaji,
New Delhi-19.

Applicant

(Applicant in person)

Versus

1. Commissioner of Police Delhi,
Delhi Police Headquarters,
M.S. Q. Building,
I.P. Estate,
New Delhi.

2. Addl. Commissioner of Police,
(Administration) Delhi,
Delhi Police Headquarters,
M.S. Q. Bldg.,
I.P. Estate,
New Delhi.

3. Dy. Commissioner of Police,
Hd.-I, Delhi Police Headquarters,
M.S. Q. Building,
I.P. Estate,
New Delhi.

Respondents

(through Shri Rajinder Pandita, advocate)

ORDER

delivered by Hon'ble Sh. B. K. Singh, Member (A)

The admitted facts of the case are these.

The applicant was recruited as Sub Inspector on
15.10.1981. The Delhi Police (Appointment &
Recruitment) Rules, 1980 Provides that a Constable/



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Sub Inspector will continue to be temporary and will be on probation for a period of two years which can be extended by another year. The applicant's case is that he completed the maximum period of probation on 15.10.1984 and as such he should have been confirmed. It is admitted that the applicant was awarded a minor penalty (censure) on 4.2.1986 and as such his confirmation was postponed and instead of being confirmed w.e.f. 1.9.1985 i.e. on the due date he was confirmed on 19.3.1986. It is not disputed that his probation period was extended by one year. The other juniors who were confirmed after the successful completion of their probation period, were promoted earlier than him. He states that this fact of the promotion of the junior came to his knowledge in the year 1991. The junior was promoted to the rank of Inspector and before his promotion he did not know about the order of confirmation or the seniority list since the same was not intimated to persons individually. His case is that the D.P.C. which met on 1.9.1985 confirmed his colleagues. There was no case pending against him and that there was no punishment and, therefore, the D.P.C. was wrong in taking a decision to extend the period of probation by one year and to confirm him later making him junior to the erstwhile colleagues who had been junior in the seniority list/ of S.Is. The applicant also relied on a judgement of the Hon'ble Tribunal/ in case of an employee, who was identically situated like the present applicant and was allowed this benefit in D.A. No. 1188/90 Surinder Singh Sandhi Vs. Delhi Administration (1992 (21) ATC P. 753).

6

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The learned counsel appearing on behalf of the respondents raised the preliminary objection that this application is hit by delay and laches. The cause of action arose to the applicant sometimes in 1986 and the application was preferred in 1992 and as such it is to be dismissed on that ground alone.

It is true that the order of non-confirmation w.e.f. 15.10.1983 or atleast after the extended period of one year more i.e. w.e.f. 15.10.1984 in terms of Rule 5(a) of the Delhi Police (Appointment & Recruitment) Rules, 1980 and Notification No.38735/CH-II dated 4.8.1986 are under challenge in this application. In both the cases it is clear that the cause of action arose from 15.10.1983 or even if we presume it arose to him after the extended period of probation of one year on 19.3.1986 the application was preferred on 16.1.1992. Section 21 of the A.T. Act, 1985 envisages that the period of limitation would be one year if no representation/appeal is filed and shall be 1½ years if a representation/appeal is filed. Obviously, taking any of the two dates which are under challenge, the application is admittedly hit by limitation as prescribed under Section 21. This has been held by the Hon'ble Supreme Court in case of S.S. Rathore Vs. State



10

of M.P. (AIR 1990 SC 10). There is no application filed by the applicant for condonation of delay and if such application is not filed alongwith the original application, the Tribunal has no power to consider the same as has been held by the Hon'ble Supreme Court in case of Secretary to Govt. of India & Ors. Vs. Siwaram Mahadu Gaikwad (1995) ^{(30) A} ATC P.635).

On merits also the applicant has no case in view of the judgement of the Hon'ble Supreme Court in case of Jai Kishan Vs. Commissioner of Police and Anr. (1995) 31 ATC Page 148. The Hon'ble S.C. Court has categorically held the view that the question of the maximum period of probation is not there. A person will be confirmed only on ~~completion~~ probationary ~~successful completion of/period.~~ If a person suffers any disability as a result of punishment or his performance is not upto the mark, the respondents are well within their right to extend the probation period and, therefore, there is nothing called deemed confirmation in the rules. Unless a person is confirmed and unless he completes the probationary period successfully, there is nothing called deemed confirmation in the Delhi Police (Appointment and Recruitment) Rules, 1980. In such a situation he will continue to be a temporary employee till he is confirmed and his services also are likely to be terminated under Rule 5(e) if his extended period continues to be of probation also / unsatisfactory. Rule 5(e) of the Delhi Police (Appointment & Recruitment) Rules, 1980 reads as follows :-

5(e)(i) All direct appointments of employees shall be made initially

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20

on purely temporary basis. All employees appointed to the Delhi Police shall be on probation for a period of two years.

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."

Thus the ratio of that judgement is that even after the completion of the maximum period of probation, an employee will not be deemed to be confirmed automatically. He has to successfully complete the probationary period. The competent authority has a right to review the question of confirmation and has the power to extend the probation period and has also the right to terminate the services of the employee since the employee continues to be a temporary servant till he is confirmed.

In the instant case, it is admitted that his period of probation was extended by an order of the competent authority and during this period he was imposed a penalty of censure also. This being so he was confirmed later than his erstwhile ^{junior} colleagues. Thus those who were confirmed earlier became senior to him because the entire original merit list under goes a change. It is only after confirmation that he becomes a regular employee and occupies a berth in the cadre. This is not true in the case of the applicant. Thus, the ratio of the judgement of the Hon'ble Supreme Court has clearly laid down ^{the law} that a person will be temporary till he is confirmed and all those who are confirmed

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earlier will occupy a berth earlier in the cadre and will rank senior to him. This being so, we do not find any merit in the claim of the applicant that he should have been confirmed after he completed the maximum period of probation i.e. three years. Thus, the application fails on account of delay and laches and on merits also.

There will be no order as to costs.

A. Vedavalli

(Dr. A. Vedavalli)
M(J)


(B. K. Singh)
M(A)

/vv/