

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

O.A. No. 482 of 1993
T.A. No.

DATE OF DECISION 02-09-94

Smt. Nandita Bakshi Applicant(s)

Versus

U.O.I. & Others Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter or not? yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

(S.K. DHAON)
ACTING CHAIRMAN

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 482/1993.

NEW DELHI THIS THE

2nd

DAY OF

Sept (sw)

AGUST, 1994.

**MR.JUSTICE S.K.DHAON, ACTING CHAIRMAN
MR.B.N.DHOUNDIYAL, MEMBER(A)**

Smt.Nandita Bakshi
Wife of Shri Rajeev Bakshi
R/o C-349, Defence Colony
New Delhi.
BY ADVOCATE SHRI M.GANESHAN

APPLICANT

...
vs.

1. Union of India through
the Secretary to the Government
of India,
Cabinet Secretariat
South Block
New Delhi-110 011.
2. Union of India,
through
The Secretary,
Research and Analysis Wing
Cabinet Secretariat
CGO Complex, Lodhi Road
NEW DELHI-110 003.
3. Union of India
through
The Chairman and Special Secretary,
Central Board of Direct Taxes,
Ministry of Finance, North Block
New Delhi-110 001.
4. Union of India,
through the Secretary to the Government
of India,
Dept. of Personnel and Training,
Ministry of Personnel, Public Grievances and
Pension, North Block,
New Delhi-110 001.
5. The Secretary,
Union Public Service Commission, Dholpur House,
Shah Jehan Road, NEW DELHI-110 011.

BY ADVOCATE SHRI P.P.KHURANA.

ORDER

JUSTICE S.K.DHAON:

The applicant, an alleged member of the Indian Revenue Service (Income Tax), challenges the legality of the communication dated 4.1.1993 issued by the Cabinet to the Secretariat/ Joint Secretary (Personnel) stating therein that it has been decided to repatriate the applicant, IRS (IT), presently working as a Deputy Secretary in the Research & Analysis Wing (R&AW) on deputation basis, to her parent cadre. It is /that the Government's approval is, therefore, conveyed to the R&AW for relieving her from the post of Deputy Secretary, with directions to report

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to her parent cadre. She also challenges the legality of the Memorandum dated 11.1.1993 issued by the Deputy Secretary(Pers.) stating, therein that in pursuance of the letter dated 4.1.1993 of the Cabinet Secretariat, the applicant is relieved from the Cabinet to the Secretariat with a direction to report / J.S.(Revenue), Ministry of Finance.

2. The material averments in the original application are these. On or before 20.11.1986, the applicant was given the senior scale. In September, 1985, she was posted to the Government Salary Circle. With effect from 20.11.1986, she came on deputation as Under Secretary to Cabinet Secretariat/R&AW for a period of three years. On 25.10.89, she was promoted ex-cadre from the post of Under Secretary to that of Deputy Secretary in the R&AW. By a letter dated 15.3.1990, her period of deputation was extended for a further period of one year with effect from 20.11.89 to 19.11.90. Treating her as absorbed in the R&AW service, by an order dated 26.4.1990, she was posted on an extremely crucial and sensitive assignment. She was eventually absorbed in the senior scale(Group A post) and placed in the executive cadre post of Deputy Secretary in the R&AW service. Her effective date of absorption was the date following the date of expiry of her extended term of deputation viz., 20.11.1990. Synchronously, she tendered to her resignation / the Indian Revenue Service and the same was accepted and acted upon by the Secretary to the Government of India, Cabinet Secretariat; the Secretary, Research and Analysis Wing and the Chairman and Special Secretary, Central Board of Direct Taxes. Her resignation was necessitated solely by the fact that her assimilation into the R&AW service was by way of a permanent transfer. She figures in the R&AW Service Civil List as on 1.1.1992. This fact goes to establish that she had already become a full-fledged member of the said Service. Upon her

appointment to the R&AW Service from 20.11.1990, she was also purported to be placed on probation in terms of the R&AW Service Rules for a period of one year.

3. In the counter-affidavit filed by Shri C.K. Sinha working as a Director in the Cabinet Secretariat, Government of India, the material averments are these. The applicant was not permanently absorbed in the R&AW Service with effect from 20.11.1990. She had, therefore, no lien on the post of Deputy Secretary in the R&AW. By Notification dated 28.12.1990 issued by the Cabinet Secretariat, she was appointed to the Senior Time Scale of R&AW Service with effect from 1.12.1990. This appointment was not on substantive basis and, therefore, she maintained lien in her parent department. On 26.2.1993, an order was issued by the competent authority (respondent No.3) posting her as Deputy Commissioner of Income Tax under Chief Commissioner of Income Tax, West Bengal. She was appointed in R&AW on deputation for a period of three years which was subsequently extended and at that point of time no indication was given to her that she will be eventually absorbed on permanent basis. She was promoted to the rank of Deputy Secretary in the normal course. Her parent department gave her proforma promotion as Deputy Commissioner of Income Tax in the Junior Administrative Grade with effect from 28.4.1989. As per Government's order, the Cabinet Secretariat was required to promote her to the post of Deputy Secretary within six months or revert her to parent/cadre. No Departmental Promotion Committee was held in R&AW in this regard and her promotion as Deputy Secretary was made on the basis of her promotion in the parent cadre. In order to be permanently absorbed in the R&AW Service, one is required to be appointed substantively to the Service.

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4. We may immediately deal with the Memorandum dated 25.10.1989 issued by the Cabinet Secretariat appointing the applicant as Deputy Secretary in the R&AW. In this Memorandum, the applicant has been described as Under Secretary in the Cabinet Secretariat(R&AW) on deputation basis. It is and it cannot be the case of the applicant that on 25.10.1989 her deputation to R&AW ^{to} came to an end. According /her own case, she came on deputation in R&AW for a period of three years which commenced from 20.11.1986. Since the applicant continued to be on deputation on 20.11.1989, the question of her being either absorbed in the R&AW or being promoted as Deputy Secretary did not arise. We have already referred to the explanation offered in the counter-affidavit as to why the applicant was appointed as Deputy Secretary. This was so, as indicated in the counter-affidavit, the applicant had been given a corresponding promotion in her parent department. The position is clarified by the order dated 15.3.1990 whereby the period of deputation of the applicant as Under Secretary in the Cabinet Secretary(R&AW) was extended for a further period of one year.

5. In the normal course, the applicant should have gone back to her parent department on or after 20.11.1990. On the material on record and in view of the averments made in the counter-affidavit, we are not prepared to record a finding that the applicant was treated to be absorbed in the R&AW from 20.11.1990 onwards.

6. Annexure 'R-I' to the counter-affidavit is a true copy of the notification dated 28.12.1990. The said notification is the sheet-anchor of the applicant's case and since considerable debate has taken place on the interpretation of its terms and the rules applicable thereto, we consider it appropriate to extract the

same:

The President is pleased to appoint Smt. Nandita Bakshi, IRS(IT) to the Senior Time Scale of Research & Analysis Service under the Special Recruitment Scheme w.e.f.1.12.1990. Smt. Nandita Bakshi, IRS(IT) shall be assigned 1980 as her year of allotment.

The seniority list determined at the selection by the Selection Board will remain undisturbed.

On appointment to the Research & Analysis Service, she will be on probation for one year. On completion of probation and confirmation, she will be deemed to have resigned from her parent Cadre.

Her lien in the parent Department/Cadre, subject to the approval of the Cadre Controlling Authority, will be retained for a period of one year or till substantively appointed to the Research & Analysis Service, whichever is later.

7. The following features emerge from a reading of the aforequoted notification:

- (i) the applicant, an IRS(IT), is being appointed to the Senior Time Scale of Research & Analysis Service under the Special Recruitment Scheme.
- (ii) the seniority list determined at the selection by the Selection Board will remain undisturbed.
- (iii) she will be on probation for one year. On completion of probation and confirmation, she will be deemed to have resigned from her parent Cadre.
- (iv) her lien in the parent Department will be retained for a period of one year or till substantively appointed to the Research & Analysis Service, whichever is earlier.

8. It is thus clear that a specific order of confirmation is definitely in contemplation. It is also clear that by the said notification, the applicant is not being substantively appointed and that appointment will come into existence later on. It is nobody's case that an express order of confirmation was passed in the case of the applicant. On the contrary, the learned counsel for the applicant has contented himself by urging that in view of the operation of the rules applicable to the applicant, a deemed confirmation came into existence.

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We are, therefore, proceeding to consider the Rules.

9. It is an admitted position that the Research and Analysis Wing(Recruitment, Cadre and Service)Rules, 1975(hereinafter referred to as the Rules), framed under the proviso to Article 309, are applicable to the applicant's case. These Rules are applicable to all persons who have been or may be appointed to any post in the R&AW.

10. Both the parties have placed reliance upon Rule 24 of the Rules. Rule 24(1) inter alia states that all the posts in the Service in Senior Scale and above shall, after the initial constitution of the Service, be filled by promotion. Rule 24(2)(a) is relevant and it, inter alia, states that notwithstanding anything contained in clause(1), the Government may in special circumstances on the recommendations of Special Selection Board make selection to the Research and Analysis Service of any person of outstanding ability and merit serving in connection with the affairs of the Union who may or may not be from any one of Organised All Indian Central State Civil Services Group A. Rule 24(2)(e) posits that person so recruited shall be on a trial period, the duration of which would be prescribed by Head of the Organisation in each case. The trial would, however, not exceed the maximum of 2 years. The trial period may be waived by the Head of the Organisation in any case for reasons to be recorded in writing. Rule 140, as material, talks in the same vein. Sub-rule(2) thereof states that every person other than a direct recruit shall when first appointed to a grade in any Service/Cadre of the R&AW, be on a trial for a period of one year from the date of such appointment. Sub-rule(3) posits that the period of probation or trial may, if the Head of the Organisation or the Appointing Authority deems fit, be extended or curtailed in any case, but the total period of extension

of the period of probation or trial shall not exceed one year.

11. We have already quoted the contents of the notification dated 28.12.1990 and also catalogued the salient features of the said notification. We have emphasised that the passing of the order of confirmation is implicit in it. A combined reading of the aforesaid notification, Rules 24(2) and 140 clearly demonstrates that the period of probation of the applicant could be extended to two years though the stipulation in the notification was only one year. The question arises as to from what date will the period of probation of the applicant commence. Will that period commence from 28.12.1990 or from 1.12.1990? For answering this question, we will have to read the notification again. It, in the first paragraph, says that the applicant is appointed to the Senior Time Scale of Research & Analysis Service with effect from 1.12.1990. In the third paragraph, it is recited that on appointment to the Research & Analysis Service, she will be on probation for one year. If the document is read carefully, it clearly meant that the period of probation will commence from 28.12.1990. It cannot be the applicant's case that she was appointed to the Senior Time Scale on 1.12.1990. The appointment saw the light of the day only on 28.12.1990. It could be given a retrospective effect only after coming into existence. If the contention is accepted, the immediate effect would be that her period of deputation would come to end just three days a.i.e. 31.12.1990. That could not be the intention of the appointing authority.

12. Rule 24(2)(e) mandates that the appointment of a person under Rule 24(2)(a) shall be on a trial period. Therefore, it is mandatory to fix the trial period in the order of appointment. However, a discretion is given to the Head of the Organisation in each case to prescribe the duration of the trial. Rule 140(2) also mandates

that every person other than a direct recruit shall when first appointed to a grade in any Service/Cadre of the R&AW be on a trial for a period of one year from the date of such appointment. The two Rules should be interpreted in a manner so as to advance the intention of the rule making authority. Surely, the intention of rule making authority is that a person should be put on a trial for a reasonable period and not for mere 3 days. The discretion given to the appointing authority in Rule 24(2)(e) is not put so far as fixation of trial of a probationer is concerned. It has to be exercised judiciously and not whimsically or arbitrarily. Therefore, we should give a reasonable interpretation to the notification dated 28.12.1990. Once that is done, the conclusion is inevitable that the period of trial or probation of the applicant was to commence from 28.12.1990.

13. The purpose of fixing a period of trial or probation is to give an opportunity to the appointing authority to watch the performance of an employee before giving him a permanent appointment. That purpose, surely, cannot be subserved during the period of three days only. Therefore, the view we are taking is in accord with the object and purpose for which an employee is put on a probation or trial.

14. The respondents have placed before us, the record of the department, under a sealed cover. The department claimed privilege. We passed the following order on the application of the respondents claiming privilege:

" A sealed cover was produced before us by Shri Khurana, the learned counsel for the respondents. Learned counsel for the parties are agreed that the question of privilege will not arise if the Tribunal itself examines the record after opening the sealed cover. We accordingly opened the sealed cover and we are satisfied that it will not be necessary to divulge the contents, as contained in the sealed cover to the learned counsel for the applicant."

15. From a perusal of the contents of the sealed cover, we find that on 2.11.1992, Secretary(R) put up a note regarding the repatriation of the applicant to her parent cadre. We also find a note dated 31.12.1992 of the Cabinet Secretary stating therein that the proposal of repatriation of the applicant to his parent cadre has been approved by the Prime Minister. Secretary(R) was directed to issue necessary orders. Thereafter, the impugned communication and the impugned Memorandum were issued.

16. Once it is held that the period of probation of the applicant commenced from 28.12.1990 and once it is found that the Prime Minister on 31.12.1992 approved the proposal of the Secretary concerned that the applicant should be repatriated to her parent cadre, it has to be presumed that the matter engaged the attention of the Prime Minister before / expiry of two years from 28.12.1990 and, therefore, it has to be held that a decision was taken not to confirm the applicant within the period permitted by law. That the decision not to confirm should be taken precisely within the period of probation is not a rule of thumb. What has to seen is whether such a decision has been taken within a reasonable period after the expiry of the period of probation. The applicant is, therefore, not entitled to contend that she should not be repatriated. The impugned order has, therefore, to be upheld.

17. Assuming the period of probation of the applicant commenced from 1.12.1990 then too for reasons stated herein after, the net result would be the same.

18. No rules or instructions or terms of contract have been brought to our notice to the effect that immediately after the expiry of the period of

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probation an order of confirmation will come into existence. On the basis of certain decisions, the leading judgement being the case of **STATE OF PUNJAB vs. DHARAM SINGH(AIR 1968 SC 1210)**, it is vehemently contended that once the barrier of two years' period of probation is crossed, an order of deemed confirmation will come into existence.

19. It is a settled law that no probationer has a legal claim to be confirmed merely because of lapse of time; the satisfaction of the competent authority that he is fit to be confirmed is essential. It is also a settled law that a person appointed on probation and not confirmed, has no right to hold the post on which he is appointed. What has been held in DHARAM SINGH's case and the cases following that case, to our mind /that the facts and circumstances of a particular case should so speak that it is reasonable to draw an inference that the engagement of a particular person has been confirmed. To enable a court/tribunal to draw such an inference, the basic facts have to be proved. Once that is done, a provisional presumption arises and that presumption permits the presumed fact to be inferred. In the absence of further evidence to the contrary, the presumed fact is rebuttable. The law further is that non-existence of presumed fact is more probable than its existence unless the presumption is conclusive. In the present case, the basic facts are 87 that the period of probation of the applicant either expired on 30.11.1992 (assuming the period of probation commenced on 1.12.1990) or on 27.12.1992. The Secretary(R) on 2.11.1992 put up a note regarding the repatriation of the applicant to her parent department. Between 2.11.1992 and 31.12.1992, the Prime Minister approved the proposal for the repatriation of the applicant to her parent cadre. The presumed fact is that the order confirming the applicant

in the R&AW came into existence immediately after the expiry of two years i.e. on or after 1.12.1992 or 27.12.92. No authority has been brought to our notice stating that the presumption that an employee, in the absence of an express order of confirmation, stands confirmed is conclusive. That cannot be so unless either the statutory rule or a term of contract or an executive order says so. We, therefore, take the view that such a presumption is not conclusive. The facts stated above, in our opinion, rebut the presumption even though the impugned communication or the impugned memorandum were issued subsequent to 1.12.1992 or 27.12.1992.

20. The learned counsel for the applicant has relied upon the following authorities in support of his contention that the applicant having allowed to work as Deputy Secretary in the R&AW beyond the period of probation, she either stood automatically confirmed or an order confirming her should be deemed to have been passed.

(1) **DHARAM SINGH's case(supra).**

This is a decision of the Constitution Bench. The material facts are these. The maximum period of probation fixed by the rules was three years which expired on 1-10-1960. Dharam Singh continued to hold his post after 1.10.1960 but formal order confirming him in his post was not passed. He was allowed to continue in his post until some time in 1963 and was even allowed to draw annual increments of salary including the increment which fell due on 1.10.1962. By an order dated 10.2.1963, his services were terminated. The relevant rule, as material, provided that the members of the service, officiating or to be promoted against permanent posts, shall be on probation in the first instance for one year. On the completion of the period of probation, the authority competent to make appointment may confirm

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the member in his appointment or if his work or conduct during the period of probation has been in his opinion unsatisfactory he may dispense with his services or may extend his period of probation by such period as he may deem fit or revert him to his former post if he was promoted from some lower post. Then come the crucial words which are extracted:

"Provided that the total period of probation including extensions, if any, shall not exceed three years."

Their Lordships noted the law that when a first appointment or promotion is made on probation for a specific period and the employee is allowed to continue in the post after the expiry of the period without any specific order of confirmation, he should be deemed to continue in his post as a probationer only, in the absence of any indication to the contrary in the original order of appointment or promotion or the service rules.. In such a case, an express order of confirmation is necessary to give the employee a substantive right to the post, and from the mere fact that he is allowed to continue in the post after the expiry of the specified period of probation, it is not possible to hold that he should be deemed to have been confirmed. The reason for this conclusion is that where on the completion of the specified period of probation, the employee is allowed to continue in the post without any order of confirmation, the only possible view to take in the absence of anything to the contrary in the original order of appointment or promotion or the service rules, is that the initial period of probation has been extended by necessary implication. In all these cases, the conditions of service of the employee permitted extension of the probationary period for an indefinite time and there was no service rule forbidding its extension beyond a certain maximum period. In para 5,

the law laid down for the purpose of the present case is:

"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 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 negated 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" (underlining by us).

In para 6 while dealing with the facts before them, their Lordships observed:

".....But the authority allowed them to continue in their posts thereafter without passing any order in writing under Rule 6(3). In the absence of any formal order, the question is whether by necessary implication from the proved facts of these cases, the authority should be presumed to have passed some order under Rule 6(3) in respect of the respondents, and if so, what order should be presumed to have been passed." (underlining by us).

To our mind, their Lordships have not taken the view that if in a case where a term of contract or the service rules forbids the extension of the period of probation beyond a certain limit and the authority allows its employee to continue in his post thereafter without passing any formal order, an order of confirmation will automatically come into existence. To put it differently, their Lordships have not held that in the aforementioned situation, an order of confirmation should be presumed to come into existence as a matter of course on account of the operation of some law or under a rule of thumb. Their Lordships have made it clear that it is possible to draw an inference from the proved facts

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of a given case that a probationer has been confirmed in the post by implication. This idea is clarified in para 6 wherein it is observed that the question to be answered in each case is whether, from the proved facts and in the absence of any formal order, it necessarily implies that the authority should be presumed to have passed an order of confirmation. Therefore, on the facts of each case, the ultimate decision falls in the realm of presumption, which is rebuttable. In Dharam Singh's case, their Lordships on the basis of the inference drawn from the proved facts, presumed that the authority concerned passed an order confirming Dharam Singh in service.

To our mind, the following emerge from Dharam Singh's case:

- (a) in the absence of any term of contract or rule, an order of confirmation of appointment of a probationer must be passed. Otherwise, such an appointment will continue to be on probation.
- (b) if a term of contract of any service or any rule governing such a service fixes a maximum period of probation, an order of confirmation will not automatically spring up under a legal compulsion or a rule of thumb, if the employee is allowed to continue in service even after the expiry of the optimum period of probation.
- (c) in a case falling under (b), an order of confirmation may be presumed to have been passed on the basis of an inference drawn from the facts of a particular case.
- (d) in a case falling under (b), a presumption of the existence of an order of confirmation may not be inferred. In other words, an order of confirmation may not be inferred by necessary implication.

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(e) the presumption of an implied order of confirmation falling under (b) is not conclusive and is rebuttable.

(2) PARAMJIT SINGH AND OTHERS VS. RAM RAKHA AND OTHERS (AIR 1979 SC 1073).

In this case, relying upon Dharam Singh's case, it was held that where the rules provide for a fixed period of probation with a power in the Government to extend it up to a specific period and not any unlimited period, either by express provision or by necessary implication, at the end of such specified period beyond which the Government had no power to extend the probation, the probationer if he continues beyond that period, should be deemed to have been confirmed in the post. Their Lordships held that in Dharam Singh's case it is held that it is permissible to draw an 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. Their Lordships have not held that the mere fact that an employee is allowed to continue in the post beyond the optimum period of probation results in an automatic confirmation of such an employee, as contended by the counsel for the applicant.

(3) STATE OF MAHARASHTRA VS. VEERAPPA R. SABOJI AND ANOTHER (AIR 1980 SC 42).

This is a decision of a two-judge Bench. This was not a case where an optimum period of probation was prescribed. In para 6, it was observed:

".....the rule in question, therefore, comes under the ordinary and normal rule that without an express order of confirmation the Government servant will not be taken to have been confirmed in the post to which he was appointed temporarily and/or on probation. It is not covered by the exceptional rule like the one which was the subject-matter of consideration of this Court in State of Punjab v. Dharam Singh."

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After referring to Rule 6(3) of the Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961 which was the subject-matter of interpretation in Dharam Singh's case, it is observed:

" It was because of that it was held that when the Government servant was allowed to continue in the post after completion of the maximum period of probation without an express order of confirmation he could not be deemed to continue in that post as a probationer by implication. In other words because of the express provision in the rule vis-a-vis the maximum period of probation the confirmation was automatic. There is nothing of the kind to be found in the rules in the present case. The view of the High Court to the contrary is erroneous and cannot be sustained."

With profound respect, their Lordships were not dealing with a rule providing for a maximum or optimum period of probation and, therefore, their interpretation of the judgement in Dharam Singh's case is an obiter. We are conscious of the fact that even an obiter dictum of the Supreme Court is binding on us. However, in our humble opinion, the observation that the confirmation was automatic runs contrary to the law declared in Dharam Singh's case. We feel ourselves bound by the decision of the Constitution Bench.

(4) AJIT SINGH AND OTHERS Vs. STATE OF PUNJAB AND ANOTHER (AIR 1983 SC 494).

In this case, there was a particular Rule 9 which, *inter alia*, provided that a person appointed to a service shall remain on probation for a period of two years, if appointed by direct recruitment, and one year, if appointed otherwise. It appears that the letter of appointment issued to a direct recruit provided for a period of one year of probation. The real controversy before the Supreme Court was whether in view of Rule 9 it was mandatory to fix a period of two years of probation in the case of a direct recruit. Their Lordships held that the aforesaid Rule 9 was merely an enabling provision and it gave

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a discretion to the appointing authority to fix a lesser period of probation. We have carefully read this case and we find that it does not touch the controversy at hand at all. It is further noted that in this case there is no reference of Dharam Singh's case(supra).

(5) OM PRAKASH MAURYA Vs. U.P. CO-OPERATIVE SUGAR FACTORIES FEDERATION & ORS. (AIR 1986 SC 1844).

This is a two-judge judgement. This was a case of reversion of one Sh.Om Prakash Maurya from the post of Commercial Officer to that of Office Superintendent. On 29.8.1980, he was appointed as a Commercial Officer on probation for one year. By an order dated 2.10.1981, his probationary period was extended for one year till 4.9.1982. Thereafter, no order either extending the probationary period or confirming him on the post was issued, and he continued to work as a Commercial Officer. On 2.9.1983, an order was passed reverting him to the post of Office Superintendent. Regulation 17 of the Regulations governing his service conditions, inter-alia, stated that the period of probation would be one year. Proviso to Regulation 18 provides for confirmation of an employee by an express order on the completion of the probationary period. Relying upon Dharam Singh's case, it was observed:

" Regulation 17 does not permit continuation of an employee on probation for a period more than two years the necessary result would follow that after the expiry of two years probationary period, the employee stands confirmed by implication.

This case, in our opinion, does not lay down the law that immediately after the expiry of the probationary period, the employee stands automatically confirmed. By using the expression, " implication ",

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their Lordships had in their mind the dictum in Dharam Singh's case that it is permissible to draw the inference that an employee allowed to continue in the post on completion of the maximum period of probation stands confirmed in the post by implication. We reiterate that in a given case, it may be permissible to draw an inference but in another case, it may not be permissible to draw such an inference. Therefore, the facts of each case will have to be examined for drawing an inference of confirmation by necessary implication.

(6) STATE OF GUJARAT Vs. AKHILESH C. BHARGAV AND OTHERS (AIR 1987 SC 2135)

This again is a two-judge judgement. In this case, one Shri Akhilesh C. Bhargav was appointed to the Indian Police Service on 4.7.1969. By an order dated 9.4.1974, he was discharged from service. Rule 3(1) of the Indian Police Service(Probation) Rules, 1954 came up for consideration. It, inter-alia provided that every person recruited to the service shall be appointed to the service on probation for a period of two years. No maximum or optimum period of probation was provided. On behalf of the appellant in the appeal, it was contended that an order of confirmation has to be made and confirmation would not follow automatically. Their Lordships, relying upon the administrative instructions issued by the Ministry of Home Affairs on 16.3.1973 which, inter-alia, provided that save for exceptional reasons, the period of probation should not be extended by more than one year and no member of the service should, by convention, be kept on probation for more than double the normal period i.e. four years. held that a probationer, who does not complete the probationers' final examination within a period of four years, should ordinarily be discharged from the service. (As shown above, the order of discharge was passed about 5 years after the appointment.) After

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observing that in Dharam Singh's case(supra) the relevant rule fixed a maximum limit of three years beyond which the period of probation could not be extended, it was observed:

"When an officer appointed initially on probation was found to be continuing in service beyond three years without a written order of confirmation, this Court held that it tantamounts to confirmation."

Their Lordships have not interpreted Dharam Singh's case to mean that the mere fact that even if an employee is allowed to continue just for a few days after the expiry of the optimum period of probation, an order of confirmation will automatically come into existence. Since in Dharam Singh's case as well as in Akhilesh C. Bhargava's case(supra), the employees concerned were allowed to continue in service for a considerable period beyond the maximum period of probation, their Lordships are not departing from the dictum in the case of Dharam Singh that confirmation by necessary implication is a matter of inference.

(7) SHIV KUMAR SHARMA Vs. HARYANA STATE
ELECTRICITY BOARD AND OTHERS (AIR 1988
SC 1673).

This is a two-judge judgement. We have read this case carefully and we find that it does not touch the controversy.

(8) VIMAL CHANDRA PANDEY Vs. UNION OF INDIA
AND ANOTHER (ATR 1992(1) C.A.T.562)

In this case, Rule 21 of the Delhi and Andaman and Nicobar Islands Civil Service Rules, 1971 was involved. This rule did not provide for any maximum or optimum period of probation. A reference was also made to Akhilesh C. Bhargava's case(supra). It does not give any decision to the issue under consideration.

21. We have already referred to the facts of the instant case. To repeat ourselves, we have found

that the departmental Secretary had recorded the opinion that the applicant should be repatriated to her parent department even before the expiry of the optimum period of probation and the papers reached the Prime Minister in normal course and he passed the order that the applicant should be repatriated to her parent department within a reasonable period from the date of expiry of the maximum period of probation. In these circumstances, it will not be reasonable to draw an inference that the applicant stood confirmed by necessary implication. The presumption which came into existence on account of the fact that the applicant was allowed to cross the dead-line of the period of probation stands amply rebutted by the material on which we are placing reliance.

22. There are five respondents to this original application. They are:

- (1) Union of India through the Secretary to the Government of India, Cabinet Secretariat.
- (2) Union of India through the Secretary, Research and Analysis Wing, Cabinet Secretariat.
- (3) Union of India through the Chairman and Special Secretary, Central Board of Direct Taxes.
- (4) Union of India through the Secretary to the Government of India, Department of Personnel and Training.
- (5) The Secretary, Union Public Service Commission.

23. A counter-affidavit has been filed on behalf of all the respondents by Shri C.K.Sinha, working as

a Director in the Cabinet Secretariat, Government of India.

He has verified the contents of all the paragraphs in the counter-affidavit as correct to the best of his knowledge and belief as derived from the official record.

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24. In the original application, allegations of serious nature have been made by the applicant against respondent No.2. Those allegations, as material, are these. The present incumbent/respondent No.2 started to assume towards the applicant a familiarity going beyond their respective official positions as well as the protocol and etiquette attaching to official dealings between personnel. The applicant politely but unmistakably rebuffed the said respondent No.2 in his said transgression of limits. Consequently, he became hostile to the applicant. In retaliation, he started abusing his official position and authority in diverse ways to embarrass and teach a lesson to the applicant. Delicacy forbids the applicant from divulging further details of the said gender harassment inflicted by the said respondent No.2 on her. The applicant avers that she is here pleading explicitly mala fides, i.e., malice in fact on the part of respondent No.2 in initiating the issuance of the impugned orders. Acting obviously out of spite and hostility against the applicant, the said respondent No.2 acting in connivance with certain others within the organisation and with certain journalists closely known to him, leaked and caused to be leaked to one particular English National News daily a news story containing false allegation against ^{her and one of her} former senior colleague who had already taken voluntary retirement from the service. The news item in question was carried in the issue dated 29.12.1992 of the Indian Express(vide Annexure-3). We shall refer to Annexure-3 presently. This annexure is a news item, the author of which is one Shri R.Rajagopalan. It has the caption" Senior RAW officer quits after affair." Under it, the following is printed in bold letters:

" Mr.Jha,46,had an affair with Mrs.Nivedita Bakshi,40,an income tax officer in RAW. Both sought leave subsequently. Earlier in July,a similar case involving two RAW officers ended with both putting in their papers."

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The applicant asserts that though her name has been wrongly mentioned in the bold letters she is the person who is one of the targets of the news items.

25. On 31.12.1992, the applicant addressed a letter to the Secretary (R), respondent No.2 enclosing therewith a copy of the press clipping which appeared in the 'Indian Express' dated 29.12.1992. She made a request that a full-fledged enquiry be instituted and culprits be brought to book. On 6.2.1993, the applicant addressed a confidential letter to Shri S.Rajagopal, Cabinet Secretary, Rashtrapati Bhawan, New Delhi bringing to his notice the publication in the Indian Express on 29.12.1992 and praying therein that a proper enquiry be held.

26. The aforesaid allegations made against respondent No.2 have not been denied by him personally. Instead, an officer has performed this job, who as already stated, has denied the allegations on the basis of the perusal of the record. It is impossible to believe that allegations made against respondent No.2 on personal level have the remotest of the remote connection with the official record. The allegations have, therefore, remained absolutely uncontroverted. The only explanation offered in the counter-affidavit for not holding an enquiry into the allegations made by the applicant against respondent No.2 is that she has either taken libel proceedings against the persons concerned or is due to initiate such proceedings.

27. The R&AW is a highly sensitive department dealing with national interest, including its security-internal as well as external. The allegations made by the applicant call for a thorough departmental enquiry by an independent authority like the Vigilance Commission. ³⁴ / The reason given for not holding such an enquiry is not convincing at all. Therefore, a proper and thorough fact finding enquiry should be held now. We hasten to

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add that any observation made by us in the present judgment will have no impact whatsoever on any proceedings initiated by the applicant in a competent court of law to vindicate her honour and reputation. The fact finding enquiry shall be held and completed as expeditiously as possible but not beyond a period of three months from the date of the receipt of a copy of this judgment by the Secretary of the Cabinet. The report of the enquiry shall be placed before the Prime Minister.

28. We do not find any force in the submission of the counsel for the applicant that the respondents having not put the applicant on notice regarding their proposed decision to repatriate her to her parent cadre and also not disclosing to her the basis on which they came to the conclusion for doing so, the impugned order repatriating her to her parent department stands vitiated. Neither any authority has been brought to our notice in support of the said proposition nor has any principle been referred to by the learned counsel. It is a settled law that the principles of natural justice are not applicable to cases of discharge simpliciter and to repatriation to the parent department. The argument based on mala fides shall be considered a little later.

29. The learned counsel for the applicant next urged that the decision not to confirm the applicant having not been communicated to her immediately after the expiry of the optimum period of probation, that decision taken by the competent authority could not and did not prevent the coming into existence of a deemed order of confirmation. This argument really begs the question. We have already taken the view that "deemed confirmation" is based merely on an inference of presumption. The argument also ignores the fact that the authority concerned is entitled to apply its mind to the question whether an employee should or should not be confirmed till the end of the period of probation. Therefore, the Prime Minister could take a decision

not to confirm the applicant within a reasonable period from the date of the expiry of the maximum period of probation.

30. Now we come to the question of mala fides. Serious allegations of mala fides have been made against the Secretary (R&AW), Cabinet Secretariat who it is to be noted has not been cited as a respondent personally and by name. The Union of India through the Secretary (R&AW), Cabinet Secretariat is cited as one of the respondents to the original application. Be that as it may, the fact remains that the Secretary of the department concerned merely put up a note but the final decision was taken by the Prime Minister. It is to be presumed that the Prime Minister had before him the entire material and it is to be further presumed that he applied his independent mind in coming to the conclusion that the applicant should be repatriated to her parent department. In these circumstances, it cannot be said that the decision to repatriate the applicant to her parent department is vitiated on the ground that the Secretary of the department concerned was actuated by mala fides by putting up a note that the applicant should be repatriated to her parent department. On an examination of the record, we are satisfied that the material therein was sufficient to enable a reasonable person to come to the conclusion that the applicant should not be confirmed in the service of R&AW.

31. It is also to be remembered that the note of the Secretary (R) is dated 2.11.1992 and the publication in the Indian Express is dated 29.12.1992. Further, a reading of the letter dated 31.12.1992 of the applicant to the Secretary (R) discloses that on that day her relations with him were not strained. Moreover, it is significant to note that the applicant has refrained from mentioning the date on which the Secretary (R) allegedly

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crossed the limits of protocol and etiquette while dealing with her.

32. In view of the foregoing discussion, the applicant is not entitled to any relief. The original application is, therefore, dismissed but without any order as to costs.

B.N.Dhundiyal
(B.N.DHUNDIYAL)
MEMBER (A)

S.K.Dhaon
(S.K.DHAON)
ACTING CHAIRMAN

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