

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: ~~28~~⁷ August, 2001

OA No.233/1995

Azicullah Khan s/o Shri Fazi Serulla Khan r/o Ward No.19, Mchalla Paiga, Jhalawar presently posted as Sepoy in the office of District Opium Officer, Jhalawar.

..Applicant

Versus

1. Union of India through the Secretary, Ministry of Finance, Government of India, North Block, New Delhi.
2. The Secretary, Board of Central Excise and Customs, Ministry of Finance, Government of India, New Delhi.
3. The Narcotics Commissioner, 19, Malroad Morar, Gwelier.
4. District Opium Officer, Jhalawar.
5. Dy. Narcotics Commissioner, Station Road, Kota.
6. Dy. Narcotics Commissioner, Opium Colony Neemach (M.P.)
7. Iswar Chand, LDC, O/o the District Opium Officer, Jhalawar.
8. Shri Narendra Kumar, LDC O/o the Dy. Narcotics Commissioner, Kota.

.. Respondents

Mr. F.N.Methur, counsel for the applicant

Mr. Arun Chaturvedi, counsel for the respondents

CORAM:

Hon'ble Mr.A.F.Mishra, Judicial Member

Hon'ble Mr.A.P.Nagath, Administrative Member

ORDER

Per Hon'ble Mr. A.P.Nagath, Administrative Member

By filing this application, the applicant seeks directions to the respondents to confirm him on the basis of his seniority to be determined from the date of appointment and also to assign seniority to the applicant from the date of his initial



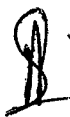
appointment. Further prayer of the applicant is that the rule by which his seniority has been linked with confirmation may be declared as ultra vires.

2. We find from the OA that no specific policy, circular or rules of the Government linking seniority with confirmation has been challenged in this OA. No arguments were advanced assailing such order. Consequently, we are not inclined to go into this aspect of the application.

3. The case of the applicant is that though he was appointed as Sepoy on 26.5.1971, he has not been confirmed till date and due to this non-confirmation, promotional avenues are also being denied to him by the respondents. He claims to have made number of representations in 1993. The representation made by him in 1993 was rejected by the respondents and the one submitted in 1994 has not been attended so far. He submits that he was granted quasi-permanent status w.e.f. 26.5.74 (Ann.A7) and he also was allowed to cross the Efficiency Bar by letter dated 29th January, 1990 (Ann.A8). He contends that this obviously means that there is no disability which should have prevented his confirmation. He has thus assailed the action of the respondents for not confirming him so far though his juniors have been confirmed and found suitable for further advancement.

4. The respondents have filed their reply. They have stated that in the two DFCs held in 1982 and 1988 (para 5.D of the written submissions) the applicant was found "Not yet fit" for confirmation. It has been stated that the case of the applicant for confirmation in the grade of Sepoy will be put up before the next DFC.

5. The learned counsel for the applicant placed reliance on 1987 (3) ATC 932, Kartar Singh vs. Union of India and ors.; (1992) 19



ATC 604 (CAT-Delhi), Parduman Fumar Jain v. Union of India and anr.; 1977 (2) SLR 235, S.B.Fatwardhan and ors. v. State of Maharashtra and ors.; 1992 (2) SLR (CAT) 548, S.M.Chakraborty and ors. v. Union of India and ors.; 1987 (2) SLR 689 (SC), Union of India and ors. v. Chander Pal and 1986 (1) ATC 596 (Delhi), Chander Pal v. Union of India and ors. to contend that seniority has no relation with the confirmation and also that the applicant has been wrongfully denied confirmation from the due date. In the case of Chandra Pal v. Union of India, it was held by the C.A.T. Principal Bench that the applicant was entitled to confirmation from the date he completes two years of probation. This matter went in appeal before the Supreme Court. The Apex Court while confirming the decision of the Tribunal modified the date of confirmation from 1st January, 1971 to 1st January, 1970 for the reasons mentioned therein. In so far as linking seniority with confirmation, we would like to refer to the observations of Hon'ble the Supreme Court in the case of S.B.Fatwardhan v. State of Maharashtra wherein the Apex Court had an occasion to observe that confirmation is one of the inglorious uncertainties of the Government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancy. We find that the policy in respect of the confirmation has undergone a total change in the meantime. With coming into force of this simplified policy regarding confirmation, that uncertainty seems to have ended. By an order dated 28th March, 1988, the Government of India, Department of Personnel and Training vide OM No.18011/1/86-Est.(D) issued a revised policy which provides for one time confirmation only in that grade to which a person was initially recruited. The relevant provisions states as follows:-

Confirmation in the grade to which initially recruited -

- (i) As at present, the appointee should satisfactorily complete the probation. (ii) The case will be placed



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before the Departmental Promotion Committee for confirmation. (iii) A specific order of confirmation will be issued when the case is cleared from all angles."

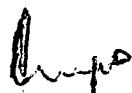
It is clear from the above, that as soon as an employee completes the probation period satisfactorily, his case will be placed before the DPC and specific order of confirmation will be issued. It is not the case of the respondents that the applicant had not completed his probation period satisfactorily. It is clearly borne out from the facts that he was granted quasi-permanent status vide letter dated 26.5.74 (Ann.A7) which states that Shri Azizulla Khan is appointed in a quasi-permanent capacity having regard to the quality of work, conduct and character and that he is suitable to be appointed in that capacity. Having granted the quasi-permanent status in 1974 more than 2 year after the applicant was appointed in the service, there can be no ground for denying confirmation to him after the revised policy for confirmation was introduced. Contention of the respondents that the applicant was considered by the DPC in 1988 and was found not yet fit, is liable to be rejected as the action is in contravention of the revised policy which became effective from 1.4.88. Thus, we have no hesitation in concluding that the applicant is liable to be confirmed w.e.f. 1.4.88 by which date he had put in almost 17 years of service. We are not inclined to accept the prayer of the applicant for granting him confirmation from the retrospective date as his case had been considered by the DPC in 1982 under the provisions of then prevailing rules and he was not considered fit. He had not challenged that action and, therefore, no relief can be granted to him on account of inaction on his part.

6. In the circumstances, we partly allow this OA and direct the respondents to treat the applicant as having been confirmed in the



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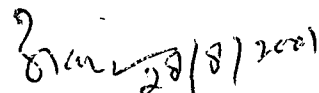
initial grade of Sepoy w.e.f. 1.4.1988. He shall be entitled to all consequential benefit with respect to this date of confirmation, which should be accordingly extended to the applicant within a period of 3 months from the date of this order. No order as to costs.



(A.P. NAGRATH)

Adm. Member

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(A.K. MISHRA)

Judl. Member

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