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# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
# JAIPUR BENCH, JAIPUR

O.A. No. 161/2001 199
T.A. No.

DATE OF DECISION 14.9.2001

Yamini Chauhan Petitioner

Mr. Ajay Rastogi Advocate for the Petitioner (s)

Versus

Navodaya Vidyalaya Samiti and anr. Respondent

Mr. V.S.Gurjar Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.K.AGARWAL, JUDICIAL MEMBER

The Hon'ble Mr. S.A.T.RIZVI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? YES
3. Whether their Lordships wish to see the fair copy of the Judgement ? yes
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(S.A.T.RIZVI)
Adm. Member

(S.K.AGARWAL)
Judl.Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 14 September, 2001

OA No.161/2001

Yamini Chauhan D/o Shri N.L.Chauhan r/o 13, Rishi Nagar, Extension I, Ujjain (Madhya Pradesh) last employed as PET, JNV, Sirsa, Haryana.

..Applicant

Versus

1. Navodaya Vidyalaya Samiti through its Director, A-39, Kailash Colony, New Delhi.

2. Navodaya Vidyalaya Samiti, Jaipur Region through its Deputy Director, A-12, Shastri Nagar, Jaipur

.. Respondents

Mr. Ajay Rastogi, counsel for the applicant

Mr. V.S.Gurjar, counsel for the respondents

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.S.A.T.Rizvi, Administrative Member

ORDER

Per Hon'ble Mr. S.A.T.Rizvi, Administrative Member

The services of the applicant appointed as Physical Education Teacher (PET) vide respondents' letter dated 13.1.1997 (Ann.A2) by which she was placed on probation for a period of 2 years has been terminated by the respondents by their order dated 20th April, 2000 (Ann.A9), more than 3 years after she had assumed the charge of the post of PET on 1.2.1997. The aforesaid order was taken in appeal without success. The appellate authority has rejected the applicant's prayer by his order of 22nd February, 2001 (Ann.A1). Both the orders aforesaid have been impugned in the present OA. The prayer made is for quashing and setting aside the aforesaid orders and consequently for her reinstatement in service on the post of PET (Female). The further prayer made is that the respondents should be directed to declare the applicant confirmed on the post of PET (Female) w.e.f.

1.2.2000 on which date he had completed 3 years of probation.

2. The main contentions raised on behalf of the applicant are firstly that the order passed by the respondent authority terminating her services is stigmatic and, therefore, could not have been passed without giving an opportunity to the applicant to state her case, and secondly on the ground that following the expiry of the maximum period of probation of 3 years in this case, the applicant should be deemed to have been confirmed. The learned counsel appearing for the respondents has, on the other hand, contended that the order passed by the appointing authority dated 20th April, 2000 is wholly in order and cannot be termed as stagmatic in character. He has also contended, contrary to what the applicant has submitted, that she need not to be confirmed by a written order passed after due consideration of her performance during the period of probation, and in the absence of such an order, the applicant could not be taken to have been confirmed. According to him, there is no question of deemed confirmation in the present case, inasmuch as, the Navodaya Vidyalaya Samiti has not framed any service rules laying down the maximum period of probation, whether of 2 years or of 3 years duration.

3. We have heard the learned counsel at length and have perused the material on record.

4. We find that the letter of appointment dated 13.1.1997 (Ann.A2), insofar as, the period of probation is concenred, lays down as follows:-

> "You will be on probation for a period of two years from the date of appointment extendable by another one year at the discretion of the competent authority. Failure to

complete the period of probation to the satisfaction of the competent authority or found unsuitable for the period during probation period, will render you liable to discharge from service at any time without notice and without assigning any reasons thereto."

In pursuance of the aforesaid stipulation made in the letter of appointment, the respondents have carefully assessed the performance of the applicant and have thereafter passed ~~the above~~ an order dated 6.4.99 (Ann.A3) by which the period of applicant's probation has been extended by one year. The relevant paragraph taken from the aforesaid order is reproduced below:-

"Miss Yamini Chauhan, is further, directed to show improvement in her performance during the extended period of probation. In case, she fails to do so within this period, her services are liable to be terminated as per terms and conditions of her appointment."

From the extracts taken from the appointment letter and the order extending the period of probration reproduced above, we note that the applicant was required to complete the period of probation to the satisfaction of the competent authority, and on being found to be unsuitable for the post during the period of probation, she was liable to be discharged from the service at any time without notice and without assigning any reasons therefor. The performance of the applicant was duly assessed and on finding that her performance required to be improved, the period of probation was extended by one year to enable her to register improvement in her performance. In the order extending the period of her probation, it has been reiterated that in the event of her failure to register improvement as above, her

services were liable to be terminated in accordance with the stipulation made in the letter of appointment. We also note that her performance, before the extension order was passed, was assessed by the DPC and not by an individual person and by a concious decision, she was allowed more time by way of extension in the period of probation to show improvement in her performance. Her performance remained under close watch as expected and the same was assessed once again by the DPC which met on 18/19th April, 2000 to consider her case. Proceeding on the basis of the recommendations made by the DPC, the respondent authority has terminated the applicant's services by his order dated 20th April, 2000 (Ann.A9). The aforesaid order has been passed by keeping in view the provisions contained in the Ministry of Home Affairs (MHA) OM No. 44/1/59-Estt (A) dated 15th April, 1959 and in due exercise of the powers conferred on the respondent authority.

5. A copy of the MHA's OM dated 15th April, 1959 referred to in the above paragraph has been made available to us by the learned counsel appearing on behalf of the respondents. The subject matter of the aforesaid OM dated 15th April, 1959 is "Probation on appointment". The aforesaid OM, we find, lays down 10 general principles for observance by the various Ministries etc. Principle No. (viii) taken from the aforesaid OM reads thus:-

> "viii) While the normal probation may certainly be extended in suitable cases, it is not desirable that an employee should be kept on probation for years as happened occasionally at present. It is, therefore, suggested that, save for exceptional reasons, probation should not be extended for more than a year and no employee should be kept on probation for more than

double the normal period."

As provided in the letter of appointment dated 13.1.1997, in the applicant's case the normal period of probation is 2 years which can be extended by one year at the discretion of the competent authority. It would be seen, therefore, that in the applicant's case a maximum period of probation has apparently been laid down and which is 3 years in all. The aforesaid provision seems from the letter of appointment and not from any specific provision made in any of the service rules concerning probation. In our view, therefore, it has to be seen whether there are any rules as such which would govern the matter of probation or else reliance has to be placed exclusively and wholly on the aforesaid stipulation made in the letter of appointment. The parties in this OA have admitted that there are no rules as such in existence, insofar as, the probation is concerned. According to the learned counsel appearing on behalf of the applicant, in such an eventuality, it will be entirely in order to place reliance on the aforesaid stipulation made in the letter of appointment. On the other hand, the learned counsel for the respondents has stressed that in the absence of formal rules on the subject, reliance is inevitably required to be placed on the administrative/executive instructions, if any, issued by the Government of India. He has accordingly argued that since formal rules on the subject of probation do not seem to have been framed, it will be only proper to follow the principle No. (viii) reproduced above. The MHA's OM dated 15th April, 1959 is, according to him, in the nature of administrative/executive instructions issued by the Government of India and, therefore, the aforesaid principle extracted therefrom is indeed required to be followed. In view of this, according to the learned counsel for the respondents, the respondent authority has correctly relied upon above mentioned principle in passing the impugned order dated 20th April, 2000. It is

just as well according to him that the respondent authority has made a specific reference to the aforesaid MHA's OM dated 15th April, 1959 in the body of the aforesaid impugned order of 20th April, 2000.

6. In a nutshell, therefore, what comes out is that while the respondents find nothing wrong with the impugned order dated 20th April, 2000, insofar as, passing of the said order after completion of 3 years is concerned, the learned counsel appearing for the applicant has, on the other hand, laid great stress on his contention that in the absence of a definite rule, the conditions including the period of probation contained in the letter of appointment, will be conclusive for determining the aforesaid question raised in this OA. Thus, in other words, while the respondents have vehemently pleaded that the period of probation could be extended upto 4 years, being double the normal period of 2 years, in pursuance of the MHA's OM dated 15.4.1959, the learned counsel for the applicant has equally vehemently urged that it would be incorrect to follow the provisions made in the MHA's aforesaid OM and that the period of probation should be determined only in accordance with the aforementioned stipulation made in the letter of appointment, i.e. the period of probation should be taken to be a maximum of 3 years and not more.

7. Apart from the question of duration of probation period, insofar as, the issue of stigma earlier raised is concerned, the respondents do not find any fault with the order dated 20th April, 2000 passed by the competent authority. The same is an order simplicitor and does not assign any reason for the termination of the applicant's services. The said order merely provides that the recommendations made by the DPC alone have been relied upon by the respondent authority at the time of passing of the order. Thus, no reasons have been disclosed. The learned counsel appearing in support

of the OA has, however, proceeded to argue not so much on the basis of the aforesaid order of 20th April, 2000, but in the light of what the appellate authority has to say in the order passed by him on 22.2.2001 (Ann.A1). It will be useful to reproduce the relevant portion therefrom in the following:-

> "AND WHEREAS, the undersigned, after careful examination and consideration of the evidences on record has observed that the performance of Ms. Yamini Chauhan during his service in JNVs was totally dissatisfactory and she has not shown any improvement in her work and attitude despite the opportunity given to her by extending her probation period. Her performance appraisals during the period of service do not speak positive about her terms of dedication of work, attitude, sense of responsibility and amenability to discipline etc. I am convinced that continuation of teachers like Ms. Yamini Chauhan in service will certainly be detrimental to the growth of residential institution like JNVs".

According to the learned counsel for the applicant, the aforesaid extract taken from the order passed by the appellate authority clearly shows that the order terminating the services is stigmatic in character and has been passed as a measure of punishment. This could not have been done according to him without putting the applicant to notice and without following the prescribed procedures. No such notice was issued to the applicant and, therefore, the order terminating her services is bad in law. The learned counsel appearing for the respondents has, on the other hand, asserted that for ascertaining whether termination order is stigmatic in character or

not, reliance should be placed wholly on the order passed by the appointing authority, namely, the Deputy Director, Navodaya Vidyalaya Samiti. As already stated, the order dated 20th April, 2000 (Ann.A9) in question is an order simplicitor and it is not at all possible to advance the plea that by the said order any stigma has been cast on the work and conduct of the applicant.

8. We have carefully considered both the questions raised by the learned counsel on either side. We will first deal with the issue of stigma raised by the learned counsel for the applicant with a great deal of vehemence. It is true that the order dated 20th April, 2000 passed by the appointing authority is an order simplicitor. We are however required to see whether the views expressed by the appellate authority in the order passed by him in appeal on 22.2.2001 can really amount to casting of stigma on the work and conduct of the applicant so as to enable her successfully to challenge the impugned order dated 20th April, 2000 by which her services have been terminated. On consideration, we find that the appellate authority is required to consider the various issues raised in the appeal and to pass a reasoned and a speaking order thereon. While passing such an order, the appellate authority is, naturally enough, bound to come out with various factors which might have weighed with him in deciding the appeal. The views, which an appellate authority is thus inevitably bound to disclose in an order passed in appeal, will be entirely those of the appellate authority himself. For any such views finding place in the appellate order, the appointing authority cannot be blamed and, in the circumstances, it will be futile to argue that stigma otherwise not found in the order of the appointing authority will appear to form part of it, merely because the appellate authority has chosen to express his own views about the termination of the applicant's services. Moreover, from the relevant stipulation made in the letter of appointment as reproduced in paragraph No.4 of this order, it would

appear that the applicant had consciously accepted the conditon that on her work and conduct being found to be unsatisfactory and on her being found to be unsuitable for the post, her services will be liable to be terminated without assigning any reason and at any time without notice. Having accepted the aforesaid condition, it is not open to the applicant, in our view, to argue that the respondents have committed a mistake by re-counting the reasons based on which her performance was found to be unsatisfactory in the order passed by the appellate authority, though no reason at all has been assigned in the order passed by the appointing authority consistently with the aforesaid stipulation reproduced in Paragraph 4 above. Having accepted a very specific condition about performance of duties to the satisfaction of the respondent authorities, the applicant should have been prepared, in our view, to know first hand as what has really gone wrong, insofar as, her work and conduct are concerned, which has led to the termination of her services. The appellate authority has, we find, gone about his job not only carefully, but has been brutally honest about what he found in the record about the work and conduct of the applicant. For good and valid reasons, the appellate authority has, without mincing words, pointed out the deficiencies noticed in performance of the applicant. This cannot mean, as already indicated, that the order passed by the appointing authority, is in any respect and in any manner stigmatic in character. We are convinced that only the order to be looked into with a view to deciding the question of stigma is the order passed by the appointing authority. The order passed by the appellate authority which has only upheld the Dy. Director's order cannot form the basis for the determination of the aforesaid question of stigma. The proposition that the original order of termination will stand merged in the appellate authority's order and, thus viewed, stigma would seem to have been cast on the work and conduct of the applicant by whatever the appellate authority has had

to say in his order in regard to the work and conduct of the applicant, which does not hold good and we are least inclined to accept this view either. Merger of the two orders, as in this case, will have very limited implication. According to us, the same implies merger of the operative portions of the two orders, nothing more and nothing less. Thus, the termination order simplicitor of the Dy. Director gets merged in the appellate authority's order upholding the same or rejecting the appeal. The issue of stigma raised by the learned counsel for the applicant is decided accordingly.

9. Insofar as the issue of period of probation is concerned, the learned counsel appearing on behalf of the applicant has in addition to what have been stated above, relied heavily on a number of decisions rendered by the Apex Court in this regard. The foremost among the Apex Court's judgments cited by the learned counsel is the one decided by the Five Judges Constitution Bench on 2.1.1968 in the State of Punjab v. Dharam Singh, reported in AIR 1968 SC 1210. We had occasion to go through the relevant portion of the order passed by the Supreme Court in the aforesaid case. We find that the same deals with a case in which the maximum period of probation had been laid down in the relevant service rules itlself. The relevant rule quoted in the judgment, inter alia, provides "that the total period of probation including extensions, if any, shall not exceed three years". Thus, the Supreme Court in that case had considered a very specific situation in which there was no manner of doubt about the period of probation. A maximum period had been prescribed and the same had to be adhered to. Finally, this is what the Supreme Court had held in that case:-

> "In the present case, Rule No. 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 negatived by the service rules forbidding extension of the probationary period 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."

In regard to cases where a maximum period of probation has not been laid down, the Supreme Court has, in the same case, observed as follows:-

"This court has consistently held 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 expiry

of the specified period of probation. It is not possible to hold that he should be deemed to have been confirmed".

In the present case, the only provision with regard to the period of probation is available in the letter of appointment. The same, we find, merely provides that the applicant would be on probation for 2 years extendable by another one year. It nowhere lays down that the period of probation cannot be extended in any case beyond the total period of 3 years. Thus clearly enough, the relevant stipulation made in the letter of appointment does not lay down a maximum period of probation. There are no specific service rules made in this connection and this fact is admitted by both sides. In the circumstances, the only course open to us is to place reliance, in the manner argued by the learned counsel for the respondents, on the general administrative/executive instructions issued by the Government on matters connected with probation. In paragraph No.5 we have reproduced an extract from MHA's OM dated 15th April, 1959 which provides that save for exceptional reasons, probation should not be extended for more than a year and no employee should be kept on probation for more than double the normal period. A similarly worded provision incorporated in MHA's instructions dated 16.3.73 which reads thus:-

"(ii) It is not desirable that a member of the service should be kept on probation for years as happens occasionally at present. Save for exceptional reasons, the period of probation should not, therefore, 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. Accordingly, a probationer, who does not complete the

probationer's final examination within a period of four years, should ordinarily be discharged from the service."

was relied upon in the State of Gujrat v. A.C.Bhargava and ors. decided by the Supreme Court on 26.8.1987; (1987) 4 SCC 482 in the case of an IPS officer. The IPS officer in question was appointed on probation on 4.7.1969 and was discharged by an order dated 9.4.74. The said IPS probationer's service was thus terminated a little more than 5 years after he was put on probation. The relevant rule provided a two years' period of probation with the possibility of extension with no maximum limit prescribed under the rules. In the circumstances, based on the aforesaid instructions dated 16.3.1973 issued by the MHA, the provision of a maximum period of 4 years (double the normal period) was inferred and put to use by the Supreme Court which held that the maximum period of 4 years having been exceeded without the IPS probationer being confirmed, he would be deemed to have been confirmed. Literally interpreted, the aforesaid provision lays down that save for exceptional reasons no employee should be kept on probation for a period more than double the normal period. In the present case, the normal period of probation stipulated in the letter of appointment is two years and, therefore, having regard to the aforesaid provision, the applicant's probation can be extended by the respondents upto 4 years in all. This is precisely what the respondents had done albeit by necessary implication of having regard to the OM dated 15.4.1959. They have correctly placed reliance on the aforesaid provision and have, in the event, passed orders terminating the services of the applicant in the fourth year of her probation, after first extending the period by one year. The impugned order dated 20th April, 2000 [redacted], in these circumstances, having been passed within the overall limit of 4 years laid down in the aforesaid provision, no fault can be found with the same in the light of the

principle propounded by the Supreme Court in State of Punjab v. Dharam Singh (supra).

10. After arguing on the basis of the judgment in State of Punjab v. Dharam Singh (supra), the learned counsel for the applicant proceeded to place reliance on State of Gujarat v. Akhilesh C. Bhargava and ors. decided on 26th August, 1987, (1987) 4 SCC 482; Daya Ram Dayal v. State of MP and anr. decided on 28th August, 1997, (1997) 7 SCC 443 and several other judgments rendered by the Supreme Court, much to the same effect.

11. The learned counsel appearing on behalf of the respondents in his turn placed reliance on a number of judgments render by the Supreme Court on the question of probation. He has also relied on State of Punjab v. Dharam Singh (supra) on which reliance has been placed by the learned counsel for the applicant as well. Referring to Daya Ram Dayal v. State of M.P. and anr. (supra) decided by the Supreme Court on 28th August, 1997, the learned counsel has emphatically argued that presumption of deemed confirmation herein need not apply in cases in which a special provision for continuation of probation even beyond the maximum period of 3 years has been made in the rules. While laying down the aforesaid principle, the Supreme Court has in the said case held as follows:-

> The decision of the Constitution Bench in State of Punjab v. Dharam Singh was accepted by the seven-Judge Bench in Samsher Singh v. State of Punjab. However it was distinguished on account of a further special provision in the relevant rules applicable in Samsher Singh case. The rule there provided for an initial period of 2 years of probation and for a further period

of one year as the maximum. One of the officers, Ishwar Chand Agarwal in that case completed the initial period of 2 years on 11.11.1967 and the maximum on 11.11.1968, and after completion of total 3 years his services were terminated on 15.12.1969. But still Dharam Singh case was not applied because the Rules contained a special provision for continuation of the probation even beyond the maximum of 3 years."

Thus from the above, we find that even though a maximum period of probation may have been laid down in a particular case, the presumption of deemed confirmation may yet not apply in the peculiar circumstances of the case. On the very same question the learned counsel for the respondents has also referred to the judgment rendered by the Supreme Court on 24.9.97 in Chief General Manager, State Bank of India and anr.v. Bijoy Kumar Mishra reported in AIR 1997 SC 3981. In the said case a maximum period of 3 years of probation was laid down in the relevant rules, but the services of the probationer were terminated nearly 8 years after he was appointed. The High Court had in that case applied the theory of deemed confirmation by following the Supreme Court judgment in Dharam Singh's case (supra). The same was, however, set-aside in the aforesaid judgment having regard to the peculiar facts and circumstances of the case. The relevant extract taken from the aforesaid judgment reads as under:-

"It is obvious that the decision in Dharam Singh (AIR 1968 SC 1210) have no application in a case where an employee was absent from duty from a date much prior to the expiry of the maximum period of probation and

remained absent even thereafter for a long time. There was no occasion in such a case for the employer to allow the employee (respondent) to continue to work on the post after the expiry of the maximum period of probation because he was absent and was not working on the post at the time of expiry of the period of probation. Deemed confirmation results from the conduct of the employer in permitting continuance in service after the expiry of the maximum period of probation fixed by the rules. When there is no such conduct of the employer, the very foundation for the argument of deemed confirmation and reliance on Dharam Singh is not existent".

The aforesaid judgment also brings home once again the conviction which we both share that expiry of the maximum period of probation laid down in the rules or in the letter of appointment need not in all cases lead to the presumption of deemed confirmation. Much depends on the merits and the facts and circumstances of a case. In yet another case, namely, that of Dr. Amrit Lal Dharsibhai Jhankaria v. State of Gujrat and anr. also decided by the Supreme Court on 3rd September, 1997 reported in (1998) 8 SCC 767, the appellant, a medical officer was put on probation for a period of 2 years on 10.9.1970. Nearly 6 years later his services were terminated by the employer as the service rendered by the appellant were not found to be satisfactory. The proposition of deemed confirmation was pleaded in that case but was not accepted by the Court holding as follows:

"No material has been produced before us to show that the appellant was confirmed after the completion of probationary period or that there was any provision in the relevant rules applicable to his service which

conferred automatic confirmation on completion of 2 years probationary period.... We also do not have any material on record for coming to a conclusion that he had been confirmed in the post either by an express order or by virtue of any rule or by any other provision of law."

In the present case, according to the learned counsel, the letter of appointment seemingly provides for a maximum period of 3 years of probation. However, no rule has been framed which would confer automatic confirmation on the applicant on completion of the aforesaid period of 3 years. Further-more the aforesaid stipulation made in the letter of appointment also does not in turn provide that the probation period cannot in any case be extended beyond 3 years. In this view of the matter also the applicability of the principle of deemed confirmation would seem to be in doubt.

12. A fourth case relied upon by the learned counsel for the respondents is the one decided by the Supreme Court on 15.1.2001 in Krishnadevaraya Education Trust v. L.A.Balakrishna, 2001 SOL Case No. 040. This deals with the issue of stigma so vehemently pleaded by the learned counsel for the applicant. It would be useful to reproduce the following portion of the aforesaid judgment:-

"5. There can be no manner of doubt that the employer is entitled to engage the services of a person on probation. During the period of probation, the suitability of the recruit/appointee has to be seen. If his services are not satisfactory which means that he is not suitable for the job, then the employer has a right to terminate the services as a reason thereof. If the

termination during probationary period is without any reason, perhaps such an order would be sought to be challenged on the ground of being arbitrary. Therefore, normally services of an employee on probation would be terminated, when he is found not to be suitable for the job for which he was engaged, without assigning any reason. If the order on the face of it states that his services are being terminated because his performance is not satisfactory, the employer runs the risk of the allegation being made that the order itself casts a stigma. We do not say that such a contention will succeed. Normally, therefore, it is preferred that the order itself does not mention the reason why the services are being terminated.

6. If such an order is challenged, the employer will have to indicate the grounds on which the services of a probationer were terminated. Mere fact that in response to the challenge the employer states that the services were not satisfactory would not ipso facto mean that the services of the probationer were being terminated by way of punishment. The probationer is on test and if the services are found not to be satisfactory, the employer has, in terms of the letter of appointment, the right to terminate the services."

The above decision makes it clear that if in response to a challenge to the employer's order terminating the services of a probationar, it is stated that the termination was occasioned due to the service not being found satisfactory, such a statement made on behalf of the employer will not ipso-facto mean that the services of

the probationar had been terminated by way of punishment. The appellate authority in the present case has no doubt brcughtforth the various reasons which weighed with the respondents at the time of taking the decision to terminate the applicant's services. The appellate authority has obviously came out with the aforesaid reasons only in response to a challenge made in the form of an appeal preferred against the order of the appointing authority. Thus, according to the learned counsel for the respondents, in view of what the Supreme Court had held in the above case, it will not be tenable to argue that respondents' order could be considered to be an order passed by way of punishment.

13. From the pleadings on record, we find that the applicant had, inter alia, levelled the charge of sexual harassment against the respondent authorities. Nothing much and nothing convincing at all has been said by the applicant in respect of this charge. What is significant is that the same has not been pressed at all at the time of final hearing. We take it, therefore, that the aforesaid charge was levelled as an afterthought and not with any amount of seriousness.

14. To sum up, we have, in this order, held and concluded as under:-

(i) The impugned order 20.4.2000 passed by the appointing authority is clearly an order simplicitor. The same would, no doubt, merge in the order dated 22.2.2001 passed by the appellate authority, but the merger of the two orders will have limited implication. Only the operative portions of the aforesaid orders will merge and in all other respects the order passed by the appellate authority will be treated as a stand alone order. The reasons advanced by the appellate authority in his aforesaid order are entirely his own and cannot

cast a shadow on the impugned order of the appointing authoirty. The termination order in question is thus not stigmatic . Moreover, the allegation of malafide sought to be levelled by advancing the plea of sexual harassment, not having been pressed, is found to have been made as an afterthought, without legs to stand on.

(ii) The next plea of deemed confirmation pressed into service on behalf of the applicant also cannot be sustained. Dharam Singh's case (supra) itself derives sustenance from a specific and express rule proving for a maximum period of probation. No such provision has been found to be in existence in the present case. There is considerable force and merit in the respondents' plea that, in the absence of an express provision in the relevant service rules, recourse will have to be made to the administrative/executive instructions issued by the Government in order to fill in the gaps or to supplement the existing provisions with regard to probation. MHA's OM dated 15.4.1959 relied upon by the respondents is precisely the administrative/executive instructions which must be adhered to for resolving the issue raised in this OA. The respondents have correctly relied to the same OM in the body of the impugned order dated 20.4.2000. An almost exactly similarly worded OM dated 16.3.1973 was relied upon in the case of an IPS officer decided by the Supreme Court in State of Gujrat v. A.C.Bhargava decided on 26.8.1987 (supra). That being the case, the impugned termination order in question would seem to have been passed well within the maximum period of probation of 4 years. Deemed confirmation

cannot, in the circumstances, be inferred in the instant case. Moreover, as held by the Supreme Court in Daya Ram Dayal case (supra), and CGM, SBI Vs B K Misra (supra) despite an express provision laying down a maximum period of probation, in the peculiar circumstances of a particular case, it may not be possible to draw the inference of deemed confirmation following the principle held in Dharam Singh's case (supra). Thirdly, even if it is assumed, in the manner argued by the learned counsel for the applicant, that a maximum period of 3 years has been laid down as per the relevant conditions stipulated in the letter of appointment, there is no indication therein that the same cannot be extended further, come what may. It will be reasonable to presume, therefore, that the said period can be extended even beyond 3 years. That being so, insteed of the proposition of deemed confirmation propounded in Dharam Singh's case (supra) the ratio of Shamsher Singh vs. State of Punjab reported in (1974) 2 SCC 831, will find application. In other words, the probationary period will be deemed to continue until the services are terminated or else probationer is confirmed by an express order passed by the competent authority.

15. For all the reasons given by us in the preceding paragraphs, we find no merit in the contentions raised by the learned counsel for the applicant. The OA is devoid of merit and is dismissed. The parties will bear their own costs.

(S.A.T.RIZVI)
Adm. Member

(S.K.AGARWAL)
Judl.Member