

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

LPA No.1680 of 2012 (O&M)

Date of decision: 02.06.2016

Head Constable Kamaljeet Singh

---Appellant

Versus

State of Haryana and others

---Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr. Sunil K. Nehra, Advocate for the appellant.

Mr. Ravi Dutt Sharma, DAG Haryana.

HARINDER SINGH SIDHU, J.

This intra-Court appeal under Clause X of the Letters Patent has been filed against the judgment dated 04.07.2012 of the learned Single Judge, whereby, CWP No.1257 of 2012 filed by the appellant for quashing the order dated 09.01.2012 (Annexure P-12) of Inspector General of Police, Hisar Range, Hisar (respondent No.4), vide which he has directed the Superintendent of Police, Jind to consider the case of the appellant for inclusion in B-1, C-1 list and for promotion as Head Constable in District Jind has been dismissed.

2. The appellant was initially enrolled as Constable in Haryana Police on 28.12.1998 and was assigned District Jind which falls in Hisar Range, Hisar. Vide orders of the Director General of Police, Haryana he was transferred from District Jind to District Police, Gurgaon on 6.4.2005,

which was in Gurgaon Range. He was allotted Constabulary No. 541/GGN. He was brought on the C-list in District Gurgaon, Gurgaon Range on 23.12.2005 w.e.f. 01.12.2005 and thereafter promoted as Head Constable on 16.03.2006. On his promotion, he was assigned a new Head Constabulary No.99/GGN on 17.03.2006.

3. Respondents No.5 and 6 had passed the lower school course along with the petitioner. Despite being junior to the petitioner, they were brought on C-list at the same time along with him.

4. In the seniority list of Head Constables of Gurgaon Range, Gurgaon circulated on 1.1.2007, the appellant was at Sr.No.839. On 16.06.2007, Gurgaon Range was converted into Gurgaon Commissionerate and some of the districts which came under Gurgaon Range were shifted to Faridabad Range. On this, a fresh seniority list of Head Constables of Gurgaon Commissionerate was circulated in which the appellant's name was at Sr. No.111. Respondent No.3- Commissioner Gurgaon, deputed respondents No.5 and 6 who were junior to the appellant to undergo intermediate school course on 19.02.2010 (Annexure P-10) but the name of the appellant was not included. The appellant requested that he be deputed for the intermediate school course as he was working/posted in the Gurgaon Commissionerate and had been promoted as a Head Constable there. However, instead of deputing him for the intermediate school course, respondent No.3 forwarded the request of the appellant to the Inspector General of Police, Hisar Range, Hisar for consideration. In response the Inspector General of Police, Hissar sent communication dated 22.9.2011 (Annexure P-11). He pointed out that the appellant had been transferred to

District Gurgaon on 10.4.2005, he had passed the Lower School Course in Gurgaon, he was brought on the C-1 list in Gurgaon and thereafter promoted as Head Constable in Gurgaon and requested respondent No.3 to fix his seniority in Gurgaon Commissionerate. Despite this, no action was taken by respondent No. 3. But in a sudden volte face, the Inspector General of Police, Hisar range, Hisar, vide memorandum dated 9.1.2012 (Annexure P-12) directed the Superintendent of Police, Jind to consider the claim of the appellant for promotion in Jind district.

5. Aggrieved, the appellant filed the writ petition which has been dismissed by the impugned order.

6. Before the Ld. Single Judge, the primary contention on behalf of appellant was that as he had been confirmed as a Head Constable in the Gurgaon Commissionerate, his seniority and consequential deputation to the course and promotion is to be considered and decided as per his seniority in that Commissionerate and not as per the seniority in his initial cadre in Hisar range.

7. Reliance was placed on the Instructions dated 22.9.2006 which were issued by the Director General of Police as per the guidelines issued by this Court in CWP No. 18904 of 2005 titled *Megh Pal and others Vs. State of Haryana* and ors decided on 7.2.2006.

The instructions are as under:

“1. The cadre of constables will be the district/unit in which they were initially appointed/enrolled. However, cadre of Constables enlisted in HAP/Commando will be the district/Unit to which they were transferred permanently from HAP or Commando as per policy/standing order.

2. The cadre of the Constables promoted as Head Constable but not confirmed as such will be district/unit in which they were initially appointed/enrolled.

3. *The cadre of Head Constables will be the district/unit in which they were confirmed as Head Constable.*

4. *The cadre of direct P/ASI or PSI will be the unit in which they joined on their first appointment.”*

8. The respondents had argued that as per the decision taken by the Director General of Police, Haryana, the seniority of a Constable is to be fixed against the strength of the district where he was initially enrolled as Head Constable. It was argued that the appellant was approved for promotion list B-1 in District Jind and thereafter transferred to Gurgaon and that his transfer order does not change his lien which continues with Hisar range. The seniority of the official will be reckoned from the district from where he was brought on promotion list B-1. It was argued that the seniority of the appellant in the Gurgaon Commissionerate, was assigned only for the purpose of administrative exigencies as he was posted there but it did not confer any right upon him.

9. A specific affidavit dated 22.6.2012 was filed by the Commissioner Police, Gurgaon in which it was stated that the appellant had not been confirmed in the rank of Head Constable in the Gurgaon Commissionerate and, therefore, he could not claim any benefit for having been deputed and promoted as a Head Constable in Commissionerate of Police, Gurgaon.

10. Ld., Single Judge held that case would have to be decided as per the instructions dated 22.9.2006. As per guideline No. 1 of these instructions the cadre of constables will be the district/unit in which they were initially appointed/enrolled. As per guideline No. 2 the cadre of the Constables promoted as Head Constable, but not confirmed as such, will be

district/unit in which they were initially appointed/enrolled. In view of the

affidavit dated 22.6.2012 categorically stating that the appellant had not been confirmed as Head Constable in the Gurgaon Commissionerate, as per guideline No. 2, the cadre of the appellant would remain the district in which he was initially appointed/ enrolled i.e., Jind. Accordingly, no fault was found with the order dated 9.01.2012 of the Inspector General of Police Hissar. The writ petition was dismissed.

11. Mr. Sunil Nehra Ld. Counsel for the appellant has raised two arguments:

(i) The appellant had been promoted as Head constable on 16.03.2006.

As he has worked as Head Constable for longer than the maximum three year period for probation including permissible extensions, and he had not been reverted he is to be considered as having been deemed confirmed.

(ii) The order dated 9.01.2012 (Annexure P-12) being in the nature of a review of the earlier order dated 22.9.2011 (Annexure P-11) is illegal on the principle that successor-in-office cannot review the order of his predecessor.

12. In support of his contention, Ld. Counsel for the appellant has relied upon the decisions of this Court in Hardev Singh v. State of Haryana, 1995 (1) PLR 124 and Tara Singh and ors Vs. State of Punjab and ors 2004 (1) PLR 468.

13. Ld. State Counsel on the other hand defended the order.

14. Thus, the following two questions arise for consideration.

1. Can the appellant be considered to be deemed confirmed?

2. Is the order dated 9.1.2012 (Annexure P-12) in the nature of a review of the earlier order dated 22.9.2011 (Annexure P-11) and thus illegal?

Question No.1:

15. The relevant Rule 13.18 of the Punjab Police Rules, 1934 (as applicable to Haryana) is reproduced below:

“13.18 Probationary period of promotion-

All police officers promoted in rank shall be on probation for two years, provided that the appointing authority may, by a special order in each case, permit periods of officiating service to count towards the period of probation. On the conclusion of the probationary period, the competent authority may either confirm the probationer or revert him or, if it so thinks fit, extend the period of probation by one year in the aggregate and on the conclusion of the extended period of probation, pass such orders as it could have passed on the conclusion of the original period of probation. While on probation, officers may be reverted or their period of probation may be extended without departmental proceedings. Such reversion shall not be considered reduction in rank for the purposes of rule 16.4. This rule shall not apply to Constables and Sub-Inspectors, promoted to the selection grade, whose cases are governed by rules 13.5 and 13.14”

16. Before proceeding further it is relevant to point out that the above quoted Rule is the Rule as amended with effect from April 12, 1966. Before its amendment the Rule read thus:

“13.18 Probationary period of promotion

All police officers promoted in rank shall be on probation for two years provided that the appointing authority may, by a special order in each case, permit periods of officiating service to count towards the period of probation. On the conclusion of the probationary period a report shall be rendered to the authority empowered to confirm the promotion who shall either confirm the officer or revert him. In no case shall the period of probation be extended beyond two years and the confirming authority must arrive at a definite decision within a reasonable time soon after the expiry of that period whether the officer should be confirmed or reverted. While on probation officers may be reverted without departmental proceedings. Such reversion shall not be considered reduction

for the purpose of rule 16.4. This rule shall not apply to Constables and Sub-Inspectors promoted to the selection grade, whose case is governed by rules 13.5 and 13.14.”

17. We have considered the judgments relied upon by the counsel for the appellant.

18. In both the cases the petitioners therein, who were Head Constables were held to have been deemed confirmed on the completion of the probation period of two years.

19. In Hardev Singh's case (supra) the Ld. Single Judge had, perhaps inadvertently, considered the unamended Rule 13.18. This Rule specified that in no case shall the period of probation be extended beyond two years and the confirming authority was required to arrive at a definite decision within a reasonable time soon after the expiry of that period whether the officer should be confirmed or reverted.

20. In the context of the aforesaid Rule the Ld. Single Judge observed as under:

“5. There is also a merit in the contention of counsel that petitioners would be deemed to have been confirmed on completion of probation period of two years. The relevant rule in the case of the petitioners is rule 13.18, which is reproduced hereunder:—

“13.18. All Police Officers promoted in rank shall be on probation for two years; provided that the appointing authority may, by a special order in each case, permit periods of officiating service to count towards the period of probation. On the conclusion of the probationary period a report shall be rendered to the authority empowered to confirm the promotion who shall either confirm the officer or revert him. In no case shall the period of probation be extended beyond two years and the confirming authority must arrive at a definite decision within a reasonable time soon after the expiry of that period whether the officer should be confirmed or reverted. While on probation officers may be reverted without departmental proceedings. Such reversion shall not be considered reduction

for the purpose of rule 16.4”.

6. Concededly, all the petitioners have completed much more than two years’ probation period and there is nothing on record to show that their conduct during the probation period was not satisfactory. In this view of the matter, petitioners would be deemed to have been confirmed on the post in question, on completion of two years’ probation period.”

21. Tara Singh's case (supra) was decided relying on Hardev Singh's case.

22. The above decisions, appear to have been rendered in ignorance of an earlier Full Bench decision of this Court in **Raj Kumar v. State of Punjab and others, 1980 (3) SLR 779.**

23. In this case, the question for consideration before the Full Bench was:

“Whether a Head Constable, whose name is borne on list ‘D’, as prescribed by rule 13.9 of the Punjab Police Rules, 1934 when merely officiating against a permanent post of an Assistant Sub-Inspector of Police is deemed to be on probation from the date of such officiation, or an express order under rule 13.18 of the Punjab Police Rules, 1934 has to be passed for putting such an official on probation and till then he continues merely to officiate on that post?”

24. Relying on Rule 13.18, it was canvassed on behalf of the petitioners therein that an express officiation against the post of an Assistant Sub-Inspector cannot be inordinately extended (in that case to a continuous period of seven years) and must be deemed either as a probation for the said period or as automatic confirmation after the expiry of three years in view of rule 13.18 of the Rules.

25. In support reliance was placed on Division Bench judgment of the Delhi High Court in **Sat Pal, A.S.I. and Ors. v. The Delhi Administration, Delhi through Lt. Governor, Delhi and Ors. 1974(1) SLR**

26. The majority opinion of the Full Bench was rendered by two Hon'ble Judges and one Hon'ble Judge gave a dissenting opinion.

27. In the majority opinion it was first noted that the reliance by the petitioner's on Sat Pal's case was misplaced because in that case the Delhi High Court was construing the un-amended rule 13.18 of the Punjab Police Rules (as applicable to Delhi). This rule was later amended and significant changes were made therein. *Juxtaposing* the un-amended and the amended Rule it was observed, that as per the un-amended Rule in no case could the period of probation go beyond two years. But as per the amendment the intention seems to be either to take away any automatic confirmation after a period of two years or in any case to extend the same up to three years.

It was observed:

“It will be plain from above that a significant content of the unamended rule was that in no case the period of probation could go beyond two years and virtually automatic confirmation or reversion would follow thereafter. However, by the amendment the plain intent appears to be either to take away any automatic confirmation after a period of two years or in any case to extend the same up to three years. Such changes in language would inevitably call for notice the intention of the legislature in doing so and can inevitably lead to a different construction. In any case it would be a pit-fall to import the ratio of a judgment which pertains to a provision which is not in pari materia with what falls for construction before us.”

28. Elaborating on the issue of deemed confirmation it was further observed as under:

“(23) In Sukhbans Singh's case (supra) the appellant had been directly recruited as a Tehsildar and was appointed as an Extra-Assistant Commissioner on probation in the year 1945. He continued to officiate as such for seven years when he was reverted on the 20th of May, 1952. He claimed to have been automatically confirmed in the higher rank. Negating such a claim and reversing the view of the High Court, their Lordships observed as follows:—

“ * * If the learned Judge meant by all this that a*

probationer must be deemed to have been confirmed in his post by sheer lapse of time we think, with respect, that he was in error. A probationer cannot, as rightly pointed out by the Division Bench, automatically acquire the status of a permanent member of a service, unless of course the rules under which he is appointed expressly provide for such a result. The rules governing the Provincial Civil Services of Punjab do not contain any provision whereby a probationer at the end of the probationary period is automatically absorbed as a permanent member of the Civil Service”.

and again—

“This argument assumes that a probationer who continues to be such without being reverted after the expiry of the period of probation has a legal right to be confirmed or to be treated as if he were confirmed. The rule in question says no more than this that at the end of the probationary period the probationer, unless reverted or absorbed in a substantive post will be eligible for being made permanent. In other words it means that he will continue to be a probationer unless he is reverted or absorbed in a permanent post. But the very fact that a person is a probationer implies that he has to prove his worth, his suitability for the higher post in which he is officiating. If his work is not found to be satisfactory he will be liable to be reverted to his original post even without assigning any reason. It would, therefore, not be correct to say that a probationer has any right to the higher post in which he is officiating or a right to be confirmed. A probationer being merely made eligible for being absorbed in a permanent post is in no better position”.

It would be manifest from the aforesaid enunciation of the law that the mere efflux of time cannot by itself lead to any automatic confirmation.

(24) If in essence ‘officiation’ and ‘being placed on probation’ are distinct and separate terms then the mere length of time of officiating cannot convert it into a deemed probation. On principle such an interpretation does not commend itself to me and as would appear hereafter precedent is equally to the same effect.

(25) In Union of India v. Prem Parkash Midha,, a similar question arose—whether a long continued temporary service would convert into one of quasi-permanent nature. Reversing the view of the District Judge on this point their Lordships observed as follows:—

“In our judgment the District Judge was in error in so holding. It is common ground that no order confirming the respondent as a quasi-permanent servant was

passed. This Court has held in Champaklal v. Union of India, that a public servant in temporary employment, by mere length of service cannot claim the status of a 'quasi-permanent' employee; he may acquire that status only by an express declaration".

.Yet again it appears to me that any deemed probation cannot ripen into an automatic confirmation on the very day of the expiry of the period of probation. Reference on this point has already been made in detail in Sukhbans Singh's case (supra). It is unnecessary to dilate on this issue because it appears to be now equally well-settled by the recent Full Bench decision of this Court in Baldev Singh v. State of Punjab. Therein after referring to Shri Kedar Nath Bahl v. The State of Punjab and others; Hari Singh Mann v. The State of Punjab and others, and The State of Punjab v. Dharam Singh, it was concluded as follows:—

"It appears to me that both on principle and precedent any theory of automatic confirmation cannot now be easily supported". "

29. Though, the Full Bench judgment was rendered in the context of a plea of automatic confirmation under Rule 13.18 in respect of the officials who were on officiating service, but the observations therein would be equally applicable to the question of automatic/ deemed confirmation in respect of a probationer, because the question that was being considered was whether automatic confirmation follows on the expiry of the probation period which was answered in the negative.

30. Thus, as per this decision there was no question of deemed confirmation as per the amended Rule 13.18.

31. The question of automatic/ deemed confirmation has also engaged the attention of Hon'ble the Supreme Court in a number of cases.

32. We need refer to only two cases, where on a review of the earlier cases, the law has been summed up.

33. Hon'ble the Supreme Court has held that question of deemed

the language of the service rules broadly three lines of cases have been noticed. One is where in the service rules a period of probation is specified but power to extend the same is also conferred upon the authority without prescribing any maximum period. In such cases, if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. The other line of cases is where a maximum period is specified beyond which it is not permissible to extend probation. The inference in such cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry order of termination/ reversion has not been passed. The last line of cases is where, though under the rules maximum period of probation is prescribed, but some specific act of issuing an order of confirmation and of passing a test for the purposes of confirmation is required. In such cases, even if the maximum period of probation has expired, but the order of confirmation has not been passed nor has the person concerned passed the requisite test, he cannot be deemed to have been confirmed merely because of the expiry of the maximum prescribed period of probation.

34. In **High Court of M.P. v. Satya Narayan Jhavar, (2001) 7 SCC 161**, it has been observed as under:

“11. The question of deemed confirmation in service jurisprudence, which is dependent upon the language of the relevant service rules, has been the subject-matter of consideration before this Court, times without number in various decisions and there are three lines of cases on this point. One line of cases is where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after

expiry of the period of probation. The other line of cases is that where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry the order of termination has not been passed. The last line of cases is where, though under the rules maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person concerned passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired.

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35. In the case on hand, correctness of the interpretation given by this Court to Rule 24 of the Rules in the case of Dayaram Dayal is the bone of contention. In the aforesaid case, no doubt, this Court has held that a maximum period of probation having been provided under sub-rule (1) of Rule 24, if a probationer's service is not terminated and he is allowed to continue thereafter it will be a case of deemed confirmation and the sheet anchor of the aforesaid conclusion is the Constitution Bench decision of this Court in the case of Dharam Singh. But, in our considered opinion in the case of Dayaram Dayal Rule 24 of the Rules has not been interpreted in its proper perspective. A plain reading of different sub-rules of Rule 24 would indicate that every candidate appointed to the cadre will go for initial training for six months whereafter he would be appointed on probation for a period of 2 years and the said period of probation would be extended for a further period not exceeding 2 years. Thus, under sub-rule (1) of Rule 24 a maximum period of 4 years' probation has been provided. The aforesaid sub-rule also stipulates that at the end of the probation period the appointee could be confirmed subject to his fitness for confirmation and to his having passed the departmental examination, as may be prescribed. In the very sub-rule, therefore, while a maximum period of probation has been indicated, yet the question of confirmation of such a probationer is dependent upon his fitness for such confirmation and his passing of the departmental examination by the higher standard, as prescribed. It necessarily stipulates that the question of confirmation can be considered at the end of the period of probation, and on such consideration if the probationer is found suitable by the appointing authority and he is found to have passed the prescribed departmental examination then the appointing authority may issue an order

of confirmation. It is too well settled that an order of confirmation is a positive act on the part of the employer which the employer is required to pass in accordance with the Rules governing the question of confirmation subject to a finding that the probationer is in fact fit for confirmation. This being the position under sub-rule (1) of Rule 24, it is difficult for us to accept the proposition, broadly laid down in the case of Dayaram Dayal and to hold that since a maximum period of probation has been provided thereunder, at the end of that period the probationer must be held to be deemed to be confirmed on the basis of the judgment of this Court in the case of Dharam Singh.

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37. Ordinarily a deemed confirmation of a probationer arises when the letter of appointment so stipulates or the Rules governing service conditions so indicate. In the absence of such term in the letter of appointment or in the relevant Rules, it can be inferred on the basis of the relevant Rules by implication, as was the case in Dharam Singh. But it cannot be said that merely because a maximum period of probation has been provided in the Service Rules, continuance of the probationer thereafter would ipso facto must be held to be a deemed confirmation which would certainly run contrary to the seven-Judge Bench judgment of this Court in the case of Samsher Singh and the Constitution Bench decisions in the cases of Sukhbans Singh, G.S. Ramaswamy and Akbar Ali Khan.”

35. In **Kazia Mohammed Muzzammil v. State of Karnataka,**

(2010) 8 SCC 155 : (2010) 2 SCC (L&S) 573, after reviewing the earlier

cases, the position was summarized as under:

“46. On a clear analysis of the above enunciated law, particularly, the seven-Judge Bench judgment of this Court in Samsher Singh and the three-Judge Bench judgments, which are certainly the larger Benches and are binding on us, the courts have taken the view with reference to the facts and relevant rules involved in those cases that the principle of “automatic” or “deemed confirmation” would not be attracted. The pith and substance of the stated principles of law is that it will be the facts and the rules, which will have to be examined by the courts as a condition precedent to the application of the dictum stated in any of the line of cases aforementioned.

47. There can be cases where the rules require a definite act on the part of the employer before an officer on probation can be confirmed. In other words, there may a rule or regulation requiring the competent authority to examine the suitability of

the probationer and then upon recording its satisfaction issue an order of confirmation. Where the rules are of this nature the question of automatic confirmation would not even arise. Of course, every authority is expected to act properly and expeditiously. It cannot and ought not to keep issuance of such order in abeyance without any reason or justification. While there could be some other cases where the rules do not contemplate issuance of such a specific order in writing but merely require that there will not be any automatic confirmation or some acts, other than issuance of specific orders, are required to be performed by the parties, even in those cases it is difficult to attract the application of this doctrine.

48. However, there will be cases where not only such specific rules, as noticed above, are absent but the rules specifically prohibit extension of the period of probation or even specifically provide that upon expiry of that period he shall attain the status of a temporary or a confirmed employee. In such cases, again, two situations would rise: one, that he would attain the status of an employee being eligible for confirmation and second, that actually he will attain the status of a confirmed employee. The courts have repeatedly held that it may not be possible to prescribe a straitjacket formula of universal implementation for all cases involving such questions. It will always depend upon the facts of a case and the relevant rules applicable to that service.”

36. As per amended Rule 13.18, all police officers promoted in rank shall be on probation for two years. On conclusion of the probationary period, there are three courses open to the the competent authority; either to confirm the probationer or revert him or extend the period of probation which in the aggregate cannot exceed one year. After the expiry of the extended period the authority may pass such order as it could have passed on the conclusion of the original period of probation. i.e, either confirm or revert him.

37. Thus, as per Rule 13.18, the total probation period, the initial and the extended both included, cannot exceed three years. But the Rule also requires the authority to pass an order of confirmation or reversion after

positive act of confirmation negatives the idea of automatic or deemed confirmation on the expiry of the maximum period of probation.

38. Thus, Rule 13.18 falls in the third line of cases as explained in para 11 of ***Satya Narayan Jhavar's case (supra)***, where, though under the rules maximum period of probation is prescribed, but the rule also requires a specific act on the part of the employer of issuing an order of confirmation and there is no automatic confirmation without any order of confirmation having been passed.

39. Accordingly, we are of the view that there is no merit in the argument of the Ld. Counsel of the appellant that the appellant is to be treated to be deemed confirmed on completion of three years of probation.

40. But while so holding we also consider it necessary to emphasize the need for the authorities to take timely action regarding satisfactory completion of probation period and to avoid needless delay in this regard which not only affects the morale of the employees but may also lead to avoidable litigation. In doing this we are only reiterating what has already been stressed by Hon'ble the Supreme Court in various cases. In ***Kazia Mohammed Muzzammil case (supra)***, the Supreme Court observed as under:

“57. Long back in Shiv Kumar Sharma v. Haryana SEB this Court had the occasion to notice that due to delay in recording satisfactory completion of probation period where juniors were promoted, the action of the authority was arbitrary and it resulted in infliction of even double punishment. The Court held as under: (SCC p. 672, para 7).

“7. ... While there is some necessity for appointing a person in government service on probation for a particular period, there may not be any need for confirmation of that officer after the completion of the probationary period. If during the period of probation a government servant is found to be unsuitable, his services may be terminated. On the other hand, if he is found to be suitable, he would be allowed to continue in service. The archaic rule of confirmation, still in force, gives a scope to the executive authorities to act arbitrarily or mala fide giving rise to unnecessary litigations. It is high time that the Government and other authorities should think over the matter and relieve the government servants of becoming victims of arbitrary actions.”

58. We reiterate this principle with respect and approval and hope that all the authorities concerned should take care that timely actions are taken in comity to the rules governing the service and every attempt is made to avoid prejudicial results against the employee/probationer. It is expected of the courts to pass orders which would help in minimising the litigation arising from such similar cases. Timely action by the authority concerned would ensure implementation of rule of fair play on the one hand and serve greater ends of justice on the other. It would also boost the element of greater understanding and improving the employer-employee relationship in all branches of the State and its instrumentalities. The courts, while pronouncing judgments, should also take into consideration the issuance of direction which would remove the very cause of litigation. Boni judicis est causas litium dirimere.”

Question No. 2.

41. Letter dated 22.9.2011 (Annexure P-11) was addressed by the Inspector General of Police, Hissar Range to Commissioner of Police, Gurgaon. In this letter after pointing out that the appellant had been transferred to District Gurgaon on 10.4.2005, that he had passed the Lower School Course in Gurgaon, he was brought on the C-1 list in Gurgaon and thereafter promoted as Head Constable in Gurgaon, the Inspector General, Hissar Range requested the Commissioner Gurgaon to fix his seniority in Gurgaon Commissionerate. The Commissioner Gurgaon replied to this

letter on 2.12.2011 (Annexure R-V), stating that as per instructions the

seniority of the official is to be reckoned in his parent range where he has been brought on promotion list B-1. It was pointed out that as the appellant was brought on promotion list B-1 by Superintendent of Police, Jind, hence his seniority could not be fixed in Commissionerate of Gurgaon. It was after receipt of this reply that the Inspector General of Police, Hisar Range, Hisar, vide memorandum dated 9.1.2012 (Annexure P-12) directed the Superintendent of Police, Jind to consider the claim of the appellant for promotion in Jind district.

42. It is well settled that internal governmental communications do not constitute an order. A decision becomes enforceable and binding only when it is communicated to the person concerned. Before that it is only a proposal for action, which can be reviewed or altered. (**Bachhittar Singh Vs. State of Punjab AIR 1963 SC 395**)

43. The letter dated 22.09.2011 (Annexure P-11) is only a communication from one officer to his counterpart, in charge of a different Range. No order pursuant thereto was passed fixing the seniority of the appellant in Commissionerate of Gurgaon. Instead, based on the response of Commissioner Gurgaon, that as per instructions the seniority of the official is to be reckoned in his parent range where he has been brought on promotion list B-1, the Inspector General of Police, Hisar Range, Hisar, vide memorandum dated 9.1.2012 (Annexure P-12) directed the Superintendent of Police, Jind to consider the claim of the appellant for promotion in Jind district.

44. In these circumstances, as letter dated 22.09.2011 (Annexure P-11) cannot be construed to be an order fixing the seniority of the appellant

in Gurgaon Commissionerate, consequently the communication dated 9.1.2012 (Annexure P-12) cannot be construed as an order reviewing an earlier order. Thus there is no merit in the second contention of the Ld. Counsel for the appellant as well.

45. Accordingly, there is no merit in the appeal and the same is dismissed.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

June 02, 2016
Atul

Refer to Reporter