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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment dated: 11th November, 2016*

+ W.P. (C) 6568/2001

MOHINDER KUMAR V.M. Petitioner

Through : Mr. Ashok Mathur, Adv.

versus

UOI & ORS Respondents

Through : Mr. A.K. Soni, CGSC with Mr. Waize
Ali Noor, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

G.S.SISTANI, J. (ORAL)

1. Rule DB was issued on 13.02.2002.
2. Challenge in this writ petition is to the order dated 18.09.2001 in O.A. No. 2203/2000 passed by the Central Administrative Tribunal (hereinafter referred to as '*the Tribunal*') by which the application filed by the petitioner herein has been dismissed.
3. The necessary facts to be noticed are that the petitioner at the relevant point of time, was working as a 'Vehicle Mechanic (HS Gde-I)' in the Electrical Mechanical Engineering, Delhi Cantt ('EME') and pursuant to clearing a supervisory trade test in the year 1988, he was promoted by promotion-cum-posting order, bearing EME Records Letter No. 3623/74/CA-3, dated 20.04.1991 to the post of 'Chargemen (Part II Cadre)'. As per the promotion-cum-posting order, the initial period of probation was fixed at 2 years. The probation period of the petitioner was extended from time to time, as he was repeatedly found 'not fit' by

various DPCs and was finally extended till 03.11.1996.

4. Meanwhile, by an order dated 11.06.1993, 'Chargemen (Part II Cadre)', including the petitioner herein, were promoted to the post of 'Senior Chargemen (Part II Cadre)' (briefly 'SCM') as the old post stood abolished as per the revised recruitment Rules.
5. In 1994, feeling his services were not being properly utilized, the petitioner sought a transfer, which was rejected by order dated 10.02.1994 on the ground that the petitioner had failed to complete his period of probation.
6. Thereafter, in the DPC held in December, 1995 the petitioner was again found to be 'not yet fit' and was recommended to work in another environment. Accordingly, the petitioner was transferred to Station Workshop, EME, Delhi Cantt. w.e.f. 22.04.1996.
7. In the DPC conducted in 1996, the petitioner was found 'not fit' for retention and accordingly, by Letter bearing No. 1704/DPC Nov 96/23/CA-3 dated 22.03.1997, it was recommended that immediate action should be taken to revert the petitioner to the lower post prior to promotion. Aggrieved, the petitioner immediately approached the Tribunal by filing O.A. No. 852/1997. The Tribunal initially stayed the operation of the decision but later on 27.03.2000 the application was dismissed as premature.
8. Thereafter, the respondents issued a fresh show cause notice dated 28.06.2000 seeking the response of the petitioner; the petitioner replied to the notice on 10.07.2000. Finding the reply as devoid of any specific reasons, the petitioner was reverted to the post of 'Vehicle Mechanic (HS Gde-I)' by an order dated 01.08.2000.
9. The petitioner once again approached the Tribunal in O.A. No. 2203/2000 impugning the order dated 01.08.2000. The Tribunal by an

order dated 23.10.2000, stayed the operation of the reversion order. However, the OA filed by the petitioner was dismissed on 18.09.2001, which led to the filing of the present petition.

10. It is the case of the petitioner that while he was posted under Lieutenant Colonel Shri Davinder Singh, Resident Inspector in January 1993, Sh. Singh had inquired about the initial entry grade, age and other details of the petitioner and upon knowing that the petition had risen through the ranks in a short period and that he belonged to the SC Community, passed sarcastic remarks about the promotion of the petitioner.
11. Mr. Mathur, learned counsel appearing for the petitioner, submits that after the expiry of the period of two years, the petitioner was deemed to have been confirmed, which aspect was ignored by the learned Tribunal.
12. Learned counsel contends that by a letter dated 14.09.1993 signed by Sh. Singh, the respondents communicated to the petitioner that his period of probation has been extended from 04.05.1993 to 03.11.1993. Counsel submits that by a letter dated 28.10.1993, the respondent communicated to the petitioner the Assessment Report of the alleged extended period of probation for a period from 04.05.1993 to 03.11.1993 which was issued due to *mala fides*, personal spite and vengeance of the said Shri Singh towards the petitioner belonging to a SC community.
13. Mr. Mathur also contends that the Tribunal has failed to appreciate that in fact, the assessment report for the period 04.11.1995 to 03.11.1996, the Reporting Officer had given the remarks as 'Average', and the Reviewing Officer had graded the petitioner as 'Good'. In the absence of the grading 'Poor', the DPC erred in its decision to hold the petitioner not fit, especially when the petitioner belongs to the SC community.
14. During the course of hearing, Mr. Mathur, learned counsel for the petitioner submitted that the promotion-cum-posting order dated

20.04.1991 would show that the petitioner was placed on probation for a period of two years. During the period of probation, the petitioner was neither cautioned nor any shortcoming was pointed out and thus, on completion of two years, the petitioner would stand automatically confirmed to the post of Chargeman. Further, the two year period of probation came to an end on 19.04.1993, while, he was reverted back as late as on 01.08.2000. Assuming that there was no fixed period of probation, the provision could not have continued for such a long period of time and the action of the respondents would be hit by the doctrine of reasonableness and thus, the Tribunal has erred in not accepting the prayer of the petitioner that he stood confirmed after the expiry of the probation period.

15. Learned counsel further submits that even as per the understanding of the respondent, the petitioner stood confirmed which is evident upon reading of communication dated 22.03.1995. By the said communication, a show cause notice was issued to the petitioner as to why disciplinary action for break in service should not be taken against him. This is further evidenced by the fact that if the petitioner was on probation, there was no occasion to issue such a show cause notice, as the respondents would have been well within their right not to extend the probation.
16. Finally, Mr. Mathur contends that the petitioner was promoted on 11.06.1993, i.e. post the two years period of probation and the order of promotion does not mention any condition of probation. Thus, subsequent communications dated 14.09.1993, 09.03.1994, 18.05.1995 and 27.02.1996 extending the period of probation are *non est* in the eyes of law and cannot be relied upon.
17. Mr. Mathur has placed firm reliance on *State of Punjab v. Dharam*

***Singh*, AIR 1968 SC 1210, *High Court of M.P. through Registrar and Others v. Satya Narayan Jhavar*, (2001) 7 SCC 161 and *Head Master, Lawrence School, Lovedale v. Jayanthi Raghu and Another*, (2012) 4 SCC 793.**

18. Mr. Soni learned counsel for the respondents has opposed this petition. It is contended that there is no infirmity in the order passed by the Tribunal which would require interference in proceedings under Article 226 of the Constitution of India.
19. Learned counsel contends that it is not in dispute that the petitioner was appointed on 20.04.1991 on probation for a period of two years. After the two years period of probation came to an end, the respondents extended the period of probation on various dates, i.e. 14.09.1993, 09.03.1994, 18.05.1995 and 27.02.1996. He further submits that reading of the provision would show that merely because the period of two years came to an end, it would *ipso facto* not lead to confirmation of the petitioner herein.
20. It is contended that at no point of time, did the petitioner protest or raise the plea of automatic confirmation. In fact, in the order dated 10.02.1994 in response to the request for transfer, it was specifically stated that the request cannot be acceded to as the period of probation has not been completed. Mr. Soni has also drawn the attention of the Court to the explanation rendered by the petitioner for not meeting the standard, including his health, his physique and other related explanations. No objection was raised by the petitioner that his probation having come to an end, he was deemed to have been confirmed.
21. It is also explained by Mr. Soni that the petitioner did not remain on probation from 1991 to the year 2000. He remained under probation

from 1991 to 03.11.1996 only, on account of the fact that in the year 1997, the petitioner approached the Tribunal and the Tribunal by an interim order stayed the reversion of the petitioner.

22. While relying on the same set of judgments, Mr. Soni contends that reading of the communication of 20.04.1991 would show that the period of probation was for two years, but there was no limit fixed. He further submits that the respondents acted in a reasonable frame of time by extending the period of probation within six months of the expiry of initial 2 years and thereafter, the case of the petitioner was actively monitored and period of probation extended from time to time and thus, the petitioner cannot complain of the excess period of probation.
23. On the contrary, having regard to the fact that the petitioner was appointed on compassionate ground, the respondents accommodated the petitioner as far as possible. But when they found that the progress of the petitioner was not satisfactory, he was reverted back by an order of 01.08.2000 after the first application filed by the petitioner before the Tribunal was dismissed.
24. We have heard the learned counsel for the parties, examined their rival submissions and also the pleadings and annexures filed thereto.
25. The facts of the case have already been detailed by us the foregoing paragraphs and are not in dispute. The first question which arises for consideration is upon completion of two years, was the petitioner automatically confirmed or not?
26. The law in respect of deemed confirmation or automatic confirmation of probationers is no longer *res integra*.
27. A Constitution Bench of the Supreme Court in ***State of Uttar Pradesh v. Akbar Ali Khan***, AIR 1966 SC 1842, held as under:

“9. *The scheme of the rules is clear : confirmation in the post*

which a probationer is holding does not result merely from the expiry of the period of probation, and so long as the order of confirmation is not made, the holder of the post remains a probationer. It has been held by this Court that when a first appointment or promotion is made on probation for a specified period and the employee is allowed to continue in the post, after the expiry of the said period without any specific order of confirmation he continues as a probationer only and acquires no substantive right to hold the post. If the order of appointment itself states that at the end of the period of probation the appointee will stand confirmed in the absence of any order to the contrary, the appointee will acquire a substantive right to the post even without an order of confirmation. In all other cases, in the absence of such an order or in the absence of such a service rule, an express order of confirmation is necessary to give him such a right. Where after the period of probation an appointee is allowed to continue in the post without an order of confirmation, the only possible view to take is that by implication the period of probation has been extended, and it is not a correct proposition to state that an appointee should be deemed to be confirmed from the mere fact that he is allowed to continue after the end of the period of probation. See Chief Conservator of Forests, U.P. Nainital v. D. A. Lyall (C.A. 259 of 1963 decided on Feb. 24, 1965) : Sukhbans Singh v. The State of Punjab (1963)ILLJ671SC and The Accountant General, Madhya Pradesh, Gwalior v. Beni Prasad Bhatnagar (C.A. 548 of 1962 decided on Jan. 23, 1964).”
(Emphasis Supplied)

28. Another Constitution Bench of the Apex Court in ***Dharam Singh (Supra)***, while interpreting Rule 6 of the Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961 which specifically stipulated that the period of probation, including extensions, shall not exceed three years and where the respondent was kept on probation for more than five and a half years, held that the respondent would be deemed to have been confirmed. The relevant paragraph reads as under:

“3. 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 the expiry of the specified, period of probation it is not possible to hold that he should be deemed to have been confirmed. This view was taken in Sukhbans Singh v. State of Punjab [1963 (1) SCR 416, 424-426] , G.S. Ramaswamy v. Inspector-General of Police, Mysore State, Bangalore [1964 (6) SCR 278, 288-289] , Accountant General, Madhya Pradesh, Gwalior v. Beni Prasad Bhatnagar [CA No 548 of 1962 decided on January 23, 1964] , D.A. Lyall v. Chief Conservator of Forests, U.P. [CA No 259 of 1963 decided on February 24, 1965] and State of U.P. v. Akbar Ali [1963 (3) SCR 821, 825-826] . 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 an 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.”

(Emphasis Supplied)

29. In **Tarsem Lal Verma v. Union of India & Ors.**, (1997) 9 SCC 243, a Full Bench of the Supreme Court held that when the relevant rules did not stipulate a maximum period of probation, even though the initial probation period of two years had expired, and the probationer was allowed to continue to improve his performance, no question of deemed confirmation could arise.
30. In **Satya Narayan Jhavar (Supra)** the Supreme Court while interpreting Rule 24 of the M.P. Judicial Service (Classification, Recruitment and Conditions of Service) Rules, 1955 held that when a probationer is

considered for confirmation and being found unfit continued on probation, the same cannot be a case of deemed confirmation. The relevant paragraphs read 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.

...

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.”

(Emphasis Supplied)

31. In ***Khazia Mohammed Muzammil v. The State of Karnataka and Anr.***, (2010) 8 SCC 155, the Supreme Court held as under:

“18. On a clear analysis of the above enunciated law, particularly, the Seven Judge Bench judgment of this Court in the case of Samsher Singh (supra) and 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 the cases afore noticed. There can be cases where the Rules require a definite act on the part of the employer before 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. 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 straight jacket formulae 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.”

(Emphasis Supplied)

32. In ***Head Master, Lawrence School, Lovedale (Supra)*** the services of the respondent therein had been continued beyond the maximum period of probation allowed by the Rules of Lawrence School, Lovedale (Nilgiris), the Division Bench of the Madras High Court had held that the same would be a case of deemed confirmation. In appeal before the Supreme Court, the order of the High Court was set aside to the extent the same held that it was a case of deemed confirmation. In this background, Justice Dipak Misra, giving the opinion for the Bench, held that since the Rule stipulated an overt act of confirmation, there cannot be any deemed confirmation. The relevant paragraph reads as under:

“38. Had the rule-making authority intended that there would be automatic confirmation, Rule 4.9 would have been couched in a different language. That being not so, the wider interpretation cannot be placed on the Rule to infer that the probationer gets the status of a deemed confirmed employee after expiry of three years of probationary period as that would defeat the basic purpose and intent of the Rule which clearly postulates “if confirmed”. A confirmation, as is demonstrable from the language employed in the Rule, does not occur with efflux of time. As it is hedged by a condition, an affirmative or positive act is the requisite by the employer. In our considered opinion, an order of confirmation is required to be passed.”

(Emphasis Supplied)

33. The law has also been considered by a coordinate bench of this Court in ***Jai Prakash v. School Management of ITL Public School and Ors., 222 (2015) DLT 157 (DB)***, wherein Justice Mukta Gupta speaking for

the bench held as under:

“15. The law on deemed confirmation of a probationer is clear and stands very clearly noted in the decision reported as (2001) 7 SCC 161 High Court of MP v. Satya Narayan Jhavar followed with approval by the Supreme Court in the decision reported as (2005) 13 SCC 179 Rajender Singh Chauhan v. State of Haryana. Three situations result in two different results is the ratio which can be culled out from the said two decisions. Situation one is where in the service rules or in the letter of appointment a period of probation is specified with a power to extend the same without prescribing any maximum period of probation and no order is passed confirming the probationer. The second situation is where the rules for initial probation and extension thereof provide a maximum period it is not permissible to extend the probation. The third is where the rules prescribe a maximum period of probation but also require a specific act on the part of the employer to issue an order confirming the appointment. It was held that cases falling under situation one or three cannot be treated as a case of deemed confirmation. Only under situation two would it be treated as a case of deemed confirmation.”

(Emphasis Supplied)

34. In ***V.K. Mittal and Ors. v. Registrar General, High Court of Delhi and Ors.***, 2016 (2) SCT 15 (Delhi): (2016) 227 DLT (CN) 15 (DB), it was held that all cases can be categorized on the basis of the relevant rules and appointment conditions as under:

“64. The legal position on 'deemed confirmation' can be summarised as under:

- (a) If in the rule or order of appointment, a period of probation is specified and a power to extend probation is also conferred and the officer is allowed to continue beyond the prescribed period of probation, he cannot be deemed to be confirmed. At the end of such probation he becomes merely qualified or eligible for substantive permanent appointment.*
- (b) There is the other line of cases where even though 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 presumption about continuation, beyond the period of probation, as a probationer stands negated by the fixation of a maximum time-limit for the extension of probation. In such cases the officer concerned must be deemed to have been confirmed.

(c) A third line of cases is where though under the rules maximum period of probation is prescribed, it 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.

(d) 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, there would be no 'deemed confirmation'."

(Emphasis Supplied)

35. From the foregoing discussion, it is clear that the law in respect of 'deemed confirmation' of an employee on probation is well settled. The decisive factors remain the relevant rules, first appointment order or promotion order, as the case may be, and the specific language used therein. For an employee to bring his case within the scope of deemed confirmation, he must show that his conditions of service stipulate a specific maximum period of probation, which has been exceeded; and that they do not mandate issuance of any specific order on the part of the department. The requirement of specific order can be judged by the express language of the provisions or by necessary implication thereof. In all other cases, there cannot be a question of deemed confirmation even if a maximum period of probation has been stipulated.

36. Accordingly, the present case has to be judged on the touchstone of the

law laid down in the foregoing judicial pronouncements.

37. In the present case, the promotion-cum-posting order dated 20.04.1991 gains immense importance and we deem it appropriate to extract the relevant paragraph, which reads as under:

*“PROBATION, CUM POSTINGS: -----
NON INDUSTRIAL PERSONNEL CENTRALLY CONTROLLED*

1. The under mentioned Part I Cadre tradesmen and Part II Cadre tradesmen are promoted to Senior Chargemen (Part I Cadre) and Chargemen (Part II Cadre) respectively in the pay scales shown below against the existing vacancies ----- [sic] of Corps to the unit w.e.f. the dates shown against each. On promotion, they are posted to the units shown against their names. They will be on probation for a period of two years from the date of assumption of duty in the higher post. Pay and allowances of the higher post will be admissible from the date of assumption of duty.”

(Emphasis Supplied)

38. A reading of this communication would show that the initial period of probation was fixed at two years. There is no indication as to whether post the period of two years, the petitioner would be deemed to have been confirmed.
39. Although, no rules have been produced before us, but the Tribunal has referred to the paragraph 1 (8) of the OM bearing No. F.44/1/59-Est (D) of the Ministry of Home Affairs, Government of India (‘MHA’) dated 15.04.1959. We deem it necessary to reproduce more than paragraph 1 (8) of the OM, which read as under:

“The undersigned is directed to say that all aspects of appointments on probation in various Services have been recently reviewed by Government and to forward the following recommendations for adoption in respect of the Services controlled by the various Ministries, etc.:—

...

(6) It would be desirable to have uniformity as regards the

period of probation in different Services and it is therefore recommended that the period of probation should normally be two years; but where there are any special reasons for prescribing a longer or shorter period, a suitable period may be fixed in consultation with the Ministry of Home Affairs.

...

(8) 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 happens 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.

...

2. It is requested that expeditious action may be taken to bring the existing position regarding probation in line with the above recommendations.

(Emphasis Supplied)

40. From the aforegoing paragraph 1 (8), it was urged before the Tribunal that the petitioner would be deemed to be confirmed after the expiry of 'double the normal period', i.e. after 4 years of being on probation. Reliance was also placed on another OM bearing No. 21011/2/80-Estt. (C) dated 09.05.1983 issued by the Departmental of Personnel and Administrative Reforms, MHA; the relevant portion of which reads as under:

“Sub:- Probation in various Central Services

The undersigned is directed to refer to Ministry of Home Affairs OM No.44/1/59-Estt. (A) dated the 15th April, 1959 on the subject cited above. The matter has been under consideration for quite sometime past in consultation with the Ministry of Law, U.P.S.C, and the Comptroller and Auditor General of India with particulars reference to the question whether any period of probation should be prescribed in respect of the persons recruited to the posts in pay-scales the minimum of which is Rs.2000/- and above, as also in respect of promotees from one grade to another. According to para 6 of the existing

instructions contained in the aforesaid OM dated the 15th April, 1959, it is laid down that the period of probation should normally be two years so as to have uniformity with regard to the period of probation in different services. It is further provided that where there are any special reasons for prescribing a longer or shorter period, a suitable period may be fixed in consultation with the Ministry of Home Affairs.

...

4. On expiry of the period of probation, steps should be taken to obtain the assessment reports on the probationer and to:-

- i) Confirm the probationer/ issue orders regarding satisfactory termination of probation, as the case may be, if the probation has been completed to the satisfaction of the competent authority; or
- ii) Extend the period of probation (in terms of para 1(8) of the OM dated 15.4.59) or discharge the probationer or terminate the services of the probationer as the case may be, in accordance with the relevant rules and orders, if the probationer has not completed the period of probation satisfactorily.

5. The date from which confirmation should be given effect to is the date following the date of probation or the extended period of probation, as the case may be. ... Confirmation of the probationer after completion of the period of probation is not automatic but is to be followed by formal order. As long as no specific orders of confirmation or satisfactory completion of probation are issued to a probationer, such a probationer shall be deemed to have been continued on probation.”

(Emphasis Supplied)

41. The respondents have also relied upon EME Records Letter bearing No. 3516/5/CA-III dated 23.06.1989; the relevant portion of which reads as under:

“In view of the rule position with regard to probation envisaged in Army HQ letter No.B/03056/71-0/EME Civ – 1 dated 30 May 88 (addressed to this office only) there will be no probation on promotion within the same group service i.e. groups ‘C’ and ‘D’ except where the promotion involves a change in group of posts, eg. Group ‘D’ to ‘C’ etc. However, personnel promoted from the industrial tradesmen to Supervisors viz., Chargemen Senior

chargeman will continue to be kept on probation for a period of two years. Therefore, it is clear that the probation is applicably only in the initial appointment posts and also as and when there is a change in the group of service. Further, in terms of para 5 of Govt of India Min of Home Affairs, Deptt of Personnel and AR OM No.21011/2/80 Estt (R) dated 19 May 83, in the absence of any specific orders regarding satisfactory completion of probation or otherwise, unless communicated to the probationer, such probationer shall be deemed to have continued on probation.”

(Emphasis Supplied)

42. It is thus the case of the respondents while relying on the OMs that since it was not categorically provided that upon completion of the period of two years, the petitioner would be deemed to have been confirmed and further in the light of reasons expressed in the extension orders, it cannot be said that the petitioner was deemed to have been confirmed.
43. A perusal of the promotion-cum-posting order dated 20.04.1991 shows that the same merely stipulates an initial probation period of two years, but at the same time, neither lays a maximum period of probation nor states that the petitioner would be deemed confirmed on the expiry of the said period. Accordingly, the same cannot come to the aid of the petitioner. The next aspect to be seen is the relevant rules. A reading of the relevant OMs dated 15.04.1959 and 09.05.1983, and EME Records Letter dated 23.06.1989, extracted in foregoing paragraphs, shows that the rules stipulate a maximum period of probation, i.e. double period, and also specifically state that the probationers on the expiry of the probation period shall be deemed to have been continued on probation “in the absence of any specific orders regarding satisfactory completion of probation or otherwise.” Now we proceed to apply the tests enunciated in paragraph 34 foregoing to the case at hand. Though the petitioner has been able to show a maximum period of probation

stipulated in the rules; but fails on the second limb as the rules mandate an overt act on the part of the respondents, i.e. the passing of a specific order. Accordingly, the petitioner has failed to show that his case is one of deemed confirmation.

44. Further, even on merits, the period of initial probation came to an end on 19.04.1993; the probation period was initially extended from time to time by various orders and later under the orders of the Tribunal. Various communications have been placed on record to show that the period of probation was repeatedly extended owing to unsatisfactory performance of the petitioner.
45. Although, Mr. Mathur has clarified that having regard to the qualification of the petitioner and the nature of job being performed by him, the petitioner was not in a position to understand as to whether he was deemed to be confirmed or not and thus, cannot be blamed for it. Moreover, petitioner did not find any ground to complain as he continued to work on the appointed post, as no action was taken against him.
46. We do not agree with this submission of learned counsel for the petitioner as repeated communications addressed to him, informed him that his period of probation was being extended from time to time.
47. The next contention of the learned counsel for the petitioner pertains to the promotion of the petitioner vide order dated 11.06.1993. No doubt, the submission of Mr. Mathur with regard to the petitioner having been promoted on 11.06.1993, without any provision for probation is rather attractive; but, on careful examination, we find that this contention is to be rejected solely on the ground that the same was not urged before the Tribunal. Even otherwise, this order dated 11.06.1993, which has been placed on record after seeking leave of the Court, but this

communication is in fact, not an order of promotion *stricto sensu*, but a general order, as a result of the post of 'Chargeman (Part II Cadre)' being abolished in the revised recruitment rules. Thus, this order has to be treated as in continuation of the first order dated 20.04.1991.

48. The final aspect to be considered is the alleged discrimination on the part of Lieutenant Colonel Shri Davinder Singh, Resident Inspector as the petitioner belonged to the SC community. We are unable to accept the said submission as the respondents have brought to our notice that the petitioner served under Sh. Singh until only 17.11.1993, while his performance of the petitioner continued to be unsatisfactory till 1996. Further, even when the petitioner had sought a transfer in January, 1994, the reasons were limited to unsuitability of the work and physical incapacity.
49. One must also take note that the aim and objective of probation is to enable an employer to assess the working of an employee during the period of probation. We find that the petitioner was given ample opportunity to improve himself; he was repeatedly accommodated as he was appointed on compassionate grounds. It was only when his service did not improve that the order of reversion dated 01.08.2000 was passed.
50. Resultantly, we find no infirmity in the order of the Tribunal. Accordingly, the petition is dismissed.
51. No costs.

G.S.SISTANI, J.

VINOD GOEL, J.

NOVEMBER 11, 2016 //pst/P