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

Date of decision: 09.07.2025

+ W.P.(C) 9420/2025

UNION OF INDIA & ORS.Petitioners

Through: Mr. Shashank Dixit, CGSC
with Mr. Kunaj Raj, Adv.

versus

SHRI RAHUL KUMAR MEENARespondent

Through: Mr. Sudarshan Rajan, Mr.
Hitain Bajaj, Mr. Sambhav
Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (ORAL)

CM APPL. 39763/2025

1. Allowed, subject to all just exceptions.

CAV 247/2025

2. In view of the appearance of Mr. Sudarshsan Dixit, the learned counsel for the respondent, the caveat stands discharged.

W.P.(C) 9420/2025 & CM APPL. 39764/2025

3. The present writ petition has been filed challenging the Impugned Order dated 20.03.2025 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred as 'Tribunal') in O.A. No. 85/2023, titled ***Shri Rahul Kumar Meena v. Union of India & Ors.***, allowing the said OA filed by the



respondent herein with the following directions:

“4.3 For the reasons explained hereinabove, the OA is allowed. The impugned order dated 18.04.2019 is quashed and set aside. The applicant would be reinstated his services within a period of six weeks from the date of receipt of a certified copy of this order. The applicant will be entitled to notional benefits pursuant to his reinstatement. The respondents shall be at liberty to initiate a regular Departmental Inquiry proceedings as per law and rules, if so advise. There shall be no order as to costs.”

4. The learned Tribunal, in passing the Impugned Order, has held that the offer of appointment having been given to the respondent on 01.07.2016, in pursuance of which the respondent joined on 28.07.2016 and completed the two year of probation period on 27.07.2018, he is deemed to have been confirmed even in absence of a formal order of confirmation on the expiry of the said probation period that is, w.e.f. 27.07.2018. For reaching the said conclusion, the learned Tribunal has relied upon the Office Memorandum (hereinafter referred as, ‘O.M.’) dated 11.03.2019.

5. The learned counsel for the petitioner submits that the terms of offer of appointment as also the O.M. dated 11.03.2019 do not provide for any deemed confirmation and the confirmation has to be an informed exercise by the petitioners.

6. On the other hand, learned counsel for the respondent places reliance on para 19 of the OM dated 11.03.2019 to submit that the decision on confirmation of a Probationary Officer has to be taken within 6-8 weeks of the expiry of the initial probationary period. He



submits that in the present case, no such decision was taken by the petitioners, though, almost three years period had expired from the date of initial appointment of the respondent. He submits that therefore, the learned Tribunal has rightly held that the respondent was deemed to have been confirmed.

7. Without prejudice to his above submissions, he further submits that even if this Court is to hold that there was no deemed confirmation, the petitioner had raised various other grounds in challenge to the Order dated 18.04.2019 terminating the services of the respondent. These grounds have not been considered by the learned Tribunal as the learned Tribunal was of the view that such an order of termination, post the deemed confirmation of the respondent, could itself not have been issued by invoking Rule 5(1) of the Central Civil Services, Temporary Rules, 1965. He submits that the other challenges raised by the respondent before the learned Tribunal should also be considered by this Court.

8. We have considered the submissions made by the learned counsels for the parties.

9. The offer of the appointment was issued to the respondent on 01.07.2016, and has the following conditions:

“3. They will be kept on probation for a period of two years from the date of appointment, the period of which can be extended at the discretion of the Competent Authority. On completion of the probation period satisfactorily, they will be considered for confirmation in the said post.”

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“22. The candidates should pass the



prescribed Departmental Examination within two years, failing which they will not be eligible to draw further increments and will not be considered for permanent retention in the grade of Inspector of Central Excise”

10. A reading of the above clauses would show that the candidate, for the purposes of confirmation, has to pass the prescribed departmental examination within the period of probation, whereafter his case for confirmation shall be considered if he/she had completed the period of probation satisfactorily. There is no provision of a deemed confirmation in the offer of the appointment.

11. Coming to the OM dated 11.03.2019, the relevant clauses dealing with the extension of probation period and the termination thereof, are reproduced herein below;

“Extension of Probation Period

15. If during the period of probation, a probationer has not undergone the requisite training course or passed the requisite departmental examinations prescribed (proficiency in Hindi, etc.), if any, the period of probation may be extended by such period or periods as may be necessary, subject to the condition that the total period of probation does not exceed double the prescribed period of probation.

16. If the Appointing Authority thinks it fit, they may extend the period of probation of a Government servant by a specified period but the total period of probation should not exceed double the normal period. In such cases, periodic reviews should be done and extension should not be done for a long period at a time.

17. Where a probationer who has completed the period of probation to the satisfaction of



the Central Government is required to be confirmed, he shall be confirmed in the Service/ Post at the end of his period of probation, having completed the probation satisfactorily.

18. Some employees are not able to complete the probation on account of availing leave for long duration during probation period. In such cases if an employee does not complete 75% of the total duration prescribed for probation on account of availing any kind of leave as permissible to a probationer under the Rules, his/her probation period may be extended by the length of the leave availed, but not exceeding double the prescribed period of probation.

TERMINATION OF PROBATION

19. The decision whether an employee should be confirmed or his probation be extended should be taken soon after the expiry of the initial probationary period that is within six to eight weeks, and communicated in writing to the employee together with reasons, in case of extension. A probationer who is not making satisfactory progress or who shows himself to be inadequate for the service in any way should be informed of his shortcomings well before the expiry of the original probationary period so that he can make special efforts at self-improvement.

20. On the expiry of the period of probation, steps should be taken to obtain the assessment reports on the probationer so as to:

(1) 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 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.

21. In order to ensure that delays do not occur in confirmation, timely action must be initiated in advance so that the time limit is adhered to.

22. If it appears to the Appointing Authority, at any time, during or at the end of the period of probation that a Government servant has not made sufficient use of his opportunities or is not making satisfactory progress, the Appointing Authority may revert him to the post held substantively by him immediately preceding his appointment, provided he holds a lien thereon or in other cases may discharge or terminate him from service.

23. A Probationer reverted or discharged from service during or at the end of the period of probation shall not be entitled to any compensation.

CONFIRMATION

24. Confirmation is de-linked from the availability of permanent vacancy in the grade. In other words, an officer who has successfully completed the probation, as prescribed under relevant rules, may be considered for confirmation. Consequent upon the above decision of delinking confirmation from the availability of permanent posts, it emerges that confirmation will be done only once in the service of an officer which will be in the entry grade post/service/cadre provided further confirmation shall be necessary when there is fresh entry subsequently in any other post/service/cadre by way of direct recruitment or otherwise. A specific order of confirmation should be issued when the case is cleared from all angles.

25. If, during the period of probation or any



extension thereof, as the case may be, the Government is of the opinion that an officer is not fit for permanent appointment, the Government may either discharge or revert the officer to the post held by him prior to his appointment in the service, as the case may be.

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26. Where probation on promotion is prescribed, the appointing authority will on completion of the prescribed period of probation assess the work and conduct of the officer himself and in case the conclusion is that the officer is fit to hold the higher grade, he will pass an order declaring that the person concerned has successfully completed the probation. If the appointing authority considers that the work of the officer has not been satisfactory or needs to be watched for some more time he may revert him to the post/service/cadre from which he was promoted, or extend the period of probation, as the case may be. There should be no hesitation to revert a person to the post or grade from which he was promoted if the work of the officer during probation has not been satisfactory.

*27. The date from which confirmation should be given effect is the date following the date of satisfactory completion of the prescribed period of probation or the extended period of probation, as the case may be. The decision to confirm the probationer or to extend the period of probation as the case may be should be communicated to the probationer normally within 6 to 8 weeks. **Probation should not be extended for more than a year and, in no circumstance, an employee should be kept on probation for more than double the normal prescribed period of probation. The officer will be deemed to have successfully completed the probation period if no order confirming, discharging or reverting the officer is issued***



within eight weeks after expiry of double the normal period of prescribed probation.”

(emphasis supplied)

12. A reading of above clauses would show that though a decision to confirm or for extension of the probation should ideally be taken within 6-8 weeks, the same is only directory in nature. For confirmation, a specific order has to be issued on scrutiny of the satisfactory performance of the officer. Furthermore, the deemed confirmation is only where the officer has completed double the normal period of prescribed probation.

13. In the present case, the respondent had not completed double of the prescribed probation period prior to the issuance of the Order of termination dated 18.04.2019. Hence, he could not have been said to be a case of deemed confirmation.

14. In ***High Court of M.P. through Registrar and Others v. Satya Narayan Jhavar***, (2001) 7 SCC 161, the Supreme Court laid down the principles applicable to deemed confirmation of an employee on the expiry of the period of probation 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 [(1997) 7 SCC 443 : 1997 SCC (L&S) 1797] 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 [AIR 1968 SC 1210 : (1968) 3 SCR 1] . But, in our considered opinion in the case of Dayaram Dayal [(1997) 7 SCC 443 : 1997 SCC (L&S) 1797] 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* [(1997) 7 SCC 443 : 1997 SCC (L&S) 1797] 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 [AIR 1968 SC 1210 : (1968) 3 SCR 1] .

36..... It is difficult for us to comprehend that a probationer while continuing on probation, on being considered is found unsuitable for confirmation by the appointing authority and yet it can be held to be a deemed confirmation because of maximum period of probation indicated in the Rule, merely because instead of termination of the services he was allowed to continue and was given an opportunity for improving and even after the opportunity he failed to improve and finally the appropriate authority finding him unsuitable directs termination of his services. The very fact that sub-rule (1) of Rule 24 while prescribing a maximum period of probation therein entitles a probationer for being considered for confirmation and confers a right on the appointing authority to confirm subject to the fitness of the probationer and subject to his passing the higher standard of all departmental examination must be held to be an inbuilt provision in sub-rule (1) which would negative the inference of a confirmation in the post by implication, as interpreted by this Court in the case of Dharam Singh [AIR 1968 SC 1210 : (1968) 3 SCR 1] while interpreting Rule 6 of the Punjab Educational Services (Provincialised Cadre) Class III Rules, 1961.

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 [AIR 1968 SC 1210 : (1968) 3 SCR 1] . 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 [(1974) 2 SCC 831: 1974 SCC (L&S) 550] and the Constitution Bench decisions in the cases of Sukhbans Singh [AIR 1962 SC 1711 : (1963) 1 SCR 416], G.S. Ramaswamy [AIR 1966 SC 175 : (1964) 6 SCR 279] and Akbar Ali Khan [AIR 1966 SC 1842 : (1966) 3 SCR 821].

38. Apart from sub-rule (1) of Rule 24 of the Rules, the effect of sub-rule (3) may also be considered. Under sub-rule (3), if a probationer has been found unsuitable for the service during the period of probation or he has failed to pass the prescribed departmental examination then the Governor at any time thereafter may dispense with his services. The power for dispensing with services has been conferred upon the Governor, to be exercised at any time after the period of probation if the probationer is found unsuitable or if he has failed to pass the prescribed departmental examination. If the interpretation given by this Court in the case of Dayaram Dayal [(1997) 7 SCC 443 : 1997 SCC (L&S) 1797] to sub-rule (1) of Rule 24 is held to be correct then this power of the Governor under sub-rule (3) would become otiose inasmuch as a probationer would acquire a deemed confirmation on the expiry of the maximum period of probation provided in sub-rule (1). Sub-rule (3) of Rule 24, therefore, is another inbuilt provision in the Rules which can be held to be a special provision to negative the inference of deemed confirmation on the expiry of the maximum period of probation indicated in sub-rule (1), as has been observed by this Court in the case of Dayaram Dayal [(1997) 7 SCC 443 : 1997 SCC (L&S) 1797] also and which is in conformity with the decisions of this Court in the cases of Samsher Singh [(1974) 2 SCC 831 : 1974 SCC (L&S) 550] , Sukhbans Singh [AIR 1962 SC 1711 : (1963) 1 SCR 416] , G.S. Ramaswamy [AIR



1966 SC 175 : (1964) 6 SCR 279] and Akbar Ali Khan [AIR 1966 SC 1842 : (1966) 3 SCR 821] . Rule 24, on a plain grammatical meaning being given to the words used therein does not provide for a deemed confirmation on expiry of the maximum period of probation, and on the other hand it contemplates a positive order of confirmation to be passed by the appropriate authority, if the authority concerned is satisfied about the fitness of the probationer for confirmation, and if the probationer has passed the departmental examination, as prescribed. Mere continuance of the probationer after considering his case for confirmation during the period of probation and finding him unsuitable for confirmation by the decision of the Full Court, by no stretch of imagination can be construed to be a confirmation by implication, as was held by this Court in the case of Dharam Singh [AIR 1968 SC 1210 : (1968) 3 SCR 1] and that can never be the intention of the rulemaking authority. If the Full Court would not have considered the suitability of the probationer for confirmation while the probation period was continuing, the matter might have stood on a different footing.

39. The importance of the suitability of the officer for confirmation need not be emphasized and such suitability under the Rules is required to be adjudged by the Full Court of the High Court. The Constitution itself while indicating that the claims of Scheduled Castes and Scheduled Tribes to services and posts shall be taken into consideration in Article 335, has further added that such claim should be consistent with the maintenance of efficiency of administration. The subordinate judiciary is the foundation on which the superstructure is built. It would be the solemn duty of every authority on whom the administration of justice vests, to see that the said foundation is not shaken by any process, including the process of allowing adjudged unsuitable person to man the post.



While interpreting Rule 24 and considering the question whether a deemed confirmation can at all be conferred, the aforesaid principle must be borne in mind and unless the Rules explicitly say so, by implication a status of deemed confirmation ought not to be granted, particularly when the Full Court of the High Court has adjudged the Judicial Officers unsuitable. In this view of the matter, we have no hesitation to come to a conclusion, that the decision of this Court in the case of Dayaram Dayal [(1997) 7 SCC 443 : 1997 SCC (L&S) 1797] does not lay down the correct position with regard to the interpretation of Rule 24 of the Rules. As has been stated earlier in this batch of cases, the question of confirmation of each of the probationers was considered by the Full Court within the maximum period of probation provided in sub-rule (1) of Rule 24, but the Full Court found them not fit for confirmation and instead of adjudging them unsuitable and recommending for termination, the Court deferred their case for further consideration and thereby granted further opportunity for proving their worth for confirmation. Such continuance of the probationers, in our considered opinion, would not confer the status of deemed confirmation, merely because a maximum period of probation has been provided there in sub-rule (1) of Rule 24.”

15. The above principle was again reiterated by the Supreme Court in ***Durgabai Deshmukh Memorial Senior Secondary School and Another v. JA.J. Vasu Sena and Another***, (2019) 17 SCC 157, as under:-

“45. It emerges from the consistent line of precedent of this Court that where the relevant rule or the appointment letter stipulates a condition precedent to the confirmation of service, there is no deemed confirmation of service merely because the services of a



probationer are continued beyond the period of probation. It is only upon the issuance of an order of confirmation that the probationer is granted substantive appointment in that post. Rule 105(2) stipulates the satisfaction of the appointing authority as a condition precedent to the issuance of an order of confirmation. The argument advanced by the learned counsel for the first respondent that there is a deemed confirmation upon the continuation of service beyond the expiry of the period of probation is negated by the express language of Rule 105(2). In this view, the continuation of services beyond the period of probation will not entitle the probationer to a deemed confirmation of service. The High Court has erred in holding that there is a deemed confirmation where the services of a probationer are continued beyond the expiry of the probationary period.

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57. We hold and declare that:

57.1. The words “by another year” in Rule 105(1) of the 1973 Rules stipulate that the maximum period of probation permissible is two years. The limit equally applies to minority institutions covered by the first proviso to Rule 105.

57.2. Rule 105(2) stipulates a condition precedent to the issuance of an order of confirmation. The continuation of the services of a probationer beyond the period of probation does not amount to a deemed confirmation of service. It is only upon the issuance of an order of confirmation by the appointing authority that a probationer is confirmed in service.”

16. Applying the above principles and the OM dated 11.03.2019 to the facts of the present case, in our view, therefore, the learned Tribunal has erred in declaring that there was a deemed confirmation of respondent in service on completion of probation period of 2 years



and even one year thereafter. The said finding cannot be sustained and is accordingly, set aside.

17. As far as the other challenge of the respondent is concerned, as the learned Tribunal has not opined on the same, we deem it appropriate to remand the matter back to the learned Tribunal for consideration of those issues and challenges. The Original application filed by the respondent is, accordingly, restored back to its original number before the learned Tribunal.

18. The parties shall appear before the learned Tribunal on 1st August, 2025.

19. The learned Tribunal shall consider the other issues/challenges raised by the respondent in accordance with the law.

20. As the respondent is out of service, we request the learned Tribunal to expedite the hearing of O.A. No.85/2023, preferably within six months of its first listing.

21. The present petition along with pending applications, if any, is disposed of in the above terms.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

JULY 9, 2025

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