



2025:DHC:288-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 20.01.2025

+ W.P.(C) 9788/2023 & CM APPL. 37536/2023, CM APPL.
20311/2024

TILOTTAMMA MOSHAHARY RAWAT AND ORS

.....Petitioners

Through: Mr. Ankur Chhibber, Adv.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr. Ajay Jain, Ms. Bijay
Lakshmi, Mr. Krishna Sharma,
Mr. M.N. Mishra, Mr. Manoj
Gautam, Ms. Gauranshi Rawal,
Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner praying for the following reliefs: -

“(i) Issue a writ of certiorari for quashing the Show Cause Notices dated 14.06.2023 served upon the petitioners by the respondents for reversion of Petitioner from the present rank of Assistant commandant to the rank of Inspector or any such order which may be passed by the Respondents in pursuance of the said Show Cause Notice being contrary to the Rules and regulations framed in the CRPF Establishment Manual.

(ii) Issue a writ of mandamus directing the Respondents to continue the Petitioners to serve in the present rank of Assistant Commandant with continuity and all consequential benefits as the medical category of the Petitioner No.1 is even otherwise



SHAPE-I as per the medical records.”

2. It is the case of the petitioners that the petitioner no. 1 to 4 joined the Central Reserve Police Force (CRPF) as Assistant Sub Inspectors (ASI) (Ministerial), while the petitioner no. 5 joined the CRPF as a Sub Inspector (Steno). Pursuant to their respective orders issued in January, 2019, the petitioners were promoted to the rank of Assistant Commandant (Ministerial). The said Office Orders did not mention that the petitioners would first be promoted on a probation basis, subject to their confirmation.

3. The petitioners are aggrieved by the Show Cause Notice(s) dated 14.06.2023, by which they have been informed that, as they were not in the SHAPE I Medical Category during double the probation period, that is, for four years from the date of promotion, they have failed to complete the probation period satisfactorily, therefore, a decision has been taken to revert them to their original posts from which they were promoted.

4. The learned counsel for the petitioners submits that the respective Office Orders issued in January 2019, promoting the petitioners, did not mention that they were required to satisfactorily complete any probation period after being promoted. He submits that Rule 108 of the CRPF Rules, 1955, however, provides that all selected candidates shall be appointed or promoted to a superior post in the Force on probation for a period of two years. It further provides that the period of probation can be extended by a further period of two years. He submits that, therefore, on the expiry of a period of four



years, there would be an automatic confirmation of the officer promoted.

5. In support of his contention, he also places reliance on the Office Memorandum (OM) dated 11.03.2019, issued by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, contending that Clause 27 thereof provides that on completion of double the normal prescribed period of probation, the officer would be deemed to have successfully completed the probation.

6. He submits that even the Establishment Manual issued by the CRPF does not state that the probation period can be extended endlessly.

7. Placing reliance on the judgment of the Orissa High Court in *Debendranath Behera vs Government of India & Ors.*, 2023 SCC OnLine Ori 1856, he submits that it has been held that in case no order is passed by the Competent Authority upon the expiry of the four years which is the maximum period of probation, there would be a deemed confirmation of the officer.

8. The learned counsel for the petitioners further submits that as far as the petitioner no. 1 is concerned, she has been wrongly stated to be not in the SHAPE I Medical Category. He submits that the Annual Medical Examination (AME) Report dated 04.08.2021 wrongly categorizes her as being in the S1H1A1P2E1 (T-24 weeks) Medical Category. He submits that the Haemoglobin level of the petitioner was found to be 10.50 gm/dl, which is within the prescribed limits in terms



of the Medical Guidelines. Therefore, her categorization as not being in the SHAPE I Medical Category is wrong and liable to be set aside.

9. The learned counsel for the petitioners further submits that, in fact, by the Signals dated 25.03.2020 and 08.01.2022, the Annual Medical Examination (AME) of 2020 was also suspended by the respondents themselves, and the petitioner no. 1 has, in fact, now attained the SHAPE I Medical Category as would be evident from her report dated 04.11.2023.

10. On the other hand, the learned counsel for the respondents places reliance on the Central Reserve Police Force, Assistant Commandant (Ministerial) Group 'A' Post, Recruitment Rules, 2011 (RR), and submits that in terms of Clause 5 of the RR, it is mandatory for a person promoted to be in the SHAPE I Medical Category. He submits that the RR further provides for a two-year period of probation, which in terms of Rule 108 of the CRPF Rules, may be extended by a further period of two years. He submits that unlike in the OM of the Department of Personnel and Training, there is no provision for deemed confirmation as far as the CRPF personnel is concerned, and instead, in terms of the Ministry of Home Affairs (MHA) Instructions dated 11.07.2012 and 09.09.2014, it has been repeatedly emphasised that a personnel for confirmation must be in the SHAPE I Medical Category. He submits that the petitioners in the present case were not in the SHAPE I Medical Category and, therefore, could not have been confirmed for the post of Assistant Commandant (Ministerial).



11. He further submits that as far as the petitioner no. 1 is concerned, she was rightly found not to be in the SHAPE I Medical Category. Referring to the AME Report of the petitioner no. 1, he submits that she was found suffering from Systematic Hypertension, and Anaemia with Grade I Diastolic Dysfunction. He submits that the petitioner no.1 has not provided any grounds for disputing the findings of the Medical Board. He further submits that the petitioners were given repeated reminders to conduct their Review Medical Examination (RME), and it was only when they were not found to be meeting the SHAPE I Category that the impugned show cause notice(s) were issued to them.

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

13. At the outset, we would note that the present writ petition has been filed challenging the show cause notice(s) issued to the petitioners. We have not been shown that the respondents lack any authority to issue these show cause notice(s). The jurisdiction of this Court to entertain a challenge to show-cause notice(s) is restricted and would not extend to considering the allegations on the merits of the claims of the parties, which should be left to the competent authorities to decide upon and after receiving a response to the show cause notice(s). However, as the learned counsel for the petitioners persisted with his submissions, we have further considered the same in our present judgment.

14. The Recruitment Rules, 2011 for the post of Assistant



Commandant (Ministerial) Group “A” Post provides not only that the candidate for promotion must be in the SHAPE I Medical Category but also will be appointed for a period of two years on a probational basis. Rule 108 of the CRPF Rules, 1955, deals with the period of probation for a candidate promoted to a superior post, and reads as under:-

“108. Probation and confirmation .-(1) The selected candidates shall be appointed or promoted to a superior post in the Force on probation for a period of two years.

(2) On the completion of the period of probation, the candidates shall, if considered fit for permanent appointment, be confirmed in their appointments subject to the availability of substantive vacancies in permanent posts.

(3). The Government may extend the period of two years specified in sub-rule (1).

(4). If on the expiration of the period of probation referred to in sub-rule (1) or of any extension thereof under sub-rule (3), as the case may be, the Government are of the opinion that a candidate is not fit for permanent appointment, or if at any time during such period of probation or extension they are satisfied that he will not be fit for permanent appointment on the expiration of such period of probation on extension, they may discharge him or pass such orders as they think fit.

(5). Where no action is taken by Government under sub-rule (2) or (3) or (4), the period after the prescribed period of probation shall be treated as an engagement from month to month terminable on either side on the expiration of one calendar month's notice in writing.

(6) A probationer may be required to pass such tests as may be prescribed including a



test in Hindi before confirmation.

(7) On promotion to a superior post in the Force, the officiating service in that post or an equivalent post previously rendered may be allowed to count towards the probationary period at the discretion of the controlling authority.

Note .- "Controlling authority" for the purpose of this rule will be the Inspector-General of Police, Central Reserve Police."

(Emphasis supplied)

15. A reading of the above Rule shows that a selected candidate promoted to a superior post is to be appointed with a probation period of two years. The probation period can be extended by a further period of two years, and if on the expiration of the period of probation or the extended period of probation, as the case may be, the government is of the opinion that the candidate is not fit for permanent appointment, the candidate may be discharged from service or such other order may be passed as deemed appropriate. There is no provision for an automatic confirmation provided in the said Rules, and to the contrary, sub-Rule (5) provides that if no order of confirmation or discharge is passed, the appointment shall be considered to be month to month terminable by one months' notice. This negates the very idea of a deemed confirmation.

16. Even the Establishment Manual, in Clause 10.6 thereof, does not provide for automatic confirmation on completion of the period of probation, and instead, vests power in the Competent Authority to revert the candidate to the lower post in case the candidate is not found fit for confirmation.

17. Clause 27 of the OM dated 11.03.2019, relied upon by the



learned counsel for the petitioners, specifically provides that the officer appointed, on completion of the period of probation and in case no order to the contrary is passed, shall be deemed to have successfully completed the probation period. Clause 27 of the OM dated 11.03.2019 is reproduced hereinbelow:-

“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.”

18. Such a Clause is not shown to be present as far as CRPF is concerned. On the contrary, there can be no automatic confirmation even upon the completion of the period of probation, as the MHA's Instructions for “Probation-Timely Assessment of Performance and Confirmation thereof in various Central Armed Police Forces” dated 11.07.2012 provides that, on period of probation being completed, the case of the personnel shall be assessed by the Departmental Promotion Committee (DPC), and the officer must be in the SHAPE I Medical Category. This requirement was reiterated in the Guidelines dated



09.09.2014. Therefore, confirmation can only be once the candidate is approved by the DPC and there cannot be a deemed confirmation. CRPF being a Disciplined Armed Force, there is no provision for a deemed confirmation of personnel. On completion of the period of probation, the case of the candidate has to be re-assessed by the DPC in accordance with the Guidelines, and only a person meeting the SHAPE I Medical Category and other requirements, may be confirmed. The judgment of the Orissa High Court in ***Debendranath Behera*** (supra), therefore, cannot come to the assistance of the petitioners.

19. 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 negate 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 rule-making 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.”

20. In ***Durgabai Deshmukh Memorial Senior Secondary School and Another v. JA.J. Vasu Sena and Another***, (2019) 17 SCC 157, the Supreme Court on consideration of the precedent on the issue, again reiterated 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.”

21. As far as the challenge of the petitioner no.1 to the finding of the Medical Board Proceedings is concerned, apart from stating that her Haemoglobin level was within the permissible limit, we have not been shown any other substantial reason to interfere with the findings



of the medical experts. We may note that, apart from anaemia, there were other medical conditions also noted by the medical experts in the AME report. We, therefore, do not find any merit in the said challenge as well.

22. The submission of the learned counsel for the petitioners that during 2020-2021 the Annual Medical Examination of the personnel was suspended, also cannot come to the aid of the petitioners. The respondents have given details of orders whereby the petitioners were called upon to undergo their Annual Medical Examination.

23. As far as the subsequent categorisation of the petitioner no. 1 in the SHAPE I Medical Category, this is a matter to be considered by the respondents. We, therefore, would not like to express any opinion on the same. As far as the present petition is concerned, we do not find any merit in the challenge laid down by the petitioners to the impugned Show Cause Notice(s) or the AME of the petitioner no. 1.

24. Accordingly, the writ petition, along with the pending applications, is dismissed.

25. There shall be no cost.

NAVIN CHAWLA, J

SHALINDER KAUR, J

JANUARY 20, 2025

SU/SK/DG

[Click here to check corrigendum, if any](#)