

## CHAPTER III

### Probation and Officiation

#### I. Probation

(1) A person who is directly recruited is normally kept on probation for the prescribed number of years as prescribed in the Recruitment Rules. The period of probation is the period of trial during which the suitability of the officer to the post to which he is recruited is to be tested. During the period of probation an official may be required to pass certain departmental examinations and/or to prove his integrity and ability and capacity to discharge the duties of the post. Therefore, during the period of probation, a person acquires no right to hold the post and he may be found suitable and a declaration may be given that he has completed the period of his probation satisfactorily or he may be discharged if the appointing authority finds him not suitable for the post or if he fails to fulfil the requirement of acquiring any prescribed qualification during probation.<sup>1-2</sup>

(2) *Declaration of satisfactory completion of probation*: A person appointed on probation before he becomes entitled to be confirmed has to satisfactorily complete the period of probation and the appointing authority has to give a declaration to that effect. Whether the confirmation takes place simultaneous to the declaration of the satisfactory completion of the period of probation or confirmation takes place subsequent to such declaration depends on the availability of permanent vacancy against which the probationer could be confirmed because the appointment on probation could be made either against a permanent vacancy or against a temporary vacancy which however depends upon the rules governing the recruitment and probation.<sup>3</sup> In cases where the appointment on probation is made against temporary vacancy, after the completion of the prescribed period of probation if he is found suitable; a declaration has to be made that the probationer has completed the period of probation satisfactorily. After such declaration he ceases to be a probationer and he will be entitled to be confirmed in a

1 (a) P. L. Dhingra *V.* Union of India—AIR 1958 SC 36—1958 SCR 828.  
(b) State of Punjab *V.* Sukhraj Bahadur—AIR 1968 SC 1089.

2 Mysore Government Servants' Probation Rules 1957 Rule 5 provides for declaration of satisfactory completion of probation if found suitable or for discharge if found unsuitable.

3 Mysore Government Servants' Probation Rules 1957—Rule 2(1) states that 'appointed on probation' means appointed against a substantive vacancy or a temporary vacancy likely to continue for not less than three years.

permanent vacancy as and when it becomes available. If a permanent vacancy has already become available by the time the declaration is given he would be entitled to be confirmed.<sup>4</sup>

(3) *Probationer has no substantive status* : Though under the service rules probationary period is required to be treated as if it is substantive, it is only limited for certain purposes under the Civil Services Rules but a probationer cannot be treated as a person holding the post substantively.<sup>5</sup>

(4) *Misdescription as probationer does not confer any right* : Under the rules governing the appointment of probationers, a probationer acquires certain rights such as right for confirmation against a substantive vacancy in the order of ranking in the select list and to claim seniority on that basis. A person who was described as 'probationer' in the order of appointment though it was not authorised by the rules which provided for selection from among persons in Government service, cannot claim the status and benefits available to a probationer.<sup>7</sup>

(5) *Continuance after expiry of probation—effect* : (a) A person appointed on probation becomes a permanent employee only after the issue of an express order of confirmation. By the mere expiry of the period of probation and continuing in service after the expiry of the period of probation a civil servant does not automatically acquire the status of a permanent member of the service, unless the rules expressly provide for automatic confirmation.<sup>6</sup>

(b) Even after the declaration of the satisfactory completion of probation a civil servant does not acquire substantive status or permanent appointment unless an express order is passed confirming him in that post.<sup>6-7</sup>

(6) *Effect of expiry of maximum period of probation* : (a) Where under the rules governing the recruitment and conditions of service, a maximum period of probation is fixed and there is no other condition prescribed for purpose of confirmation, the probationer continued after the maximum period of probation acquires a right to be treated as a substantive member of the

4 V. B. Badami *V.* State of Mysore—W.P. No. 193/72 DD 15-12-1972 Mys.

5 (a) Kalyana Rao *V.* State of Mysore—W.P. No. 95/1968 DD 22-6-72 Hyderabad C.S.Rs. corresponding to Rule 8(15) of Mysore Civil Services Rules interpreted.

(b) Director of Panchayatraj *V.* Babu Singh—SLR 1972 SC 106.

6 (a) Sukhbans Singh *V.* State of Punjab—AIR 1962 SC 1711—1963(1) SCR 416.

(b) State of Punjab *V.* Sukh Raj Bahadur—AIR 1968 SC 1089.

(c) Krishnamurthy *V.* Union of India—1974(1) Kar. L. J. SN. P. 2.

7 G. N. Sarwade *V.* State of Mysore—AIR 1965 Mys. 47.

*Note*: In view of the aforementioned decision the view taken by the Mysore High Court in Ramachandra *V.* State of Mysore—AIR 1960 Mys. 65 can have no general application.

service.<sup>8</sup> But existence of a permanent vacancy in a permanent post is necessary for confirmation. Therefore, where the rules prescribe a maximum period of probation and also provide that the probationer should be confirmed after the prescribed period of probation, if there is a permanent vacancy, then in the absence of a permanent vacancy, a probationer cannot be deemed to have been confirmed even though the maximum period of probation has expired.<sup>8-c</sup>

(b) *No inference of confirmation when the rules prescribe other conditions* : Where however the rules prescribe that in addition to the prescribed period of probation, an official is required to pass departmental examination before confirmation and the time for passing such departmental examination was extended from time to time, in such a case no inference can be drawn that there has been an automatic confirmation. In such a case, an official who failed to pass the departmental examination cannot be treated as having been confirmed with effect from the date of expiry of the prescribed period of probation.<sup>9</sup>

(7) *Appointment on probation to a temporary post—effect* : When a person is appointed on probation to a temporary post the position is he continues to be temporary until he is confirmed. Even the fact that the period of probation is specified in the order does not alter the position. The statement made in the advertisement that the post is likely to continue after the period for which it was sanctioned is no assurance to the appointee that the post would be made permanent.<sup>10</sup>

(8) *Discharge of a probationer* : A probationer being on trial his suitability has to be adjudged by the appointing authority during the period of probation. A discharge of a probationer at the end of the period of probation on the ground of unsuitability is perfectly valid. Any enquiry held limited to the purpose of ascertaining the suitability of the probationer for being made permanent is not an enquiry as contemplated under Article 311(2) of the Constitution. Therefore, the discharge of a probationer after an enquiry

8 (a) *State of Punjab V. Dharam Singh*—AIR 1968 SC 1210.

(b) *Dev Raj V. Director of Public Instruction*—1967 SLR 734 (Pb.).

(c) *State of Haryana V. Rajendra Sareen*—AIR 1972 SC 1004.

Punjab Public Relations Deputation (Gazette) Service Rules (1958)—Rule 10(3) proviso interpreted.

(d) *Kedarnath V. State of Punjab*—SLR 1972 SC 320.

(e) *Devshankar V. State of Haryana*—SLR 1971 P & H 443.

(f) *Chhatrasal Singh V. State of M.P.*—SLR 1973(1) M.P. 624.

(g) *Motilal V. Union of India*—SLR 1973(1) Raj. 174.

9 *Venkataswamy V. State of Mysore*—W.P. No. 2243/66 DD 27-9-1968.

10 (a) *Kedarnath V. State of Punjab*—AIR 1972 SC 873—SLR 1972 SC 320.

(b) *M. K. Lakshmiapati V. Board of Mineral Development, Mysore*—W.P. No. 86 of 1966 DD 22-6-67 (Mys).

limited for ascertaining the suitability of the probationer for confirmation is valid.<sup>11</sup>

(2) *Matters other than the work done by probationer can be taken into account to discharge a probationer* : Apart from the merit or scholarship of an individual including his performance during the period of probation there are many factors which enter into consideration before a probationer is confirmed. A particular attitude or tendency displayed by an employee can as well influence the decision of confirming authority while judging his suitability or fitness for confirmation.<sup>12</sup> Therefore an attempt made by a person during probationary period to secure a job with better prospects elsewhere and a previous conduct of the person in not keeping up an undertaking given to a Government that he would serve the Government for a specified period are all matters which the confirming authority is entitled to take into account in adjudging the suitability of a person for confirmation.<sup>13</sup>

(3) *Discharge without enquiring as to the suitability* : A probationer is no doubt liable to be discharged during or at the end of the probationary period if he is found unsuitable. But an order of discharge of a probationer should be preceded by an enquiry regarding his suitability for the post. Therefore, an order of discharge of a probationer even without getting a probation report concerning the work of the probationer during the period of probation and without coming to the conclusion that the work during the probation was unsatisfactory is illegal.<sup>13</sup>

(4) *Condition for passing discharge order which attaches stigma* : If instead of passing an order of discharge simply on grounds of unsuitability if the authority passes an order on the basis of certain charges, such a discharge amounts to removal or dismissal within the meaning of Article 311 and has got to be passed in conformity with Article 311(2) of the Constitution of India. An order though purported to be an order of discharge, if based on misconduct or allegations which attached stigma, passed without affording the protection guaranteed under Article 311(2) of the Constitution of India would be illegal. For such cases see under Article 311(2).

### 3. Right for Confirmation

(1) *After successful completion of probation* : When the appointment on probation is made against a permanent vacancy after the successful completion of the period of probation in all respects, the probationer acquires the

11 (a) *State of Orissa V. Ramnarayan Das*—AIR 1961 SC 177—(1961) 1 SCR 606.

(b) *State of Punjab V. Sukhraj Bahadur*—SLR 1968 SC 701.

(c) *Ranendra Chandra V. Union of India*—AIR 1963 SC 1552.

(d) *State of U.P. V. Akbar Ali Khan*—AIR 1966 SC 1842—1966(3) SCR 821.

(e) *T. C. M. Pillai V. Technological Institute Guindy*—AIR 1971 SC 1811.

12 *T. C. M. Pillai V. Technology Institute Guindy*—AIR 1971 SC 1811.

13 *Hira Singh V. Union of India*—SLR 1970 (Delhi) 223.

immediate right for confirmation.<sup>13</sup> The confirmation could also be made with retrospective effect from the date of appointment on probation.<sup>14-a</sup> When the appointment on probation is made against a temporary vacancy after successful completion of probation, a probationer is entitled to be confirmed against a permanent vacancy available on the date of completion of probation or in a permanent vacancy becoming available immediately thereafter.<sup>14-b-c</sup> Where according to rules of recruitment specific quota is reserved for direct recruitment, a probationer after completion of probation is entitled to be appointed against the direct recruitment quota out of the total number of sanctioned permanent posts in the cadre even by replacing promotees if they are appointed to permanent posts in excess of promotion quota.<sup>14-c</sup>

(2) *Qualification for confirmation* : Where the rules require the acquisition of prescribed qualification for confirmation, acquisition of such qualification is necessary for securing confirmation.<sup>15</sup>

(3) *Confirmation ignoring the claims of seniors illegal* : (a) Seniority among unconfirmed officers who have acquired the eligibility for confirmation should be the basis for confirmation. Confirmation of junior from a date earlier than his senior is illegal. A senior eligible civil servant can claim earlier confirmation in preference to his junior.<sup>16</sup>

(b) Where a probationer has failed to complete the period of probation satisfactorily within the prescribed period but completes subsequently during the extended period of probation, he has to seek confirmation only after such completion though persons appointed along with him and juniors to him in the select list are confirmed earlier in view of their satisfactory completion of probation earlier.<sup>14-b</sup>

(4) *Right of probationer after successful completion of probation and before confirmation* : When a civil servant appointed on probation has completed the period of probation satisfactorily and has also satisfied all the other requirements or a declaration that he has completed the period of probation is given, he acquires a right for confirmation. The service of such a person cannot be terminated without holding a departmental enquiry.<sup>17</sup>

#### 4. Officiation

(1) 'Officiation' is a term used synonymous with the word 'probation' in respect of persons promoted to a higher post and kept on trial. The rules

13 *Hira Singh V. Union of India*—SLR 1970 Delhi 223.

14 (a) *K. Veeraiah V. State of Mysore*—1969(1) *Mys. L. J.* 454.

(b) *Venkataswamy V. State of Mysore*—W.P. No. 2243/1966 DD 27-9-1968 (Mysore).

(c) *V. B. Badami V. State of Mysore*—W.P. No. 193/72 DD 15-12-1972 (Mysore).  
Mysore Government Servants' Probation Rules—Rule 9 interpreted.

15 *L. A. Desai V. State of Mysore*—1972(1) *Mys. L. J.* 625.

16 (a) *Krishanchand V. Government of Union Territory of H.P.*—SLR 1971 Delhi 2.

(b) *K. Subba Rao V. State of Mysore*—W.P. No. 177/1965 DD 26-1-67 (Mys).

17 *Narayan Singh V. Excise Commissioner*—SLR 1971(1) M.P. 387.

some times prescribe the period of officiation<sup>18</sup> because unless satisfactory completion of officiation is declared and confirmation ordered they are liable for reversion at any time and in several cases no period of officiation is fixed. The fixation of period of officiation just like the period of 'probation' is necessary in order to avoid uncertainty in relation to the tenure of promoted officers. Continuance of promoted officers for unduly long period on officiating basis has also given rise to several disputes relating to seniority and discontent among promoted officers because persons directly recruited several years later are confirmed and they claim seniority over promoted officers several years before their direct recruitment on the ground they are confirmed officers and the promoted officers are still officiating. Such a situation arises on account of Lacuna in the rules relating to recruitment and conditions of service by not prescribing the maximum period of officiation which is required to be remedied. The non-prescription of period of officiation, while fixing period of probation for direct recruits may also amount to discrimination against promoted officers.

(2) *Liability for reversion on grounds of unsuitability* : The position of persons who are promoted on officiating basis is similar to probationers. During the period when they are officiating they are on trial in the higher post and are liable for reversion on grounds of unsuitability at any time. The principles which are applicable in the case of probationers are equally applicable in the case of persons officiating in the higher post. Reversion of an official from the officiating higher post on the ground of unsuitability like discharge of a probationer on the ground of unsuitability without causing any penal consequences or attaching a stigma is legal and valid. It does not amount to reduction in rank within the meaning of Article 311(2) of the Constitution.<sup>19</sup>

(3) Similarly, where an officer officiating in a higher post was reverted to his substantive post when he was kept under suspension and ultimately dismissed and the order of dismissal was set aside, there was nothing wrong in ordering his reinstatement to the post in which he was officiating on the date of suspension and simultaneously passing an order reverting him with retrospective effect. When such an order does not entail forfeiture of pay or allowances or loss of seniority in the substantive post or stoppage or postponement of his future chances of promotion, the order cannot be held to be illegal.<sup>20</sup>

18 Mysore State Civil Services (General Recruitment) Rules 1957—Rule 18 prescribes the period of officiation on promotion and provides for declaration of satisfactory completion of officiation and confirmation or for reversion if found unsuitable.

19 (a) Divisional Personnel Officer *V.* S. Raghavendrachar—AIR 1966 SC 1529.

(b) Union of India *V.* R. S. Dhabha—SLR 1969 SC 442.

(c) State of Uttar Pradesh *V.* Akbar Ali —AIR 1966 SC 1842.

(d) Union of India *V.* Gajendra Singh—SLR 1972 SC 537.

(e) R. S. Sial *V.* State of U. P.—(1974) 1 S.C.W.R. 749.

20 Nareshchandra Saha *V.* Union Territory of Tripura—(1970) 2 SCR 639.

(4) *Reversion on collateral consideration* : A reversion from officiating higher post to the lower substantive post made for collateral or legally extraneous purpose, reversion being unwarranted in the exigencies of public service is illegal and invalid. Therefore, when there was no legal compulsion that after reorganisation of States under the provisions of the State Reorganisation Act to send all the officers speaking a particular language to that particular linguistic state, reverting officers officiating in higher posts to the lower posts and to send them to the new State on the ground that posts which stood allotted to the new State are insufficient to accommodate them and filling up the posts available in the parent State by juniors is unwarranted and illegal as having been made for collateral or legally extraneous purpose.<sup>21</sup>

(5) *Reversion from officiating post in exigencies of public service* : A person promoted on an officiating basis can always be reverted to the lower post in the exigencies of public service. Where the promotion was made on a regional basis in the State, preparation of a State wide seniority list and consequential reversion of junior officials is not illegal. Likewise, is the position when reversion has got to be made on the return of senior officers went on deputation.<sup>22</sup>

(6) *Reversion from officiating post principle of 'last come first go' when applicable* : (a) When promotions to the next higher cadre was made according to seniority and merit, normally in the matter of reversion from an officiating post made consequent on the abolition of post or retrenchment, etc., the principle of last come first go has got to be applied and the persons promoted last have got to be reverted.<sup>23</sup>

(b) However, where promotions to the next higher post on officiating basis was not made in accordance with the seniority in the lower post and were made out of turn and irregularly the seniority of persons in the officiating posts is the same as the seniority in the substantive cadre. In such a case when reversion becomes necessary in the exigencies of public service, the officials who are liable for reversions are the officials who are juniors in the substantive cadre though promoted earlier and not the seniors who were promoted later.<sup>24</sup>

(c) Where promotions were made of junior officials on the passing of departmental examinations and the seniors were not promoted for want of

21 (a) R. R. Kulkarni *V.* State of Mysore—AIR 1967 (Mysore) 225.

(b) State of Mysore *V.* P. R. Kulkarni—AIR 1972 SC 2170.

22 (a) G. S. Ramaswamy *V.* State of Mysore—AIR 1966 SC 175—(1964) 6 SCR 279.

(b) State of Mysore *V.* Purohit—SLR 1967 SC 753.

23 (a) Doddajiah *V.* State of Mysore—1967(2) *Mys. L. J.* 100.

(b) M. K. Lakshmiipathy *V.* Board of Mineral Development—W.P. No.86/66 DD 22-6-67.

(c) P. K. Gopala *V.* Mysore University—W.P. No. 5593/69 DD 23-11-73.

24 (a) G. S. Ramaswamy *V.* State of Mysore—AIR 1966 SC 175.

(b) Giryappa Patil *V.* State of Mysore—1964 *Mys. L. J. Suppl.* 573.

qualification and were subsequently promoted against the leave vacancies on the return of those officers who had gone on leave, the officials liable for reversion are those who were promoted against the leave vacancies, and not the officials who were promoted regularly against clear vacancies. In such a case reversion cannot be made on the ground that persons promoted last in the leave vacancies were seniors in the substantive cadre. The last promoted persons alone are liable for reversion.<sup>25</sup>

(7) *Reversion or discharges for want of posts when the cadre consists of both direct recruits and promotees* : Where recruitment to a particular cadre is made both by direct recruitment and promotion, the direct recruits and promotees form two separate classes until they are integrated into one cadre after confirmation. Therefore, when the reversion or discharge of certain officers becomes necessary for want of posts, the direct recruits and promotees must be treated as separate categories and reversion or discharge should be made having regard to the vacancies earmarked for direct recruitment and promotion. Therefore, reversion of persons promoted earlier retaining the direct recruits appointed later is not illegal as they form two separate classes until they are confirmed and unified together.<sup>26</sup>

(8) *Reversion from officiating post as a result of appeal by another* : Every Government servant has a right to appeal to higher authorities against any order of promotion which infringes his right, but when such an appeal is filed by a Government servant against the promotion of another Government servant, before passing an order against him, he must be given an opportunity of being heard in the matter. Any order of reversion passed without giving such an opportunity is opposed to principles of natural justice.<sup>27</sup>

25 Syed Saffeer Ahmed *V.* Divisional Accounts Officer—1971(2) *Mys. L. J.* SN. P. 125.

26 *State of Andhra V. Venkatappayya*—AIR 1961 SC 779—1961(3) SCR 45.  
Madras Police Subordinate Service Rules—Rule 5 interpreted.

27 *R. Musalappa Reddy V. State of A.P.*—SLR 1969 A.P. 42.