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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No 510/2002

23-1-03 Date of Decision

Sh. Surender Pal ... Applicant

(Shri Shyam Babu) ... Advocate for the Applicant

VERSUS

... Respondents
Govt. of NCT of Delhi

(Smt. Sumedha Sharma) ... Advocates for the Respondents

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

1. To be referred to the Reporter or not ? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 510/2002

New Delhi, this the 23rd day of January, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Sh. Govindan S.Tampi, Member (A)

Sh. Surender Pal (7023/DAP)
S/o Sh. Tejpal Singh
R/o E-376, Gali No.16
Khajuri Colony
Delhi - 110 094.
(By Advocate Sh. Shyam Babu)

...Applicant

V E R S U S

1. The Govt. of NCT of Delhi
through its Chief Secretary
Delhi Secretariat, Players Building
I.P.Estate, New Delhi.
2. Joint Commissioner of Police
(Headquarters) Delhi,
Police Headquarters, I.T.O.
New Delhi. ...Respondents
(By Advocate Smt. Sumedha Sharma)

O R D E R (ORAL)

By Hon'ble Smt. Lakshmi Swaminathan, VC (J)

In this application, the applicant has impugned the order issued by the respondents dated 16-1-2002 and communicated to him on 21-1-2002 by which his request along with others, for consideration of the names for admission in the promotion list D - 1 (Exe) w.e.f. 12-11-2001 has been rejected. The reason given in this letter is that the request of the applicant has been rejected due to his indifferent record of service. Learned counsel for the applicant has submitted that there is an averment in the OA that the applicant has never been communicated any adverse remarks in his ACR and he reasonably believes that his reports are excellent. However, admittedly the applicant had been given a "Censure" which is a minor penalty by order dated 2-3-2000 after following the

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relevant rules and the principles of natural justice. Shri Shyam Babu, learned counsel has submitted that no appeal has been filed against this order of Censure although this opportunity had been given to him in the order of 2-3-2000 itself. He has, therefore, submitted that this order has become final and binding. His contention is that the reason for the penalty of Censure which has been imposed on the applicant is that the applicant had wrongly and incorrectly verified the Arms Licence application of one Shri Ramjeet Yadav. (Annexure R-1 of the reply) which indicated "his malafide intention and ulterior motive". Learned counsel has relied on the Circular issued by the respondents dated 3-12-98 and, in particular, paragraph (iii). According to him, under this Circular only officers who have been awarded any major/minor punishment in the preceding 5 years on charges of corruption, moral turpitude and gross dereliction of duty to protect government property or major punishment within 2 years on charges of administrative lapses, can be left out of the empanelment for promotion. He has very vehemently submitted that none of these clauses applies to the present case because the Censure order dated 2-3-2000 has been issued to the applicant only on the ground of malafide intention and ulterior motive.

2. Secondly, learned counsel has submitted that in the reply affidavit filed by the respondents, they have rejected the applicant's case for promotion on the ground of honesty and integrity which they

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cannot do in the light of the aforesaid Circular dated 3-12-98.

3. The third point raised by the learned counsel for the applicant is that before any such order regarding the integrity of the applicant is passed, procedure of natural justice has to be complied with which has also not been done. Further, he has submitted that no adverse ACRs have been communicated to the applicant. On these grounds, learned counsel for the applicant has prayed that the impugned letter dated 16-1-2002 should be quashed and set aside with a direction to the respondents to bring the name of the applicant in promotion list dated 13-11-2001 above his junior who was promoted in that list, with all consequential benefits.

4. We have seen the reply filed by the respondents and heard Smt. Sumedha Sharma, learned counsel for the respondents. Learned counsel has relied on the provisions of Rule 5 of the Delhi Police (Promotion and Confirmation) Rules, 1980 (hereinafter referred to as 'the Promotion Rules'). She has also relied on the judgement of the Tribunal in Tejwati Vs. UOI & Ors. (OA 851/2000) decided on 20-10-2000, which order has been upheld by the Hon'ble Delhi High Court in CW 4821/2001 in its order dated 11-1-2002, copies placed on record. Learned counsel has submitted that a duly constituted Selection Committee has considered the name of the applicant for admission to promotion list D-1 (Exe) but due to indifferent service record

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and the punishment order of Censure for malafide intentions, he has been graded as "unfit" by the Committee. She has submitted that honesty is one of the main factors to be taken into account apart from efficiency, as clearly mentioned in Rule 5 of the Promotion Rules. Smt. Sumedha Sharma, learned counsel has, therefore, submitted that there is no illegality in the action or orders passed by the respondents and has prayed that the OA may be dismissed.

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. We find no merit in this application for the following reasons :-

The contention of the learned counsel for the applicant that as the applicant believes that his ACRs for the relevant five years were excellent, the Censure order dated 2-3-2000 imposed on him can have no effect and cannot be taken into account by the Selection Committee is without any basis. The relevant portion of Rule 5 of the Promotion Rules provides as follows :-

5."General principles of promotion-

(i) Promotions from one rank to another and from lower grade to the higher grade in the same rank shall be made by selection tempered by seniority. Efficiency and honesty shall be the main factors governing selection (Amended vide Notification No.F.5/60/83-H(P)/Estt., dated April 7, 1984). Zone of

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consideration will be determined in accordance with the rules/instructions issued by the Government from time to time."

(emphasis added)

7. A perusal of the Censure order dated 2-3-2000 shows that a minor penalty order of Censure has been imposed on the applicant confirming the show cause notice dated 21-9-99. In this show cause notice, it had been alleged that there was grave misconduct, negligence, carelessness and dereliction in the discharge of applicant's official duties in the case regarding grant of Arms Licence to one Shri Ramjeet Yadav. The penalty order also refers to the fact that the applicant had wrongly and incorrectly verified the Arms Licence application which indicates malafide intention and ulterior motive on his part. Admittedly, this order has become final and binding. We, therefore, see no reason why the Selection Committee ought not to consider this order of penalty together with the other relevant records of the applicant for the concerned five years. The contention of the learned counsel for the applicant that the penalty of Censure imposed on the applicant is not on the ground of moral turpitude and corruption etc. as laid down in the Circular dated 3-12-98 cannot be accepted, having regard to the provisions of Rule 5 of the Promotion Rules.

8. We have also seen the judgement of the Tribunal in Tejwati's case (supra) which has been confirmed by the Hon'ble High Court vide order dated 11-1-2002. We are in respectful agreement with the reasons given in those orders and see no reason to

differ from the same. In other words, those judgements are fully applicable to the facts of the present case. In this view of the matter also, OA is liable to be dismissed.

9. We also see no force in the submissions made by Shri Shyam Babu, learned counsel that as there is no question of doubtful integrity of the applicant, the further procedural requirements have to be followed. The fact remains that the applicant does not dispute the fact that he has been awarded the penalty of Censure dated 2-3-2000, against which he did not also file any appeal. This order has been passed after fully following the Rules and the principles of natural justice. The competent authority has considered the representation made by the applicant and given the reasons for imposing the penalty on the applicant. We, therefore, find no merit in this argument also.

10. It is also settled law that the Court/Tribunal does not in exercise of the powers of judicial review, institute its opinion or assessment for that made by the duly constituted Selection Committee, as in the present case. We, therefore, find no good grounds to justify any interference in the matter.

11. In the result, for the reasons given above, OA fails and is dismissed.

No order as to costs.

(Govindan S.Tampi)
Member (A)

/vkan/

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)