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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.3376/2002

New Delhi, this the 1st day of July, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.K. Naik, Member(A)

Head Constable Surender Kumar Tyagi
No.167/L
S/o Shri Roop Chand
R/o 17-A, Police Colony
Model Town-2
New Delhi.

.. Applicant

(By Advocate: Shri Sachin Chauhan)

versus

1. Union of India, through
its Secretary
Ministry of Home Affairs
North Block
New Delhi.
2. Joint Commissioner of Police
Headquarters
Police Headquarters, I.P.Estate
M.S.O.Building
New Delhi.
3. Dy.Commissioner of Police
Provisioning & Logistics
5, Rajpur Road
Delhi.

.. Respondents

(Shri Ajesh Luthra, Advocate)

ORDER (ORAL)

Justice V.S. Aggarwal

Applicant (Surender Kumar Tyagi) is a Head Constable (Executive) in Delhi Police. He was appointed as Constable on 4.1.1971 and had earned his promotion as a Head Constable on 1.9.1988. By virtue of the present application, he seeks setting aside of the order refusing to admit his name in List D-I and for a direction to hold a review Departmental Promotion Committee meeting to consider his claim for promotion to List D-I. He further



seeks a declaration that the Departmental Promotion Committee guide-lines to the extent they prescribe the forfeiture of temporary service as a major punishment, an impediment for promotion, are illegal.

2. The other relevant facts in this regard are that the name of the applicant was considered, but according to him, it was wrongly ignored by the Departmental Promotion Committee. He had been dealt with departmentally and punishment of permanent forfeiture of 3 years of approved service was inflicted upon him. It was reduced to one year's temporary forfeiture of service in appeal. According to the applicant, he had satisfactory service record. He had never been communicated any adverse entries. The guide-lines in this regard and the Rules (Delhi Police (Punishment & Appeal) Rules, 1980 in so far as they make no distinction between temporary forfeiture of service and other major punishments must be held to be illegal. On these broad facts, the present application had been filed.

3. While contesting the application, the respondents contended that Rule 5 of the Delhi Police (Promotion & Confirmation) Rules, 1980 (for short, "the Promotion and Confirmation Rules"), promotion from one rank to another and from lower grade to higher grade in the same rank has to be made by selection tempered with seniority. Efficiency and honesty are the main factors governing selection. The Departmental Promotion Committee enjoys



full discretion to devise its own methods and procedure for objective assessment. The service particulars of the applicant had been completed and the meeting of the Departmental Promotion Committee was held on 12.11.2001. The matter was considered, but because of indifferent service record of the applicant, his claim had been rejected.

4. These facts clearly indicate that the short question that immediately comes up for consideration is as to whether the name of the applicant for being included in List D-I had rightly been ignored or not. The applicant had submitted a representation in this regard and the same had been rejected with the following order:-

"Subject:-Regarding admission of names of
Confirmed HCs (Exe) to promotion list
D-I (Ex.).

Reference your office letter No.1703/SIP/P& I dated 27.2.2002, on the subject cited above.

The request of HC (Ex.) Surender Kumar No.167/L regarding admission of his name to list D-I (Ex.) w.e.f. 12.11.2001 had been considered in this Hqrs. by the competent authority but could not be acceded to in view of his indifferent record of service. He has also appeared before the Commissioner of Police, Delhi in his O.R. on 12.7.2002 and explained the rule position. He may be informed accordingly.

His service record is also enclosed herewith. Kindly acknowledge the receipt."

The guide-lines have been issued on the subject and the relevant portion of the same is:-

- "(i) Officers having 3 'Good or above' reports and without any below average or adverse reports may be empanelled where the minimum required qualifying service in the lower rank has been



prescribed as 5 years or less than 5 years. However, in cases where the required qualifying service in the lower rank is prescribed more than 5 years the DPC should see the record with particular reference to CRs for the years equal to the required qualifying service and the officer having more than 50% 'good or above reports' and without any 'below average' or 'adverse' reports during the years for which the CRs have been taken into consideration, for empanelment of the officers.

- (ii) The service record of the officer during preceding 10 years in that particular rank shall be taken into account with particular reference to the gravity and continuity of punishments till date. Punishments on counts of corruption and moral turpitude are to be viewed seriously.
- (iii) 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, from the date of consideration may not be empanelled.
- (iv) Officers whose names stand on Secret List shall not be considered fit as per S.O.No.265/96.
- (v) Officers who have been awarded censures during the last 6 months with no other punishment can be allowed to be brought on promotion list. However, the effect of censure by debarring the official for promotion by six months from the date of award, shall continue."

5. A brief reference to the relevant rules would be also in the fitness of things. Under Rule 5 of the Promotion and Confirmation Rules, promotion from one rank to another and from lower grade to higher grade shall be made by selection tempered by seniority. Efficiency and honesty shall be the main factors governing selection. We also know that normally it is for the Departmental Promotion Committee to look into the relevant



considerations. Under Rule 15 of the Promotion and Confirmation Rules, there shall be a List 'D' of confirmed Head Constables considered suitable for promotion to the rank of Assistant Sub Inspector. They have to put in minimum of 5 years of service in the rank ~~to~~ to become eligible.

6. The respondents had brought to our notice, the service record of the applicant. He had been censured on 21.12.1993 for lowering down the image of Police. He was censured on 18.10.1996 for being absent from duty. He was censured on 4.11.1996 for not being vigilant on duty while checked by the checking officer. He was again censured on 8.1.1997 for submitting a complaint directly without using the proper channel.

7. In addition to that, a penalty of one year's approved service temporarily for a period of one year on 12.4.1997 was imposed upon the applicant. In addition to that, his confidential dossiers for the last four months of the year 1998 indicate:-

"the HC always shirk work. He is habitual of sending anonymous complains against senior officers. Instigates other HCs & Consts. against Senior Officers....."

Even his relations with the public were found to be not good.



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8. We have already pointed above that it is for the Departmental Promotion Committee to go into the record of the concerned officer and keeping in view the relevant rules particularly, Rule 5 of the Promotion and Confirmation Rules to consider a particular person as to whether he is to be promoted or not. The service record of the applicant indeed is indifferent. By no stretch of imagination, therefore, the decision of the Departmental Promotion Committee not to admit his name in List D-I (Executive) can be termed to have been fumbled or flouted to prompt this Tribunal to interfere.

9. The applicant on that count, therefore, has indeed no right to press his claim.

10. Keeping in view the aforesaid, it becomes unnecessary for us to go into the other questions and declare that the guide-lines of the Departmental Promotion Committee are ultra vires because that would only be of academic interest.

11. Resultantly, the present application being without any merit must fail and accordingly is dismissed. No costs.

Announced.



(S.K. Naik)
Member (A)



(V.S. Aggarwal)
Chairman

/sns/