

Central Administrative Tribunal
Principal Bench

OA No. 3106/2002

New Delhi, this the 22nd day of May, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri Govindan S. Tampi, Member (A)

Sub. Inspector Girdhari Lal Sharma,
No.D/256,
S/o Late Shri Nar Singh Dayal Sharma,
R/o H-14, Garhwali Mohalla,
Laxmi Nagar, Delhi.

...Applicant.

(Applicant in person)

Versus

1. Govt. of NCT of Delhi
Through its Chief Secretary,
Delhi Sachivalaya, I.P.Estate,
New Delhi.
2. The Commissioner of Police,
Delhi Police Headquarters,
New Delhi-110001.
3. The Special Commissioner of Police(Admn),
Delhi Police Headquarters,
New Delhi.
4. The Joint Commissioner of Police,
Delhi Police Headquarters,
New Delhi.

...Respondents.

By Advocate: Shri Ajesh Luthra)

ORDER

By Shri Govindan S. Tampi:

The applicant, a Sub-Inspector (Ministerial) in Delhi Police is aggrieved that he has not been included in the Promotion List (F) and that his representation against the non-inclusion has been rejected on 08.10.2002. MA 896/03 for early hearing is also disposed.

2. Girdhari Lal Sharma, the applicant was present himself during the oral submissions while Shri Ajesh Luthra, learned counsel appeared for the respondents.

In terms of Rules 5(i) and 17(iii) of the Delhi Police Promotion and Confirmation Rules, 1980, promotion from one rank to the other is on the basis of selection tempered by seniority and eligibility period is fixed as 6 years in the feeder cadre, with $2x+4$ candidates being considered for promotion, 'x' representing the number of vacancies. Delhi Police has 58 posts of Inspector (Min.) out of which 8 posts are for S.C. candidates and 4 for S.T. In October 2001, respondents called for the particulars of 50 candidates showing that there were 23 vacancies to be filled up. According to the applicant, the number of vacancies which should have been reported were as below:

S1 No.	Gen.	SC	ST	Total
1. Existing Vacancy	7	1	3	11
2. Anticipated up to 2003	14	3	-	11
3. Total	21	4	3	28

However, the Promotion List stopped at 20 just before the name of the applicant, leaving 8 vacancies unfilled. Even if only 23 vacancies, including 17 of General category were acted upon to be filled the applicant would have been included. Applicant's representations dated 22.4.2002 and 22.5.2002 did not yield any positive response, leading him to file OA No.1751/02, which was disposed of on 10.7.2002, with directions to the respondents to consider the applicant's representation and pass the necessary order, which they did on

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08.10.2002 by rejecting the representation. While the existing number of vacancies was accepted as 11, the anticipated vacancies were shown as 11, instead of 17, as shown by the applicant. It was also pointed that while making out anticipated vacancies, only vacancies which were clearly expected to arise in the year would be taken into account. Hence the OA. The applicant also points out ⁴⁴ fresh list of 23 SIs have been called on 20.9.2002, for further promotion.

3. Grounds raised in the OA are that

- i) vacancies should be correctly worked out which has not been done in the instant case;
- ii) only 23 vacancies have been worked out while keeping in mind likely promotions and creations of posts and promotions it should have been fixed at 28;
- iii) DOPT's instructions as holding review DPCs was only illustrative and exhaustive and in the present case DPC should have been reviewed;
- iv) panel prepared was exhausted before the year was out showing that the vacancies were not calculated properly;
- v) if the review DPC was not held the applicant's seniority would be disturbed;
- vi) as the misreporting of vacancies had taken place, review DPC was a must;
- vii) utilisation of three posts SI (Stenographer) in 80 has not been taken into account;
- viii) next DPC would give rise to greater promotion in SC/ST candidates, disturbing his seniority further.

In view of the above the applicant pleaded that the OA be allowed.

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4. Respondents contest the above. They point out that when the DPC met on 17.01.2002, there were 22 existing/anticipated vacancies with 16 for general ^{category} ₂ candidates 4 each for SC and ST. Those approved included 16 (General) + 3 (SC) with none for ST. Two were kept in the sealed cover. Thus 19 were included in promotion list 7 (Min.). The applicant was one among the general candidates whose case was considered, but could not be placed in the promotion list due to want to adequate number of vacancies. The applicant's plea for review DPC was turned down but he was advised that his case would be considered in the next DPC. His OA 1751/02 was disposed of on 10.7.2002 with direction to decide his representation dated 22.5.2002, which was done by the impugned order dated 08.10.2002. DPC was correctly informed about the number of vacancies and there was no irregularity. While service particulars of 50 SIs (Min.) were called but only 22 vacancies did exist with 16 for general, 3 each for SC and ST categories. It was, however, true that a few more promotions were ordered. Respondents assert that while the applicant correct in respect of existing vacancies, anticipated vacancies were only 11 and not 17 as claimed by the applicant, based on ^{presumption} ~~representation~~ and not on facts. The applicant's representation was correctly rejected and he was duly advised that his request for review DPC had no basis at all. Applicant's plea that the vacancies which are likely to arise should have been considered has no basis as the instructions on the subject were clear as only existing and properly anticipated vacancies should be taken and ^{while} _L reckoning vacancies arising from promotion, death and creation of

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posts could not be treated as anticipated vacancies. As none of the five specific grounds indicated in DOPT's OM justifying holding of review DPC, ^{existing} respondents correctly took the decision not to hold a review DPC. Respondents had worked out the vacancies correctly but as it was decided to ^{utilise} 3 posts in April, 2002 and two vacancies had arisen due to promotions, which were not anticipated earlier, the panel got exhausted. The applicant's case would merit consideration in his turn, in due course. Utilisation of three posts of SI (Stenographer) was a purely temporary and stop gap arrangement and the same did not being about any regular change in the vacancy position.

5. Applicant reiterated his pleas in his rejoinder and further in the additional affidavit filed on 11.3.03, referred to ad hoc promotion ordered on 05.03.2003, whereunder six persons, including five SC candidates were promoted. Further all the vacancies were those properly anticipated and the respondents should have brought in all the vacancies into reckoning and granted him also promotion. OA in the circumstances, deserves acceptance applicant stoutly urged.

6. We have carefully considered the matter and perused the relevant files produced by the learned counsel for the respondents for our perusal. ^{Vacancy position as per} Papers placed for the DPCs information reads as under:

i)	Sanctioned Strength of Inspectors(Min)	Gen.	SC	ST	Total
ii)	Present	46	08	04	58
iii)	Early Vacancy	39	07	01	47

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iv) Anticipated vacancies
due to retirement up
to January, 2003 09 02 - 11

Total	16	03	03	22
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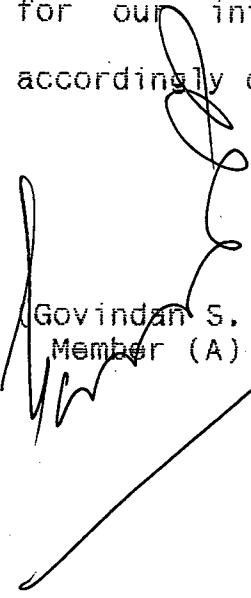
7. Applicant's grievance that the vacancies had not been worked out properly on account of which he could not be placed in the promotion list is not borne out of facts. while computing the vacancies only the existing vacancies and those clearly anticipated could be taken into reckoning. Vacancies arising out of death, promotion finalisation of disciplinary proceedings, creation of fresh posts are not those which could have been anticipated. Therefore the respondents could not be faulted for not including these vacancies while preparing papers for the DPC, as they had only acted strictly in accordance with DOPT's instructions. Those vacancies could have only been taken care by a subsequent DPC. None of the circumstances permitting holding of a review DPC - exclusion of eligible persons, inclusion of ineligible persons, revision of seniority with retrospective effect, procedural irregularity and modification/expansion of adverse remarks-has occurred in this case and therefore the applicant's insistence as review DPC is totally misplaced. It is true that if the subsequent vacancies which had arisen were within the knowledge of the DPC when it met his case would have taken a different turn and keeping in mind his relative position in seniority he would have been promoted also, But the respondents were neither aware of the vacancies nor could they have anticipated them and as such they prepared the papers for the DPC accordingly. Applicant's case has also been considered but he could not be included

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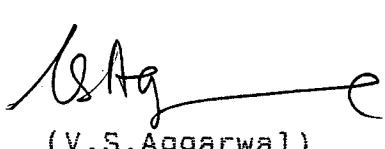
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for want of vacancies. The applicant cannot at all have any grievance in this scenario. No SI (Min) from the general category and junior to the applicant has been included in the promotion list and all those included from his category are his seniors. He cannot have any case against them in law. His present grievance is an imagined one and based on presumption. No relief can therefore be extended to him.

8. In the above view of the matter, we are fully convinced that the applicant has not made out any case for our interference. OA therefore fails and is accordingly dismissed. No costs.


Govindan S. Tamai
Member (A)

/kdr/


(V.S. Aggarwal)
Chairman