

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.2914 OF 2002

New Delhi. this the 18th day of July. 2003



HON'BLE SHRI JUSTICE V.S. AGGARWAL. CHAIRMAN
HON'BLE SHRI S.K. NAIK. MEMBER (A)

Parkash Chand
(PIS No.28740141)
S/o Shri Bhartu Ram
R/o 613/35 Gali No.3
Harijan Basti Bindapur
PO: Uttam Nagar
New Delhi.

....Applicant

(By Shri Shvam Babu. Advocate)

Versus

1. Govt. of NCT of Delhi.
through its Chief Secretary.
Delhi Secretariat. Plavers' Building
I.P.Estate
New Delhi.
2. Commissioner of Police
Police Headquarters
I.T.O.
New Delhi.
3. Dy.Commissioner of Police
Headquarters (Estt.) Delhi
Police Headquarters
I.T.O. New Delhi.
4. Adl.Commissioner of Police
(Headquarters) Delhi
Police Headquarters
I.T.O.
New Delhi.

.....Respondents

(By Advocate : Shri Aiesh Luthra)

ORDER

JUSTICE V.S. AGGARWAL :-

Applicant (Parkash Chand). by virtue of the
present application seeks a declaration that the
proceedings of the review Departmental Promotion
Committee which considered his name for List D-I

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(Executive) from 12.5.1999 and 12.2.2001 have been vitiated and further for a direction to re-consider his claim for List D-I (Executive).

2. Some of the relevant facts are that a First Information Report No.138/1988 pertaining to Police Station Inderpuri with respect to offences punishable under Sections 302/201/32 of the Indian Penal Code was registered. The applicant was one of the accused persons. As a result of the same, the applicant was placed under suspension. A departmental proceeding had also been initiated against him. On basis of the said charges/allegations, he was tried by the Court of Additional Sessions Judge, Delhi. On 23.9.1999, the court acquitted the applicant with respect to the abovesaid criminal case registered against him. After passing of the judgement by the court, the Deputy Commissioner of Police/ South West District exonerated the applicant in the departmental enquiry. It was directed that suspension period of the applicant should be treated as spent on duty for all intents and purposes. On 21.12.2000, the applicant was granted all his increments as a result of the abovesaid order. The name of the applicant vide the order of 10.7.2001 was removed from the secret list of persons of doubtful integrity with effect from 19.3.1988.

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3. The applicant asserts that he had completed the the period of probation in the rank of Head Constable with effect 27.2.1988. He made a representation to the competent authority for sending him to inter school course batch for being promoted as Assistant Sub Inspector (Executive). The juniors of the applicant were promoted but not the applicant. It is asserted that in another inquiry, the Deputy Commissioner of Police/ South West District on 26.7.1995 had imposed a punishment of stoppage of increment for a period of two years with effect from his future increment of pay and it was directed that the penalty imposed upon the applicant shall operate on his reinstatement from suspension. The representation of the applicant for being promoted had been rejected. Hence the present application.

4. The application has been contested by the respondents. They contend that efficiency and honesty are the main factors governing the selection. The Departmental Promotion Committee has full discretion to devise its own methods and procedure for objective assessment as to the suitability of candidates who have to be considered. The selection has to be made by the Departmental Promotion Committee. The service particulars of the applicant were considered. He was not considered suitable keeping in view his indifferent service record.

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5.. Rule 5 of the Delhi Police (Promotion and Confirmation) Rules, 1980 (for short, "the Rules") provides the general principles for promotion from one rank to another. Seniority has to be kept in view. but efficiency and honesty are the main factors. Sub-rule (i) to Rule 5 in this regard reads:-

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

Similarly Rule 15 of the Rules refers to drawing of List 'D' of confirmed Head Constables found suitable for promotion to the rank of Assistant Sub Inspector. The confirmed Head Constables who have put in minimum of 5 years of service would be eligible. Recommendations in this regard have to be by the Departmental Promotion Committee. The settled principle further is that the Departmental Promotion Committee can devise its own methods and procedure for objective assessment pertaining to suitability of the concerned persons. ;

6.. The impugned order dated 21.5.2002 indicates that on overall assessment of the service record, the name of the applicant was not admitted in

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List D-I (Executive). The said order reads:-

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"After overall assessment of the service record and ALRs for the last 5 years in respect of the Head Constable (Ex) Prakash Chand No.137/SW (2874041). the review departmental promotion committee did not find him fit for admission of his name to list D-I (Ex.) w.e.f. 12.5.99 and 12.02.2001 due to his indifferent service record. He may be informed accordingly.

Sd/ .
(K.C.Dwivedi)
DEPUTY COMMISSIONER OF POLICE -
HEQRS (ESTT) DELHI.

No.A(1/3 (iv-I)/02/36897-25/CB-IV dated -
Delhi. 21.5.2002".

We have already given brief resume of the pleas, namely that the applicant was placed under suspension because he was facing a trial pertaining to offences punishable under Sections 302/201/34/302 of the Indian Penal Code. Subsequently he was acquitted by the Court of Sessions. He even was exonerated by the disciplinary authority with the following order:-

"Keeping in view the overall facts and circumstances of the case and agreeing with the findings of the enquiry officer. I hereby order for the exoneration of H.C.Parkash Chand No.137/SW. Const.Ishwar Singh No.1341/SW. Const.Rambir Singh. No.1301/SW, Const.Muneshwar No.1317/SW and Const.(Driver) Kartar Singh. No.1094/SW from the charge levelled against them and drop the D.E. I hereby further order about their reinstatement from suspension with immediate effect. Their suspension period is treated as period spent on duty for all intents and purposes."

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It is on the strength of these facts that the learned counsel for the applicant asserted that the applicant had been exonerated departmentally and acquitted by the Court of Sessions and reinstated granting him full back-wages and further it was urged that subsequently he had been given the benefit of the Assured Career Progression Scheme vide the order of 13.6.2002 and. therefore. to assert that the applicant was not found fit for promotion would be incorrect.

7. On careful consideration of the abovesaid facts. we find that the submissions so made are without any merit. If after the acquittal of the applicant and exoneration from the departmental proceedings resulting from the the same facts on which he faced the trial in the Court of Sessions. the matter had ended. perhaps there was something for the applicant to contend. but admitted facts further are that the applicant faced yet another departmental proceeding in which on 26.7.1995. the disciplinary authority had imposed the penalty of stoppage of increment for a period of two years with effect from his future increments. This had arisen as a result of the allegations that the complainant therein was compelled by Assistant Sub Inspector Bohri Lal to sell his plot to the applicant. The complainant was paid Rs.8.000/- and asked to sign certain papers with the promise that the remaining payment will be made immediately after signing the papers. After getting

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the papers signed. they slipped away and the payment was never made.

8. Against the said penalty, the applicant had not preferred any appeal and in other words, he accepted the same. The said penalty in the departmental proceedings had to be made effective and operative on reinstatement of the applicant from suspension. The said suspension order had been passed in pursuance of the criminal trial that the applicant was facing at that time. Once the applicant had been acquitted in the criminal trial, the penalty order of 26.7.1995 became operative. It has to be considered at the appropriate time and the respondents are right in contending that the applicant's indifferent service record had to be considered for promotion.

9. As already pointed above, great reliance was placed on the fact that the applicant was cleared for the benefit of Assured Career Progression Scheme vide the order of 13.6.2002. Our attention was drawn to the fact that in the Assured Career Progression Scheme, a screening committee is constituted. The composition of the same is that of a Departmental Promotion Committee prescribed under the relevant recruitment rules. It is thus urged that once the benefit of the Assured Career Progression Scheme had been given to the applicant, he must be allowed to be so promoted.

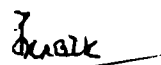
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10. In the present case, firstly this order was brought on the record in the rejoinder and was not the subject matter of the pleas raised for the applicant. Be that as it may, this order had been passed after the claim of the applicant for promotion or including his name in List D-I (Executive) had been rejected. Therefore, this order having been passed after the impugned order will not have the effect of setting aside of the same. Resultantly, we are not expressing ourselves on the grant of Assured Career Progression Scheme benefit to the applicant which as per the respondents' learned counsel was erroneous. We refrain from expressing any opinion on this controversy.

11. No other argument was advanced.

12. For these reasons, the application being without merit must fail and is dismissed. No costs.


(S.K. NAIK)
MEMBER (A)


(V.S. AGGARWAL)
CHAIRMAN

/sns/