

Central Administrative Tribunal, Principal Bench

Original Application No.575 of 2002

New Delhi, this the 4th day of October, 2002

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. M.P. Singh, Member (A)

Vijay Karun Dabas
S/o Shri Balbir Dabas
R/o Village Kherpur
Khierabad, Post Pilkhua,
Distt. Ghaziabad (U.P.).

....Applicant

(By Advocate: Shri S.K. Gupta)

Versus

1. Govt. of NCT of Delhi
Through Chief Secretary
Delhi Secretariat
IG Stadium, IP Estate,
New Delhi-2

2. Commissioner of Police
Delhi Police Headquarters,
IP Estate, MSO Building,
New Delhi-2

3. Deputy Commissioner of Police
Headquarter (Establishment)
Delhi Police Headquarters,
IP Estate, MSO Building,
New Delhi-2

4. D.C.P. (Security)
Vinay Marg,
New Delhi

....Respondents

(By Advocate: Shri Ram Kawar Dhillon)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The applicant had been enrolled as a temporary Constable in Delhi Police on 5.7.78. His services had been terminated under Rule 5 of the CCS (Temporary Service) Rules, 1965. He had filed a writ petition which was subsequently transferred to this Tribunal. On 17.5.89, the same had been allowed and order terminating the services of the applicant had been quashed. In pursuance of that order, the applicant was reinstated in service vide order dated 21.7.89. The said order stated that applicant will

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draw his full pay and allowances admissible to him under the rules for the period from the date of his termination till 21.7.89. The intervening period was to be treated as on duty for all intents and purposes. Thereupon the applicant had filed O.A.824/94 claiming that he should be promoted as Head Constable with effect from the date his junior had been so promoted. The defence of the respondents was that according to the rules, promotion to the rank of Head Constable was to be made by way of a competitive test. A confirmed constable having five years service upto the age of 40 years, could take the test. Those who qualify the test, are deputed for Lower School Course as per their seniority. This Tribunal had considered the said controversy and while allowing the O.A., had passed the order:

"10. In view of the fact that the Tribunal by its order dated 17.5.89 directed Respondents to reinstate the applicant in service with all the consequential benefits, we hold that in the event applicant clears the written test in which he will be appearing on 1.8.89 and also clears the Lower School Course, he will be entitled to seniority from the date his immediate junior was promoted as Head Constable with such further consequential benefits as flow therefrom. For this purpose, while assessing applicant's work and performance for being brought on to promotion list 'A', it will also be fair and reasonable to direct Respondents not to draw any adverse inference against applicant for the period from 1981 to 11.9.89 merely because there were no remarks recorded in applicant's ACRs, he being out of service during the aforesaid period. We direct accordingly."

2. In pursuance of the said order passed by this Tribunal, the respondents have passed the impugned order dated 3.7.2001. Needless to mention that admittedly the

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applicant had passed the test as directed by this Tribunal.

He was promoted as officiating Head Constable w.e.f.

4.12.92. He was granted proforma promotion from 4.12.92 to 21.10.2000.

3. By virtue of the present application, the applicant seeks quashing of the order dated 3.7.2001 and also to be granted the promotion to list 'B' from the date his immediate junior had been promoted.

4. We have heard the learned counsel for the parties. The facts reveal and establish beyond any ~~date~~ of controversy that between the parties, the earlier orders passed by this Tribunal in O.A.824/94 had become final. In pursuance of the said order, extract of which has been reproduced above, the applicant had taken the test and had passed the same. He had to be given the seniority and benefit from the date his immediate junior was promoted. The same has been denied though it is not in controversy that from June, 1986, one constable Vijay Kumar had been promoted as Head Constable who is junior to the applicant. It is patent that despite a clear direction by this Tribunal, the benefit of the order of this Tribunal has not been given effect to. The applicant had again to rush to this Tribunal.

5. The State has to act as a model employer and not take shelter of legal probabilities. In fact, ~~dues~~ ^{dues} should have been awarded without any further litigation. Resultantly, we find that the impugned order dated 3.7.2001

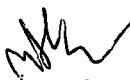
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deserves to be quashed. It is directed that applicant should be given promotion from the date his junior Vijay Kumar had been so promoted, with consequential benefits of salary, seniority etc.

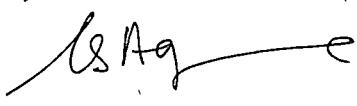
6. Before parting with this case, we deem it necessary to mention that in the counter that has been filed, the respondents have pleaded:

"The above judgement is not based on the true facts and undue benefit of seniority in list 'A' 1989 was given to the applicant only on the basis of the facts that he failed to appear/complete in the aforesaid list 'A' test due to the mistake/error of the department. The Hon'ble Court nowhere considered that a number of Constables including his batch mates had appeared in the said promotion list 'A' test of 1989 but failed to make grades. Therefore, it cannot be held that in case the applicant had appeared/competed in the said promotion list 'A' test he would have actually succeeded in making the grade. The Hon'ble Court had given undue consideration by passing the aforesaid judgement thereby ignoring the interest of all those candidates who had qualified list 'A' 1989. The applicant had not appeared in list 'A' test held during the year 1989 and 1992 and therefore it is not proper to consider at par with those candidates who had made the grade on the basis of the competitive test."

7. Perusal of the averments made in the counter clearly reveal that in a derogatory manner, the order passed by this Tribunal is being criticised. It is appropriate that the order so passed should only be taken up to a forum where it can be challenged. In fact the dues that were to be paid, have been withheld for no valid reasons. Accordingly we direct that the respondents shall pay interest at the rate of 9% on the principal amount from the date it is due till such time the payment is made.


(M.P. Singh)
Member (A)

/dkm/


(V.S. Aggarwal)
Chairman