

Central Administrative Tribunal  
Principal Bench, New Delhi

28

O.A. NO.285/2002

New Delhi, this the 06th day of October, 2005

HON'BLE MR. M.P. SINGH, VICE CHAIRMAN (A)  
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

HC-No.464/NW Budh Ram

... APPLICANT

(By Advocate: Shri Yogesh Sharma)

VERSUS

1. NCT of Delhi through The Chief Secretary,  
and Ors

... RESPONDENTS

(By Advocate: Shri Ajesh Luthra)

1. To be referred to the Reporter or not.

Yes / No

2. To be circulated to other Benches or not.

Yes / No.

  
(Mukesh Kumar Gupta)  
Member (J)

29

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**O.A. NO. 285/2002**

New Delhi, this the 06<sup>th</sup> day of October, 2005

**HON'BLE MR. M.P. SINGH, VICE CHAIRMAN (A)  
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)**

HC-No.464/NW Budh Ram,  
PIS No.29690223, L & B Cell,  
PS Ashok Vihar, Delhi

... Applicant

(By Advocate: Shri Yogesh Sharma)

**VERSUS**

1. NCT of Delhi through the Chief Secretary,  
New Sectt. New Delhi

2. The Commissioner of Police,  
Police Head Quarter, IP Estate,  
New Delhi

3. The Joint Commissioner of Police,  
Police Head Quarter, IP Estate,  
New Delhi

... Respondents

(By Advocate: Shri Ajesh Luthra)

**O R D E R (Oral)**

The reliefs prayed for, in the present OA, read as follows –

- (i) That the OA of the applicant may be allowed with the costs of litigation;
- (ii) That the Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 16.1.2002 (Annex. A/1), 22.1.2002 (Annex. A/2) and order dated 13.11.2001 (Annex.A/2) declaring to the effect that the same are illegal, arbitrary and against the principles of natural justice and consequently the applicant is entitled for including his name in Promotion D-1(Ex.) list for his promotion w.e.f. 12.11.2001 with all the consequential benefits.

(30)

2. The admitted facts of the case are that the applicant was initially appointed as Constable (Ex.) on 04.01.1969, promoted as Head Constable (Ex.) on 01.09.1988. In the year 1995, he was deputed to work as Mess Manager. A summary of allegation dated 29.01.1996 was issued alleging failure to supervise the preparation of food properly, as the food was found to be sub-standard and unhygienic besides, certain financial irregularities. A penalty of forfeiture of one year's approved service for a period of 5 years imposed by the disciplinary authority was up-held by the appellate authority. This became the subject matter of OA No.1868/1997. The said OA was allowed vide order dated 26.5.2000 and the charges were held to be vague and had caused serious prejudice to the applicant in his defence, and, accordingly the impugned orders of disciplinary as well as appellate authorities were quashed and set aside. However, a liberty was reserved to the said authorities to issue a fresh charge in accordance with law. But, no such fresh action was taken.

3. In the meantime, the applicant was detailed as an escort of the under trial prisoner (hereinafter referred as UTP) Gurmeet. A show cause notice dated 13.12.1996 was issued alleging that the applicant was found enjoying snacks and tea inside the canteen along with UTP and as such there had been a possibility of his escape from Police custody. The applicant submitted his written reply and disputed such an allegation. The Deputy Commissioner of Police, III<sup>rd</sup> Battalion DAP, Delhi, vide order dated 14.2.1997, after considering the applicant's written explanation, which was found to be not satisfactory, confirmed the said show cause notice and penalty of 'censure' was awarded by stating that "the above act on the part of HC Budh Ram, 2098/DAP amounts to gross negligence, carelessness and dereliction in the discharge of his official duties". An appeal filed

against the aforesaid penalty was rejected by Sr. Additional Commissioner of Police (AP & T) dated 10.09.1997.

4. A Departmental Promotion Committee for selecting the names of HCs(Ex) falling within the zone of promotion list D-1 (Ex.) was held and following the mandate of Circular dated 03.12.1998, the applicant was not recommended for promotion as he was declared "unfit" due to indifferent service records. Notification dated 13.11.2001 which not only included the names of HC(Ex.), who were admitted to promotion list D-1(Ex.) w.e.f 12.11.2001 in terms of Rule 15 (1) of Delhi Police (Promotion & Confirmation) Rules, 1980, also included the names of Head Constables (Exe.) who were not found fit for promotion to the said Promotion List D-1 and the applicant's name appeared in the latter list at serial no.112. He submitted a representation dated 14.12.2001 for reconsideration of his case for promotion, which was not agreed to vide communication dated 16.1.2002 stating that his request: "has been considered by the competent authority in this Hdqrs as per rules/instructions but could not be acceded to" due to "indifferent records of service". Further representation made in this regard was also rejected by reiterating the contents of aforesaid communication, vide endorsement dated 22.01.2002.

5. On an earlier occasion, the present OA was dismissed on the ground that the same was bereft of any merit vide order dated 10.05.2002. The said order was challenged before the Hon'ble Delhi High Court by instituting a Civil Writ Petition No.4833 of 2002. The said Writ Petition was allowed vide order dated 07.07.2005 and the aforesaid judgment and order of this Tribunal was quashed and set aside and the matter was remanded to this Tribunal for "re-consideration of the entire issue and disputes raised by the parties"

6. Shri Yogesh Sharma, learned counsel appearing for the applicant strenuously contended that there exists no adverse ACRs in his entire career and more particularly in the last 5 years and yet the applicant was graded "unfit" for promotion to List D-1, i.e. for the grade of Asstt. Sub Inspector merely on the ground of penalty of 'Censure' imposed upon the applicant vide order dated 14.02.1997. It is contended that the Circular No. 83135-234/CB-1 dated 03.12.1998 particularly sub-para-V is attracted in the facts and circumstances of the present case, as except for the said 'Censure' no other punishment had been in existence and, therefore, his name was liable to be brought on the Promotion List. This contention was seriously disputed by Shri Ajesh Luthra, learned counsel appearing for the respondents, who in turn, contended that the DPC which met on 12.11.2001 selected the names of 1096 Head Constables for promotion List D-1 (Ex.) w.e.f. 12.11.2001 and notification to this effect was issued on 13.11.2001. The penalty of 'censure' had been imposed upon the applicant as he freely mixed up with the high risked terrorist and also allowed UTP to meet the outsiders which was a "grave misconduct and involved in corrupt practices with malafide intention". Allowing a terrorist of TADA case to meet outsiders while in custody and taking snacks with the criminal was a corrupt/moral turpitude act on the part of the applicant. Commission of misconduct includes corruption, dishonesty and the punishment awarded to the applicant was related to his dis-honesty. Reliance was also placed on Delhi High Court judgment dated 11<sup>th</sup> January, 2002 in CWP 4821 of 2001 *W/HC Vejvati vs. Union of India & Ors.*

7. We have heard the learned counsel for the parties and perused the records including the minutes of the DPC placed before us minutely.

8. Before proceeding further we may note that both sides have heavily relied upon the Circular dated 03.12.1998 and the Hon'ble High Court in the aforesaid Writ Petition also observed that the Tribunal had not examined and considered the whether clause (v) of the said Circular is applicable and further whether or not clause (v) overrides clause (iii), which requires an in-depth examination. As such, it would be expedient to note the contents of the said Circular, which reads thus -

*"The following principles shall be observed, in future, while holding Departmental Promotion Committee for admission of names to promotion lists:-*

- 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.

vi) Result of officers, who are under suspension or facing DE or involved in Criminal Cases shall be kept in sealed covers.

*This supercedes earlier circular, issued vide this Hdqrs order No.43950-44040/CB-I, dated 2.12.94.*

Sd/-  
(S.K. JAIN)  
Addl. CP/HDQRS"

9. As noticed hereinabove, the emphasis made by the learned counsel for the applicant is that it is clause (v) which would be applicable in the present case. On the other hand, the stress laid by the respondents is upon clause (iii) of the aforesaid Circular. Shri Ajesh Luthra, learned counsel for respondents contended that this Tribunal, on an earlier occasion, i.e. vide order dated 10.05.2002, had come to the conclusion that the applicant was awarded the penalty of 'censure', which had to be treated as a penalty imposed "because of an act of moral turpitude" and, therefore, in view of the language of the aforesaid clause (iii), the said clause would be attracted. This contention was seriously countered by Shri Yogesh Sharma, learned counsel appearing for the applicant. It is contended that when a penalty is imposed on charges as enumerated in clause (iii) alone, which are listed below, an officer cannot be empanelled -

- i) charges of corruption,
- ii) moral turpitude, and
- iii) gross dereliction of duty to protect government property

10. It is contended that none of the aforesaid elements were either mentioned in the show-cause notice dated 13.2.1996 or were the basis of punishment vide order dated 14.2.1997. It is contended that since the



penalty of censure had been awarded to the applicant on 14.2.1997 and thereafter no other punishment had been imposed upon him, in terms of clause (v) of the aforesaid Circular, his name ought to have been brought on the promotion list. Moreover, the effect of 'censure' is only for a period of six months, and not for indefinite period.

11. We have bestowed our thoughtful consideration to the aforesaid contention and are of the opinion that as far as the findings recorded by this Tribunal vide Order dated 10.05.2002 is concerned, since the same had been set aside by the Hon'ble Delhi High Court in the aforesaid Writ Petition and the matter has been remanded to the Tribunal "for reconsideration of the entire issues and disputes raised by the parties", we do not find any justification in the respondents' contention that the findings recorded by this Tribunal on an earlier occasion, particularly as recorded in para 10 to the effect that penalty was the result of an act of moral turpitude, cannot be read herein. It is, no doubt, true that the Court/Tribunal could arrive at the same findings on reconsideration, but that cannot be equated as if there had been a limited quashing of the order in question. Once an order/Judgment is quashed/set aside by the higher Court, the same gets completely wiped out and no longer remains in existence. The same cannot either be referred or read even for limited purposes. The effect of such an event i.e. quashing/setting aside is that it is deemed to be "no order".

12. A cumulative reading of clause (iii), clause (v) as well as the impugned penalty order dated 14.02.1997 would show, in specific, that the grounds on which the applicant was awarded the above penalty had been,



"gross negligence, carelessness and dereliction in the discharge of his official duty" and none of the elements specified under clause (iii) were made the basis. In other words, when the authorities itself stated that the punishment is because of gross negligence, carelessness and dereliction in the discharge of official duty, it cannot be read as if the penalty was imposed on charges of corruption, moral turpitude and gross dereliction of duty to protect government property as specified under clause (iii). In other words, if the disciplinary authority was of the view that it was because of a particular element, the penalty had been imposed, the said element cannot be substituted by any other authority. It is not as if the Court/Tribunal can re-write the order of the disciplinary/appellate authority. No allegations of corruption, morale turpitude and gross dereliction of duty to protect Govt. property have been alleged against the applicant. Therefore, we are unable to accede to the contention raised by the respondents that the basis of imposing the penalty of 'censure' vide order dated 14.2.1997 would involve the elements of corruption, moral turpitude or gross dereliction of duty to protect government property. Under these circumstances, we are of the considered view that clause (iii) of the aforesaid Circular dated 03.12.1998 has no application in the facts and circumstances of the present case. We may note, at this stage, also that the Hon'ble High Court in the afore-mentioned judgment dated 07.07.2005 specifically observed that in case of 'censure' whether clause (iii) or clause (v) would be attracted, requires an in-depth examination by this Tribunal.

13. On perusal of the minutes of the DPC, we find that the applicant had been denied promotion by placing his name in the D-1 List merely for the reason that the penalty of 'censure' dated 14.02.1997 remains on record.

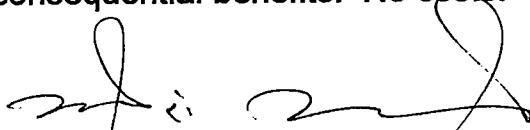
We may also note that out of the 5 CRs considered, the applicant had secured 3 "Good reports" which is the minimum requirement for being empanelled under clause (i) of the aforesaid Circular. The applicant's apprehension that he was denied his claim for promotion because of the penalty imposed, which stands quashed and set aside vide this Tribunal's order dated 26.05.2000, is misplaced as the said penalty, duly quashed by the aforesaid order, had neither been made the basis nor noticed by the said DPC. At this stage, we may also note the respondents' contention that the DPC was free to device its own procedure for arriving at a conclusion about the fitness or otherwise of the applicant, is also untenable, as the three factual aspects noticed by the DPC against the applicant's name had been the penalty of 'censure' awarded on 12.06.1990 for unauthorized absence, 'censure' awarded on 3.1.1996 for absence and the 'censure' awarded on 14.2.1997. In other words, there was no penalty imposed upon the applicant after 14.2.1997. The DPC was convened and held its meeting on 12.11.2001 and, therefore, the first ACR which had been considered by the said DPC was for the year 1996-97. In other words, the penalties of 'censure' awarded on 12.6.1990 and 13.1.1996 had been of no consequence and were immaterial. In other words, it is only the latter penalty of 'censure' imposed on 14.2.1997, which became the basis and cause for declaring the applicant 'unfit'. We may also note that the officials who constituted the said DPC were Lt. CP/Crime Branch as Chairman and DCP/Licensing as Member. Another Member DCP/X<sup>th</sup> Bn DAP could not attend the meeting for the reasons noticed therein. We may also note the fact that the penalty of 'censure' dated 14.2.1997 was imposed by Deputy Commissioner of Police, III<sup>rd</sup> Battalion was up-held by the Sr. Additional Commissioner of Police. It is an

admitted fact the disciplinary as well as the appellate authority has not imposed the penalty upon the applicant for the elements of corruption, moral turpitude or gross dereliction of duty to protect government property. Therefore, in any event, the officers who were part of the said DPC could not have noticed certain other alien elements for construing the censure order dated 14.02.1997 in a different fashion. As far as the judgment dated 11.1.2002 in CWP No. 4821 of 2001 is concerned, we find that in the said case the penalty was imposed based upon allegations of accepting illegal gratification from the person accused of pick-pocketing and she was charged with commission of misconduct involving corruption and dishonesty. As such the said judgment has no application in the facts and circumstances of the present case.

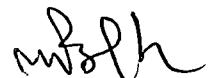
14. Shri Yogesh Sharma, learned counsel for applicant contended that though more than 5 years had expired from the imposition of the penalty of censure in the year 1997, but till date the applicant has not been promoted. This factual aspect was not disputed by the learned counsel for the respondents.

15. In view of the discussion made hereinabove, the OA is allowed. We accordingly hold that in the facts and circumstances of the present case, it is clause (v) of the aforesaid Circular dated 3.12.1998 which is applicable and not clause (iii). Accordingly, the order dated 13.11.2001 declaring the applicant ineligible for promotion list D-1 (Exe.) due to indifferent record of service is based on total non-application of mind and the same is quashed and set aside. Resultantly, the communications dated 16.01.2002 and 22.01.2002 rejecting applicant's representations are also quashed and set aside. The respondents are accordingly directed to hold a review DPC

and consider the applicant's case. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order. If the applicant is found 'fit' for promotion, he would be entitled to all consequential benefits. No costs.



(Mukesh Kumar Gupta)  
Member (J)

  
( M.P. Singh)  
Vice Chairman (A)

/pkr/