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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 2033/2002

New Delhi this the 4 th day of August 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Shri V.K. Majotra, Member (A).

Vikram Kumar,
ASI (Steno) in Delhi Police,
S/o Shri Bhagwan Dass,
R/o O-13, Jangpura Extension,
New Delhi. ... Applicant.

(By Advocate Shri K. Sultan Singh)

VERSUS

1. Commissioner of Police,
Delhi Police Headquarters,
I.P.Estate, New Delhi.
2. Jt. Commissioner of Police,
Delhi Police Headquarters,
I.P.Estate, New Delhi ... Respondents

(By Advocate Shri Ajesh Luthra)

O R D E R

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J))

The applicant has impugned the action of the respondents in promoting three Sub-Inspectors (SIs) (Ministerial) whose names stood admitted to Promotion List 'F' (Ministerial) w.e.f. 17.1.2002, to the posts of Inspector (Ministerial) w.e.f. 18.4.2002 against three vacancies of Inspectors (Stenographer) by order dated 19.4.2002.

2. The brief relevant facts of the case are that the applicant is working as Assistant Sub-Inspector (ASI) (Stenographer) with the respondents. He has alleged that by the impugned order dated 19.4.2002, the applicant has been discriminated and his chance of promotion has been deprived by the

action of the respondents. The applicant states that he was confirmed in the rank of ASI (Stenographer) by order dated 1.9.1998. He was admitted to Promotion List 'E' (Ministerial) w.e.f. 4.8.1995 and was promoted to officiate as Sub-Inspector (Ministerial) w.e.f. 10.12.1997. The applicant opted for the cadre of Stenographer and did not opt for the cadre of Ministerial vide letter dated 22.12.1997. Thereafter, his name was deleted from Promotion List 'E' (Ministerial) to the rank of SI (Ministerial). He, therefore, submits that his name was maintained in the seniority list of persons belonging to the Stenographer cadre. Shri K. Sultan Singh, learned counsel has relied on the rule, practice and precedent followed by the respondents which is given in their letter dated 28.7.1998 which he has contended should be followed in applicant's case also. Reference has been made to Rule 16 (iii) of the Delhi Police (Promotion and Confirmation) Rules, 1980 (hereinafter referred to as 'the 1980 Rules') which, according to him, shows that these are two separate and distinct cadres for promotion to the grade of SI (Ministerial). Learned counsel has submitted that the action of the respondents in issuing the impugned order promoting Sub-Inspectors (Ministerial) to the posts of Inspector against the three vacancies of Inspectors (Stenographer) is de hors the rules, arbitrary, discriminatory and against the interest of the applicant. Learned counsel has referred to the order issued by the respondents dated 5.4.2000 granting the higher pay scale to certain ASIs with effect from the

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dates shown against their names under the ACP Scheme, in which the applicant's name is at Serial No.1. He has, therefore, submitted that the applicant is the senior most ASI (Stenographer) as per the list published by the respondents themselves. He has relied on the judgements of the Supreme Court in Dr. Sandhya Jain Vs. Dr. Subhash Garg (1999 (8) SCC 449) and Lalit Mohan Deb & Ors. Vs. Union of India & Ors. (1973 (3) SCC 682).

3. The respondents in their reply have controverted the above submissions and we have also heard Shri Ajesh Luthra, learned counsel. The respondents have submitted that Stenographers as well as clerical staff used to get their promotions in their respective cadres as per Rule 12.3 of the Punjab Police Rules and this practice had continued till the year 1980, till the enactment of the 1980 Rules. They have also referred to the provisions of Rule 16 (iii) of these Rules which, according to them, remained prevalent upto 31.12.1985 i.e. before introduction of the 4th Pay Commission. The respondents have submitted that promotion of ASI (Stenographer) to the next higher grade of Sub-Inspector (Ministerial) is governed under Rule 16 (iii) of the 1980 Rules. They have submitted that the applicant had wanted to continue in the cadre of Stenographers as he did not want to opt for the post of Sub-Inspector (Ministerial) on his promotion w.e.f. 10.12.1997. Shri Ajesh Luthra, learned counsel has submitted that at that time the applicant was fully apprised about the pros and cons of the two cadres but as the applicant was adamant as to what he wanted, his

request was accepted by way of cancelling the promotion order to the post of Sub-Inspector (Ministerial) by order dated 9.1.1998.

4. The main contention of the learned counsel for the respondents is that there are no recruitment rules in existence for promotion of ASI (Stenographer) to the post of Inspector (s) and, therefore, the request of the applicant in his representation for such promotion has been rejected vide their letter dated 2.7.2002. Learned counsel has submitted that the letter dated 28.7.1998 is not a policy decision of the respondents but is merely an inter Departmental correspondence. He has explained that the matter of promotion to the post of Inspector (s) is not governed under the Rules. He has submitted two letters i.e. letter dated 26.10.1995 and 19.1.2001, copies placed on record. According to him, the respondents are pursuing the proposal for amendment of the Recruitment Rules and for upgradation of the posts both in the Ministerial and Stenographer cadres so that the incumbents in those cadres may get promotion in their respective cadres keeping in view also the recommendations of the 5th Pay Commission report. In the letter dated 19.1.2001, a proposal has been made by the respondents for upgradation of the posts of Stenographers, including 21 posts of ASI (Stenographer) to that of Inspector (Stenographer) which was to be sanctioned by the competent authority i.e. the Government of India, Ministry of Home Affairs. He has submitted that the earlier promotions to the posts of Inspector (Stenographer) were held in accordance with the

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instructions contained in Rule 5 (i) of the 1980 Rules read with Rule 17 on general principles. He has, however, submitted that as the proposals for relevant rules for promotion to this post have not yet been finalised, the applicant cannot be considered for promotion to the post of Inspector (Stenographer). He has referred to the judgement of the Tribunal dated 23.5.2000 in **J.K. Jain Vs. Government of NCT, Delhi and Ors.** with connected case (OA 2299/97 and OA 2300/97), in which he submits that a review application is pending. He has also relied on the judgement of the Supreme Court in **Ajay Kumar Bhuyan Vs. State of Orissa** (2003 (1) SC SLJ 226). Shri Ajesh Luthra, learned counsel has, therefore, submitted that in the absence of the rules which have now been proposed as draft amendment Rules, 1972 for promotion to the posts of Inspector (Stenographer), the applicant cannot be considered for promotion. He has submitted that the existing vacant posts of Stenographer have been utilised in the ministerial cadre for the time being till the recruitment rules are finalised and notified. He has contended that the impugned promotion order has been passed in accordance with the Recruitment Rules.

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties and have also heard Shri K. Sultan Singh, learned counsel in reply.

6. From a perusal of the impugned order, it is seen that Sub-Inspectors (Ministerial) whose name stood admitted to Promotion List 'F' (Ministerial) i.e.

under Rule 17 (3) have been promoted to the rank of Inspectors (Ministerial) against the three vacancies of Inspectors (Stenographers). It is not disputed that the applicant had declined the earlier promotion order dated 10.12.1997 issued to him and he had requested to be retained in the cadre of Stenographer, which request had been allowed by the respondents. It is noted from the reply filed by the respondents that they have made a proposal for amendment of the recruitment rules/upgradation of the posts of Stenographer in Delhi Police which indeed has been pending a final decision by the competent authority from October, 1995. The respondents have also stated that upto 1995, they have been giving promotions to the posts of Inspector (Stenographer) based on general principles and they have been trying to enact the relevant rules applicable to the case of promotion of ASI (Stenographer) to Inspector (Stenographer) for over 8 years, which by any standards is indeed too long a period for finalisation of the Rules. In this view of the matter, we see force in the submissions of the learned counsel for the applicant that he should not suffer for the lack of diligent action on the part of the respondents in finalising the Rules. In this regard, it is relevant to note that the respondents themselves have stated that earlier, as seen from their letter dated 28.7.1998, relied upon by the applicant they have been giving ad hoc promotions to certain officers against the vacant posts of

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Inspector (Stenographer) after holding a DPC following the general principles laid down in Rule 5 of the 1980 Rules. Shri Ajesh Luthra, learned counsel has, relying on the judgement of the Supreme Court Ajay Kumar Bhuyan's case (supra) submitted that the power to issue executive instructions is vested in the same authority which is competent to frame Rules under Article 309 and not by any subordinate authority. He has, therefore, contended that the earlier instructions which had admittedly been followed by the Department had not been issued by the competent authority and the applicant cannot, therefore, rely upon the same. If, as submitted by the learned counsel for the respondents, the efforts of the respondents had not culminated in finalisation of the relevant Recruitment Rules even after eight years, there is no reason why in the meantime they could not have issued the necessary administrative instructions in accordance with law. In the circumstances of the case, there is merit in the submission of Shri K. Sultan Singh, learned counsel that in this situation the applicant should not suffer for want of a proper decision by the respondents in time.

7. By the impugned order dated 19.4.2002, three Sub-Inspectors (Ministerial) whose name stood admitted to Promotion List 'F' with effect from 17.1.2002 have been promoted to the rank of Inspectors against the three vacancies of Inspectors (Stenographer). The applicant has admittedly declined

the promotion given to him earlier as Sub-Inspector (Ministerial) and that order has been cancelled at his own request by order dated 15.1.1998. Therefore, in the circumstances of the case, we see no good grounds to set aside the impugned order dated 19.4.2002.

8. However, in the facts and circumstances of the case, the O.A. is disposed of with the following directions:

(1) The respondents shall frame and issue the Recruitment Rules for promotion to the rank of Inspectors (Stenographer) at the earliest, as they have been considering these proposals for the last several years from 1995 and in any case, within four months from the date of receipt of a copy of this order;

(2) If the above is not done, then the respondents shall issue administrative instructions regarding promotion to the higher posts of Inspector (Stenographer) within the aforesaid time. Thereafter, within one month they shall consider the applicant's case for promotion on ad hoc basis to the next higher post of Inspector in terms of the administrative instructions adopting the same criteria as they have been following in the past while promoting the three persons

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mentioned in the letter dated 28.7.1998.

However, as this promotion will be on ad hoc basis, the respondents shall ensure that the Recruitment Rules are published well within the period of one year as ad hoc promotions are not to continue normally beyond this period.

No order as to costs.

V.K. Majotra
(V.K. Majotra)
Member (A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

'SRD'