

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(10)

OA NO. 2992/2001

OA NO. 1735/2001

OA NO. 1736/2001

This the 22nd day of ~~May~~ 2002

HON'BLE SH. KULDIP SINGH, MEMBER (J)
HON'BLE SH. S.A.T. RIZVI, MEMBER (A)

ASI Raghbir Singh
S/o Late Sh. Surat Singh,
R/o C/o Sh. Baljeet Singh Thakran,
V&PO Nangal Thakran,
Delhi.

Permanent R/o Village & P.O. Jharot
Distt. Sonepat (Haryana).

Working as Asstt. Sub-Inspector,
Special Cell,
Ashok Vihar Police Station,
Delhi.

(By Advocate: Sh. M.K.Gupta)

Versus

OA NO. 2992/2001

1. Commissioner of Police, Delhi
Police Headquarters,
I.P.Estate,
New Delhi-110002.
2. Deputy Commissioner of Police,
Headquarters (Establishment),
Police Headquarters,
New Delhi-110002.

OA NO. 1735/2001

1. Commissioner of Police, Delhi
Police Headquarters,
I.P.Estate,
New Delhi-110002.
2. Deputy Commissioner of Police,
(Vigilance),
Police Headquarters,
New Delhi-110002.

OA NO. 1736/2001

1. Commissioner of Police, Delhi
Police Headquarters,
I.P.Estate,
New Delhi-110002.
2. Special Commissioner of Police,
(Intelligence),
Police Headquarters,
New Delhi-110002.

KVR

3. Deputy Commissioner of Police,
(Special Cell),
Police Headquarters,
New Delhi-110002.

(By Advocate: Sh. Ajay Gupta)

O R D E R (ORAL)

By Sh. Kuldip Singh, Member (J)

By this common order we will dispose of three connected OAs as the result of all these OAs is interdependent and has a bearing on all the three OAs.

2. Facts which are common to all these OAs and as alleged by the applicant are that the applicant is working as Assistant Sub Inspector in Delhi Police. While he was posted at Police Station Ashok Vihar, Delhi, he arrested one accused, namely, Dharma Ram in FIR No.152/98 under Section 61/1/14 of Excise Act. The applicant was proceeded departmentally on the allegations that he released the accused Dharma Ram on the surety of Gopal Taneja who was also an accused arrested on the same day in another FIR No. 151/98 under Section 61/1/14 from the same Police Station and thus the applicant had shown undue haste in releasing the accused on bail after taking illegal gratification with mala fide intention.

3. While the departmental enquiry was pending the applicant was also considered for promotion to list E-1 (Ex.) w.e.f. 2.12.98 and list E-II (Ex.) w.e.f. 7.9.99. However, a note was appended to promotion list to the fact that the decision with regard to regularisation/promotion of certain Sub-Inspectors on ad hoc basis/ASI (Ex.) will be taken after finalisation of DE/BE/criminal case etc. pending against them or on the expiry of the punishment period and applicant's name was included in the said list at Sl. No.6 and DE was shown

JKW

pending against him. Since the DE had been culminated and punishment awarded to the applicant had also been suffered by the applicant and the punishment period has expired but still the applicant was not given promotion.

4. So in this background, the applicant filed three different OAs.

OA-1735/2001:

This OA has been filed seeking a direction to the respondent wherein the applicant had challenged an order dated 21.10.99 vide which his integrity certificate has been withheld for a period of three years on the same allegations that the applicant had investigated FIR No.152/98 under Section 68/1/14 of Excise Act and he released the accused Dharma Ram on the surety of Gopal Taneja who was also accused and was arrested on the same day under FIR No.151/98 under Section 60/1/14 which shows undue haste in releasing on bail after taking illegal gratification. In OA-1735/2001 the applicant has challenged the same and asked for quashing of this order.

OA-1736/2001:

In this OA applicant has prayed for quashing of summary of allegations, articles of charge as well as the penalty order imposing penalty upon him and the appellate order vide which appeal has been rejected and also direction to the respondents to restore the applicant to the same position as no impugned orders have been passed.

KMM

OA-2992/2001:

In this OA applicant has assailed an order dated 18.10.2001 vide which the applicant's name has been removed from promotion list E-1 (Ex.) and E-II (Ex.).

5. The grounds to challenge all these three OAs almost are common. The respondents are contesting the OA.

6. Since the main objection of the respondents is that the applicant still continues to be on the doubtful integrity list so he cannot be given promotion. As for the quashing of the penalty order is concerned, it is pleaded that the applicant alongwith another officer was on patrol duty when they apprehended two accused persons in FIR Nos.151 and 152/98 for the same offence under Section 61/1/14 of Excise Act has been registered and applicant has shown undue haste in releasing accused on surety of the accused of another FIR with a mala fide intention. Department tried to justify the orders of penalty imposed upon the applicant and submitted that all opportunities as per rules were provided to the applicant to defend his case and principles of natural justice were fully observed.

7. We have heard the learned counsel for the parties and gone through the record. The main contention of the applicant now is that since he had suffered the punishment and the penalty has also expired so the department cannot continue his name on the doubtful integrity list, hence he should be given promotion and non-removal of his name from the list of E-1 (Ex.) and E-2 (Ex.) is not justified because the order placing the applicant on list E-1 and E-2 was issued and the same was

[Signature]

subject to the condition of finalisation of DE proceedings and DPC was well aware that DE proceedings is pending against the applicant.

OA-1735/2001:

We shall dispose of first on merits OA-1735/2001 in which the applicant has prayed for removal of his name from the list of doubtful integrity wherein he has prayed that the impugned order placing him in the doubtful integrity list be quashed and the applicant should be given all consequential benefits. The main plea of the applicant is that since he had already suffered the punishment so now there is no reason to continue his name on the doubtful integrity list.

We have gone through the impugned order Annexure A-1. The persual of the order itself shows that the applicant was informed to the effect that certificate of integrity of the applicant is withheld for a period of 3 years or on finalisation of DE/criminal case whichever is earlier. The respondents in their reply also admitted that the name of the applicant was brought on secret list w.e.f. 24.8.99 vide memo dated 21.10.99 but they insist that it shall remain on the secret list for a period of 3 years. But in the para 5 (a) of their reply respondents have also stated that as per amendment dated 20.3.98 in para 8 (b) the case of secret list should be reviewed after 3 years from the date of bringing of names on the list of doubtful integrity or on conclusion of departmental proceedings/Court trials whichever is earlier (Emphasis supplied). Thus, to our mind, the respondents have admitted that the case of the applicant deserves to be reviewed as per rules whether his name should continue in the

W.W

doubtful integrity list or not. Respondents also admit that the departmental proceedings have culminated into passing of a final order and applicant had also suffered a penalty awarded to him in the said departmental proceedings so we find no reasons as to why the amended para 8 (b) is not being applied by the department and why the review is not being held to consider the fact whether the name of the applicant is to be continued in the doubtful integrity list or not. So in these circumstances, we are of the considered opinion that the respondents are under statutory obligations to review the position again whether name of the applicant is to continue in the doubtful integrity list or not. Accordingly OA-1735/2001 has to be allowed as a right has accrued in favour of the applicant seeking a review with regard to enlisting of his name in the doubtful integrity list.

Hence OA-1735/2001 is allowed and respondents are directed to conduct a review of the list of doubtful integrity with regard to the applicant within a period of one month from the date of receipt of a copy of this order. In case the department comes to the conclusion that the name of the applicant is to be removed then the applicant will be given all the consequential benefits from the date his name is removed from the said list.

OA-1736/2001:

Now we take up the case of OA-1736/2001 in which the applicant has prayed for quashing of the departmental proceedings, summary of allegation, penalty order and the appellate order. Counsel for the applicant submitted that in the findings recorded by the enquiry officer as per Annexure

A-4, the enquiry officer has come to a specific conclusion that from the evidence on record of the DE it is proved that defaulter ASI has released the accused Dharma Ram on the surety of Gopal Taneja, who was also accused in the case FIR-152/98 with undue haste but there is no evidence to prove that accused was released on bail after taking illegal gratification. Department has proved the charge against the applicant.

Applicant has referred to summary of allegations and submitted that the summary of allegation will show that there was an alleged charge of releasing the accused in undue haste on accepting the surety of Gopal Taneja, an accused of another case after taking illegal gratification and since the charge is one, it cannot be said to have been properly proved since the charge of accepting illegal gratification is not proved. In our view, this contention of the applicant has no merits because the facts as alleged by the respondents show that the applicant alongwith other police officer was on police duty when applicant arrested Dharma Ram and Gopal Taneja was arrested by some other police officer who was accompanied by the applicant on duty and both the accused Dharma Ram and Gopal Taneja were arrested for the same offence and for violation of the same provisions of law. The release of accused Dharma Ram by the applicant on the surety of Gopal Taneja who was arrested by another officer for same offence has been proved and as such commission of misconduct on the part of the applicant stands proved for which the applicant have been rightly punished. Though the applicant pleaded that under the provision of Cr.P.C. the investigating officer has released the accused Dharma Ram in exercise of power under Cr. P.C. and it does not constitute any misconduct. But to our

km

mind this plea of the applicant has no merits, because for accepting a bail bond the main purpose is to secure the presence of the accused to face the trial. And in this case by accepting a surety of another accused who is also involved in a similar case do not show at all that if the applicant had acted in a bonafide manner, he should have been given an opportunity to Dharma Ram to produce a solvent surety and it does appear that by accepting surety of Gopal Taneja applicant did act in undue haste. So we find no merits in the case. OA-1736/2001 has to be dismissed. On the contrary we find that the applicant had been granted full opportunity to defend himself and the enquiry had been conducted in accordance with the rules and judicial review in this case is not called for. So no interference is called for. Thus, OA has to be dismissed. Accordingly, OA is dismissed.

OA-2992/2001:

In this case the applicant has challenged the removal of his name from promotion list E-1 (Ex.) and E-2 (Ex.) which is issued by the respondents vide order dated 18.10.2001. The main reason given in the impugned order is that since the applicant has been awarded a major penalty and the reasoning given by the department to remove his name from the list E-1 and E-2 is that applicant has accepted the surety in FIR No.152/98 of an accused who was involved in FIR No.151/98 and since applicant was punished in the departmental enquiry so his name has been removed. The impugned order also shows that his name is removed after issuing a notice under Rule 7(ii) of Delhi Police (Promotion & Confirmation) Rules, 1980. Applicant while challenging this order had submitted that since the departmental enquiry had come to an end by passing a

h/w

penalty order dated 6.9.99 the applicant had already suffered the punishment so his name should not have been removed from the list E-1 and E-2. The applicant has also submitted that the provisions of Rule 7 (ii) of Delhi Police (Promotion & Confirmation) Rules, 1980 is violative of provisions of Article 311 of the Constitution of India as it confers arbitrary and unbridled power to remove the applicant's name from the promotion list and it carries penal consequences with it and thus it further inflicts penalty upon the applicant for the same offence for which he has already been punished.

Respondents in their reply had submitted that Rule 7 (ii) gives power to the appointing authority to remove the name of a person from the promotion list if found guilty of a misconduct of nature reflecting upon his character or fitness for responsibility or who shows either by specific acts or by his record as a whole that he is unfit for promotion to higher rank as such respondents ought to justify their action.

We have gone through the provisions of Rule 7(ii) of Delhi Police (Promotion & Confirmation) Rules, 1980 which is reproduced herewith for ready reference.

"The conduct and efficiency of men on promotion list shall be, at all times, watched with special care. Any officer whose name exists on the promotion list, if found guilty of a misconduct of nature reflecting upon his character or fitness for responsibility or who shows either by specific acts or by his record as a whole that he is unfit for promotion to higher rank shall be reported to the Deputy Commissioner of Police, Head Quarters (1), Delhi in respect of persons on lists 'A' to 'E' and to Additional Commissioner of Police (Administration) Delhi in respect of officers on list 'F'. However, final decision regarding removal of name(s) from

h/m

a promotion list shall be taken by the Appointing Authority only after giving show cause notice to the individual."

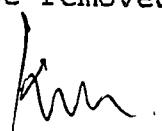
Rule 7 (ii) has been added by OM dated 12.8.87. The reading of rule would suggest that even after an officer has been brought on promotion list his conduct and efficiency has to be watched for all times with special care and any officer whose name exist on the promotion list if found guilty of the misconduct then his name can be removed. So besides the punishment under the Delhi Police (Punishment and Appeal) Rules, Rule 7(ii) of the Delhi Police (Promotion & Confirmation) Rules, 1980 gives the power to the appointing authority to remove the name of the person from the promotion list if he is found guilty of some misconduct. So this power is independent of the power of punishment as available to the disciplinary authority under Delhi Police (Punishment & Appeal) Rules, 1980. Though the counsel for applicant has challenged the validity of this clause and had taken a plea that this is violative of Article 311 of the Constitution of India since it gives a power to the appointing authority to impose a double punishment which would be further violataive of Article 14 of the Constitution of India but in our view this contention of the applicant has no merits because by promoting a person to a higher rank means that a person is to be conferred with higher responsibility, more power and more authority. When the applicant was brought on the promotion list E-1 and E-2 even at that stage it was made clear that the decision with regard to the promotion of the applicant will be taken after finalisation of DE/PE/criminal case/clarification etc. pending against him or on expiry of punishment period which means that the promotion order vide which the applicant was placed on E-2 list was not final because the final decision was yet to be taken after the finalisation of DE/PE

JKW

meaning thereby that the name of the applicant was only on a tentative list for promotion but the final decision was to be taken only after DE.

As regards Rule 7(ii) as reproduced above is concerned it shows that the person whose name is brought on the list for promotion his conduct has to be kept under special watch with a special care and if he is found guilty of any misconduct then department has a right to remove his name from the promotion list. This is an admitted case of the applicant that he was punished for alleged misconduct and he had already suffered a punishment so he cannot claim to be continued on the same promotion list when his name was brought on the list but subject to the finalisation of the departmental proceedings. Since the departmental proceedings have ended against the applicant his misconduct stood proved, the department have right to remove his name from the promotion list.

As per the validity of Rule 7 (ii) is concerned we have observed that object of promotion is to entrust upon a person with higher power, higher responsibility, higher duty, so the department has to give a second thought if person is held guilty of misconduct so this does not amount to a double punishment or a double jeopardy nor it amounts to reduction in rank because the applicant infact had not yet been promoted nor he has assumed the charge of the higher post so there is no question of double punishment. Rule 7 (ii) cannot be said to be violative of Article 311 of the Constitution. Moreover, Rule 7(ii) also prescribes a procedure that is show cause notice has been served upon the applicant and he was called as to why his name should not be removed from the promotion list



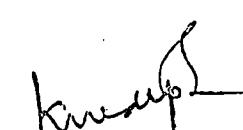
and even after providing the opportunity his name has been removed. So we find that Rule 7(ii) of the Delhi Police (Punishment & Confirmation) Rules, 1980 is not violative of Article 311 of the Constitution nor any principles of natural justice have been violated and there is nothing to interfere in OA-2992/2001. The OA merits dismissal.

8. In view of the findings, OA-1735/2001 is allowed and the respondents are directed to conduct a review of the secret list in respect of applicant within one month from the date of receipt of a copy of this order. The two OAs 1736/2001 and 2992/2001 stands dismissed. No costs.



(S.A.T. RIZVI)
Member (A)

'sd'



(KULDIP SINGH)
Member (J)

Attested
Rehesh K.
Col/4