

(14) (19)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2702/2001

New Delhi, this the 16th day of July, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.K. Naik, Member(A)

Rattan Singh
Ex.S.I.No.2043/D
S/o Shri Kher Singh
R/o Village Bijnaul,
Distt. Baghpat
(Uttar Pradesh)

.. Applicant

(By Advocate: Shri Sama Singh)

versus

1. Govt. of N.C.T. Delhi
Through its Chief Secretary
Delhi Sectt., Player's Building
Indira Gandhi Stadium
New Delhi-110002.
 2. Commissioner of Police
Delhi Police Headquarters
M.S.O. Building, I.P.Estate
New Delhi-110002.
 3. Joint Commissioner of Police (Headquarters)
Delhi Police Headquarters
M.S.O. Building, I.P.Estate
New Delhi-110002.
 4. Deputy Commissioner of Police (Hqrs.)
Delhi Police Headquarters
M.S.O. Building, I.P.Estate
New Delhi-110002.
- Respondents

(By Advocate: Shri Vijay Pandita)

ORDER

Justice V.S. Aggarwal

The applicant joined the Delhi Police as a Constable on 18.7.1962. He was promoted as a Head Constable on 23.3.1974 and on his passing the Intermediate School Course, he was further promoted as Assistant Sub Inspector in July 1987. The applicant was promoted as Sub Inspector on ad hoc basis on 30.3.1994.

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2. A departmental enquiry had been initiated against the applicant on the allegation that on 21.11.1994, one Shri Doodh Nath Gupta had made a complaint at Police Station Seemapuri regarding a burglary in his godown. The complaint was received by the applicant, but he did not take any legal action on the same despite the direction of the officer in charge of the Police Station. The departmental proceeding that was initiated ended in award of punishment of withholding of one increment for a period of one year temporarily vide the order of 23.5.1996. He preferred an appeal which admittedly was dismissed.

3. A notice had been issued to the applicant that since he had been found guilty of misconduct of the nature reflecting upon his character establishing his complete unfitness for holding the higher post, his name was proposed to be removed from promotion List E-I. The applicant had submitted his reply. The Deputy Commissioner of Police (Headquarters) vide the order of 5.3.1999 removed the name of the applicant from promotion List E-I. His appeal failed.

4. By virtue of the present application, the applicant assails the abovesaid orders passed by the Deputy Commissioner of Police (Headquarters) and the appellate authority and seeks that he should be granted promotion to the rank of Sub Inspector and that he should be regularised with consequential benefits since he has superannuated.

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5. The application has been contested. The basic facts have not been disputed. It is admitted that the applicant was promoted as Sub Inspector (Executive) with effect from 30.3.1994 on purely temporary and ad hoc basis under Rule 19(i) of the Delhi Police (Promotion & Confirmation) Rules, 1980 (for short, "the Promotion & Confirmation Rules"). Thereafter a departmental enquiry had been started against the applicant as stated above by us. He was awarded the punishment of withholding of his next increment for a period of one year temporarily. Since the applicant failed to maintain good conduct and efficiency after admission of his name to list E-1 (Executive) and not found fit to shoulder higher responsibility in the rank of Sub Inspector (Executive), a show cause notice was issued and thereafter the impugned order had been passed. It has been asserted that major punishment had been imposed and, therefore, the impugned order had to be passed.

6. The learned counsel for the applicant had contended that the name of the applicant had been removed from List E-1. He had even been sent for training and multiple punishments in this process could not have been imposed, namely his name was removed from promotion List E-1 and he was reduced in rank from the post of Sub Inspector to that of Assistant Sub Inspector.

7. The relevant position of the rules on the subject is that under the Delhi Police (Punishment & Appeal)

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Rules, 1980 (for short, "the Rules"), certain punishments can be awarded in pursuance of the disciplinary proceedings including dismissal, removal from service and reduction in rank etc. Under Rule 8(1)(c) of the Rules, the increment of a police officer can also be withheld by way of punishment.

8. The Promotion & Confirmation Rules too have been framed and under Rule 16 thereof, confirmed Assistant Sub-Inspector (Executive) who have a minimum of 6 years of service in the rank are eligible for List E-1. The selection can be made on the recommendations of the Departmental Promotion Committee. The Assistant Sub Inspectors so selected can be brought on List E-1 in order of their seniority. Sub-rule (i) to Rule 19 of the Promotion and Confirmation Rules permits, in special circumstances, the vacancies to be filled up in order of seniority to next higher rank temporarily. Their ad hoc promotion confers no right for regular appointment. The said rule reads:-

"19. Ad-hoc promotions- (i) in special circumstances when there are no approved names on promotion lists, and vacancies exist, the Commissioner of Police, may promote suitable officers in order of seniority to next higher rank temporarily. Such promotions shall not entitle the officers concerned to claim and right for regular appointment or seniority or for appointment to such or any other equivalent post and shall be liable to reversion without notice as soon as qualified men become available."

In addition to that, sub-rule (ii) to Rule 7 of the

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Promotion and Confirmation Rules unfolds itself in the following words:-

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

This rule provides that if a police officer has been found guilty of a misconduct of the nature reflecting on his character or fitness for responsibility, after a show cause notice he can be reverted.

9. The learned counsel for the applicant has drawn our attention towards a decision of this Tribunal in the case of Constable Kafil Ahmed v. Union of India and Ors., 2001 (3) (CATJ) 55. In the cited case, a penalty of forfeiture of two years' approved service had been imposed temporarily for a period of one year. Acting under sub-rule (ii) to Rule 7 of the Promotion and Confirmation Rules, the respondents rejected the request of Constable Kafil Ahmed for inclusion of his name in promotion List 'A'. This Tribunal had referred to Rule 8 (d) (i) of the Rules and thereupon quashed the order.

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10. As would be noticed hereinafter, the position herein is totally different. The cited case of Constable Kafil Ahmed (supra) will have no application in the present case.

11. In the present case in hand, the applicant had only been promoted as Sub Inspector on ad hoc basis under sub-rule (i) to Rule 19 of the Promotion and Confirmation Rules. Since it was an ad hoc promotion, it did not confer any vested right on the applicant to hold the post. Continuance in a higher post is always subject to the condition of satisfactory performance. Once the performance was not satisfactory and the applicant was found guilty of a misconduct of nature reflecting upon his character or fitness for responsibility to hold the higher post, in the facts of the present case, it cannot be termed that the applicant has been put to multiple punishments. For the purposes of the present application, we make it clear that we are not delving into the controversy where a person might have been promoted substantively and reverted because that could be considered on its own premise. Herein because of the ad hoc promotion which we have referred to above, the applicant indeed in the peculiar facts cannot claim as of right to hold the post.

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12. Resultantly, the present application being without merit must fail and is accordingly dismissed. No costs.


(S.K. Naik)
Member (A)


(V.S. Aggarwal)
Chairman

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