

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 441/2001

This the 15th day of January, 2002.

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HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

HON'BLE SHRI KULDIP SINGH, MEMBER (J)

Tej Singh,
Const. Driver No.3897,
Police Control Room,
Delhi.

... Applicant

(By Shri S.K.Gupta, Advocate)

-versus-

1. Govt. of NCT of Delhi through
Chief Secretary, I.G.Stadium,
I.P.Estate, New Delhi-110002.

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

3. Addl. Commissioner of Police (Estt.),
Police Headquarters,
I.P.Estate, New Delhi.

4. Deputy Commissioner of Police
(Licensing) (Hqrs.),
Police Headquarters,
I.P.Estate, New Delhi.

... Respondents

(By Shri Harvir Singh; Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, Member (A) :

The applicant has assailed order dated 7.12.1999 (Annexure A-1) whereby he has been reverted from the post of Head Constable (Driver) to the post of Constable arbitrarily. The applicant was enlisted in Haryana Armed Police on 15.11.1962 and absorbed in Delhi Armed Police as temporary Constable on 17.4.1968. He was further absorbed in M.T.cadre as Constable (Driver) w.e.f. 3.2.1973 and subsequently declared confirmed on 24.4.1974.

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2. In pursuance of the Hon'ble Supreme Court's judgment in CWP No.1432/1987, Maharaj Singh v. Union of India, it was decided that Delhi Police drivers would be given benefits of pay scales at par with those of the drivers of the Railway Protection Force (RPF) w.e.f. 1.1.1984 in accordance with the rules/S.O. of the RPF subject to their passing the trade test, which RPF drivers had to pass when they were given benefit of Grade-I and Grade-II w.e.f. 1.1.1984. A panel was to be drawn from amongst Constable (Drivers) who secured 60% or more marks in order of their respective seniority in the grade. A maximum of 20 marks were kept for service record, i.e., absence of punishment (deduction of 2 marks for minor and 3 marks for major punishment), and 15 marks were meant for ACRs for the last 5 years.

3. A departmental enquiry was initiated against the applicant vide order dated 23.6.1983 on the allegation of making false entry in the log book from 3.3.1982 to 19.7.1982 implying misappropriation of petrol. He was awarded punishment of forfeiture of four years' approved service permanently on 2.8.1985 in the departmental enquiry. Thus, as on 1.1.1984 a departmental enquiry was pending against the applicant. His case was to be kept under sealed cover. On the basis of major punishment in the said enquiry, 3 marks were to be deducted. On the basis of a minor punishment of censure awarded on 18.4.1977, another 2 marks were to be deducted. Thus, on the basis of the above two punishments, he was not entitled for any marks against

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the absence of punishment but he was wrongly given 3 marks while calculating the marks of service record. The applicant was also placed under suspension w.e.f. 27.7.1988 due to arrest in case FIR No.369/88 dated 27.7.1988 u/s 279/304-A IPC, P.S. Sahibabad (UP). He was reinstated on 21.8.1989. A departmental enquiry was initiated against him on 17.2.1992 in the same case which was held in abeyance on 17.2.1994 till the finalisation of the criminal case. On finalisation of the criminal case, the departmental enquiry was re-opened and he was dismissed from service on 23.5.1996. On appeal against the dismissal, the punishment was modified into forfeiture of two years' approved service permanently vide orders dated 28.6.1996.

4. The learned counsel of the applicant stated that although the applicant had been promoted as Head Constable w.e.f. 1.1.1984, i.e., more than 15 years ago, he was issued a show cause notice dated 10.9.1992 (Annexure A-2) regarding erroneous promotion. According to him, show cause notice under the garb of FR 31-A for cancellation of promotion arbitrarily after a gap of 10-15 years is bad in law. The learned counsel relied on Darshan Singh Aulakh v. State of Punjab, 1993 (2) SLR 261.

5. The learned counsel of the respondents, on the other hand, stated that the respondents have taken action against the applicant after discovery of a factual error which had led to an incorrect order of promotion of the applicant. He stated that the respondents have taken

action of reversion of the applicant after issuing a show cause notice to him and thereby following the principles of natural justice. Applicant's representation dated 21.12.1999 was also rejected after consideration at length at the hands of the Additional Commissioner of Police.

6. We have also perused the records produced by the respondents relating to applicant's promotion and reversion.

7. It is appropriate to have a look at FR 31-A. It reads as follows :

"Notwithstanding the provisions contained in these rules, the pay of a Government servant whose promotion or appointment to a post is found to be or to have been erroneous, shall be regulated in accordance with any general or special orders issued by the President in this behalf."

As per Government of India's orders under the provisions of FR 31-A, the orders of promotion of a Government servant should be cancelled as soon as it is brought to the notice of the appointing authority that such a promotion or appointment has resulted from a factual error and the Government servant should immediately on such cancellation be brought to the position which he would have held but for the incorrect order of promotion. The Government is also required to adopt procedure for de-confirming the Government servant in that post on which he was promoted erroneously.

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8. From the records, we find that the respondents initiated action against the applicant on 20.5.1998. The applicant was promoted as Head Constable (Driver) w.e.f. 1.1.1984 vide order dated 23.3.1989. He was awarded major punishment, i.e., forfeiture of four years of approved service permanently on 2.8.1985 on the misconduct which took place during 1982. On 20.5.1998 the matter was taken up for confirmation on completion of probation period of the applicant as per circular dated 29.11.1989 in which it had been decided that the effect of punishment will be considered not from the date of award of punishment but from the date of default. In the result sheets of the test, the factum of applicant's suspension w.e.f. 27.7.1988 has been mentioned and the applicant was accorded promotion.

9. In the present case, it is obvious from its facts that as required by provisions of FR 31-A, the respondents had not taken up the matter of reversion of the applicant immediately after discovery of the fact that applicant's promotion had been made erroneously on wrong facts. Whereas the facts of suspension, pendency of FIR and punishments in disciplinary proceedings were in the knowledge of the respondents at the time of accordinng promotion to the applicant, action for reversion was taken up after causing an inordinate delay. In the matter of Darshan Singh Aulakh (supra) the High Court of Punjab & Haryana which in turn relied on the decision of the Hon'ble Supreme Court in Bhagwati Prasad v. Delhi State Mineral Development Corporation, AIR 1990 SC 371. Reversion after several years on the ground that



initial appointment to Class-II post was against the qualifications laid down for the post, was held to be invalid. While dealing with a case of confirmation of some employees, the Apex Court in the case of Bhagwati Prasad (supra) had observed as follows :

"The disputable facts are that the petitioners were appointed between the period 1983 and 1986 and ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into service. Once the appointments were made as daily rated workers, and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view three years' experience, ignoring artificial break in service for short period/periods created by the respondent in the circumstances would be sufficient for confirmation."

Relying on the above dictum of the Apex Court, the High Court in the case of Darshan Singh Aulakh held that the petitioner could not have been reverted after such a long time even if it was to be held that his initial appointment violated a particular prescribed academic qualification. The cases of Darshan Singh Aulakh and Bhagwati Prasad were much more serious than the instant case.

10. In view of the inordinate delay caused by the respondents in taking action against the alleged wrong promotion of the applicant occurred several years ago and

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also the ratio in the cases of Darshan Singh Aulakh (supra) and Bhagwati Prasad (supra), the respondents cannot be absolved of the responsibility of not taking immediate action in terms of the provisions of FR 31-A.

11. In our view, therefore, the action of the respondents in reverting the applicant is invalid. Annexure A-1 dated 7.12.1999 is accordingly quashed and set aside and the respondents are directed to reinstate the applicant as Head Constable (Driver) with immediate effect with all consequential benefits.

12. The OA is allowed in the aforesated terms.
No costs.

Kuldeep
(Kuldip Singh)

Member (J)

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

/as/