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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 455/2001

New Delhi, this the 29th day of May, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri Govindan S. Tamai, Member(A)

Ashok Kumar
S/o Badam Singh
Presently working as Head Constable(Driver)
in the Office of Dy. Commissioner of Police
Special Cell(SB), New Delhi .. Applicant
(Shri Sanjeev Sahay proxy for Ms. Geeta Luthra, Advocate)

versus

1. Govt. of National Capital Territory
of Delhi, through Secretary
Players Building
IP Estate, Near ITO, New Delhi
2. Dy. Commissioner of Police (HQI)
Police Hqrs., IP Estate, New Delhi
3. Commissioner of Police, Delhi
Police Hqrs., IP Estate, New Delhi .. Respondents

(Mrs. Renu George, Advocate))

ORDER
Shri Justice V.S. Aggarwal

Applicant (Ashok Kumar) joined the Delhi Police as a Constable. In pursuance of the powers under sub-rule (ii) to Rule 19 of the Delhi Police (Promotion & Confirmation) Rules, 1980 (for short, "the Rules"), he was promoted as Head Constable (Driver) in Delhi Police for the extra-ordinary courage and devotion that he had shown towards duty in an encounter on 9.8.1994 in which one Gopal Thakur, a dreaded inter-state gangster and his associate Ram Avtar Sharma were shot dead by the applicant.

2. On 6.9.1995, a departmental enquiry was ordered by the Deputy Commissioner of Police on the allegation

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that the applicant absented himself from duty wilfully and unauthorisedly on several occasions. The findings of the inquiry officer were received and the disciplinary authority imposed a penalty on the applicant. His appeal was dismissed. In addition to that, a notice to show cause had been issued as to why the applicant should not be reverted keeping in view the alleged misconduct. The applicant seeks quashing of the same as well.

3. In the reply filed, the application has been contested. It is not disputed that the applicant was promoted as Head Constable (Driver) on purely temporary and ad hoc basis under Rule 19(ii) of the Rules. It was conditional and clearly mentioned that the applicant will have no claim for seniority in this regard and was liable to be reverted any time without assigning any reason. It is also not disputed that the inquiry had been initiated against the applicant for wilful absence and his indifferent behaviour on different occasions. The inquiry officer had returned the findings that the charge of unauthorised absence from duty could not be established, but the charge of indifferent behaviour with the Assistant Commissioner of Police/C.S.S. was proved. A penalty of forfeiture of one year's approved service temporarily for a period of one year was imposed upon the applicant entailing reduction in his pay from Rs.1230/- per month to Rs.1200/- per month and his appeal had since been dismissed. Since the applicant had been awarded a major penalty in the departmental proceedings, his case was considered in Police Headquarters in terms of

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sub-rule (ii) to Rule 7 of the Rules and it was thought appropriate that he was unfit for promotion. A show cause notice had been served as to why his name be not removed from the Promotion List 'B' (Technical) (Grade-II Driver). The reply of the applicant was not found to be satisfactory. He had stated that he was preferring an appeal against the order of penalty referred to above and, therefore, his reversion was deferred. Thereafter, the proposed show cause notice had been confirmed and the name of the applicant was removed from the Promotion List 'B' (Technical) on 11.4.2000.

4. Resume of the facts given above clearly shows that the following facts are not in dispute, namely that the applicant was promoted as Head Constable (Driver) under sub-rule (ii) to Rule 19 of the Rules. Thereafter the disciplinary proceedings had been initiated against him for remaining absent from duty unauthorisedly regarding which the inquiry officer had exonerated him. In addition to that, the following allegations were also made:

"1. On 15.4.95 he was asked to start the mini bus by ACP/CSS, but he threw down the engine cover on the ground to show his resentment a DD entry was recorded by ACP/CSS to this effect vide DD No.3 dated 15.4.95.

2. On 2.7.95 he was asked to come on duty on 8 a.m. on 3.7.95 by ACP/CSS. The HC misbehaved by saying that he would not come on duty the next day. A DD entry was also recorded by ACP/CSS to this effect vide DD No.7 dated 2.7.95."

The inquiry officer held the abovesaid assertions to have been proved and this led to the penalty already mentioned



above to have been imposed upon the applicant.

5. The learned counsel for the applicant assails the said findings about the alleged misconduct to be erroneous.

6. We find no reason to interfere in this regard. There is nothing brought to our notice that any procedural lapse had occurred which caused prejudice to the applicant. In judicial review, this Tribunal will not sit as a court of appeal and scrutinise the evidence in detail. It is not one of those cases where the findings are perverse or based on no evidence or no reasonable person would come to such a conclusion. The findings of the inquiry officer that when the applicant was asked to start the mini bus by the Assistant Commissioner/CSS, he threw down the engine cover of the bus to show his resentment and again on 2.7.1995 when he was asked to come on duty at 8 A.M., he misbehaved by saying that he would not come to duty the next day were accepted by the disciplinary authority. In face of the findings of fact so arrived at and there being no scope for interference, the said plea must be rejected.

7. Confronted with that position, the learned counsel for the applicant urged that the applicant had been promoted in terms of sub-rule (ii) to Rule 19 of the Rules. There is no training course required to be undergone and, therefore, the applicant must be deemed to have been regularly promoted and his reversion cannot be

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ordered because he was not on ad hoc promotion.

8. Sub-rule (ii) to Rule 19 of the Rules reads as under:-

" Rule 19 (ii) "To encourage outstanding sportsmen, marksmen, officers who have shown exceptional gallantry and devotion to duty, the Commissioner of Police may, with prior approval of Administrator, promote such officers to the next higher rank provided vacancies exist. Such promotions shall not exceed 5 per cent of the vacancies likely to fall vacant in the given year in the rank. Such promotions shall be treated as ad hoc and will be regularised when the persons so promoted have successfully completed the training course prescribed like (Lower School Course), if any. For purposes of seniority such promotees shall be placed at the bottom of the promotion list drawn up for that year."

It shows clearly that the said provision had been enacted to encourage outstanding sportsmen and police officers and, therefore, out of turn promotions are given with the prior approval of the Administrator subject to certain percentage, but the promotions have to be on ad hoc basis. The promotions are to be regularised when the person promoted successfully completes the training course.

9. Sub-rule (ii) to Rule 7 of the Rules further provides:

"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

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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 had been enacted so as to further take care that if a person is found guilty of misconduct, necessary action can be taken by the appointing authority after giving show cause notice to the individual. It is in pursuance of this rule that action had been so taken.

10. The learned counsel for the applicant relied upon a decision of the Supreme Court in the case of **Rishal Singh v. State of Haryana & Ors.**, JT 1994 (2) S.C.157. In the said case, Rishal Singh was a sportsman and was promoted as Head Constable temporarily. He was to be reverted and he filed a writ petition in the Punjab and Haryana High Court. It was dismissed. He challenged the said order in the Supreme Court. The Supreme Court had allowed the appeal concluding that the promotion was on regular basis under Rule 13.8(2) of the Punjab Police Rules, 1934 which are applicable to Haryana.

11. Perusal of the Punjab Police Rules 1934 as applicable to Haryana clearly show that they are not similarly worded as Rule 19(ii) of the Rules applicable to Delhi Police. Sub rule (1) to Rule 13.1 of Chapter XIII of the Punjab Police Rules, 1934 reads:-

"Promotion from one rank to another and from one grade to another in the same rank, shall be made by selection tempered by seniority. Efficiency and honesty shall be the main factors governing selection. Specified qualifications, whether in the nature of training courses passed for practical experience, shall be carefully

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considered in each case. When the qualifications of two officers are otherwise equal, the senior shall be promoted. Thus rule does not affect increments within a time-scale."

Furthermore, sub-rule (2) to Rule 13.8 of the said rules is to the following effect:-

"...Selection grade constables who have not passed the Lower School Course at the Police Training School but are otherwise considered suitable may, with the approval of the Deputy Inspector General, be promoted to head constable up to a maximum of ten per cent of vacancies."

It was in this backdrop that the Supreme Court held that the promotion could only be on regular basis and not on ad hoc basis. The language of the rules applicable to Delhi Police and Haryana Police is different. The applicant cannot rely upon or take advantage of the decision in the case of Rishal Singh (supra).

12. Confronted with that position, the learned counsel relied upon a decision of this Tribunal in the case of **Krishan Kumar v. Govt. of NCT of Delhi and anr.** in OA No. 732/1997 rendered on 11.8.1997. In the case of Krishan Kumar, this Tribunal had relied upon the decision of the Supreme Court in the case of Rishal Singh (supra), but on facts the decision rendered by this Tribunal was totally different. In the case of Krishan Kumar (supra), a show cause notice was issued and disciplinary proceedings were still pending. It was held that during the pendency of the disciplinary proceedings, the respondents could not have given a show cause notice of reversion. Consequently, the application was allowed. Herein, it is not so. We have already referred to the relevant rules on the subject and the facts which show

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that the disciplinary proceedings have already come to an end. In fact, the said contention of the applicant necessarily has to be rejected keeping in view the decision of the Delhi High Court in the case of **Govt. of NCT Delhi through its Chief Secretary and ors. v. Shri Rajbir Singh** rendered on 28.8.2002. A similar argument as is being advanced in the present case had been flouted before the Delhi High Court. While setting aside the order of this Tribunal, the Delhi High Court held that promotion under sub-rule (ii) to Rule 19 would be on ad hoc basis and not regular irrespective of the factum whether one had undergone the training course or not. In para 9, the Delhi High Court held:-

"9. In the instant case, such promotion in terms of the said Rules itself was to be ad hoc in nature and subject to fulfilment of certain conditions, although in the instant case, such a condition may not be applicable. We, therefore, are of the opinion that the impugned judgement cannot be sustained."

Consequently, the said argument that the applicant was regularly promoted and could not have been reverted also must fail.

13. The action had been taken under sub-rule (ii) to Rule 19 of the Rules which permits such a reversion and keeping in view the assertions made, we find no reason as to why the said action can be termed to be arbitrary and illegal and even unconscionable.

14. For these reasons, the application being without



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merit must fail and is dismissed. No costs.

(Govindan S. Tampi)
Member (A)
/s/s

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/s/s

(V. S. Aggarwal)
Chairman