

Original Application No. 684 of 2001

New Delhi, this the 8th day of April, 2002

HON'BLE MR. V. K. MAJOTRA, MEMBER (A)
HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Dev Prakash
S/o Shri Makhan Lal
R/o KVillage & P.O. Kadi
District Gurgaon,
Haryana.

-APPLICANT

(By Advocate: Shri Shyam Babu)

Versus

1. Lt. Governor,
Delhi, Rajniwas,
Delhi.
 2. Commissioner of Police,
Delhi,
Police Headquarters,
I.P. Estate.
 3. Addl. Commissioner of Police
(Establishment)
Delhi Police Headquarters,
I.P. Estate, New Delhi.
 4. Shri Madan Lal (1125/D)@@
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Presently posted in the office
of DCP (Prov & Lines)
Delhi.
 5. Shri Virender Singh (660/D)
Presently posted as ASI in
the office of DCP/PCR
Delhi.
- ..Respondents

(Service on respondent Nos. 4 and 5 to be
effected through respondent No. 2)

(By Advocate: Shri R.K. Singh, proxy counsel for Shri
Anil Kumar Chopra, Counsel for respondents
No. 1 to 3).

ORDER

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant has filed this OA seeking the
following reliefs:-

- (i) To call for the records of the case and
set aside/quashed the impugned order dated 29.6.2000

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(Annexure-A) and further declare that the proceedings of the review DPC which met on 20.6.2000 have been vitiated.

(ii) To give directions to the respondents to bring the name of the applicant on promotion list 'D' (Technical) w.e.f. 6.10.1994 for the purposes of ASI/MT (Store-Keeper) with all consequential benefits of pay and arrears etc. along with seniority, monetary or other consequential benefits.

2. The applicant had also filed earlier an OA 799/96 whereby he had impugned promotion granted to respondent Nos.4 and 5 to the post of Assistant Sub Inspector (MT Store Keeper) in preference to him despite the fact that applicant is senior to them in the feeder cadre.

3. In the said OA, the applicant had alleged that promotion to the post of ASI (MT Store Keeper) is filled by method of seniority-cum-fitness and not by method of merit-cum-seniority. The said OA was allowed with a direction to the respondents to hold a review DPC for the purpose of considering the claim of the applicant for promotion as on 7.10.1994, the date on which respondent Nos.4 and 5 were promoted. Consequent to the said direction, a review DPC was held by the respondents and vide impugned order Annexure-A, the review DPC again found that the applicant do not meet the fitness criteria and assessed him as unfit for admission to promotion list 'D' (Technical) w.e.f. 6.10.1994. The applicant has assailed this order in the present OA.

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4. In the grounds to assail these orders the applicant has again alleged that the review DPC which met on 20.6.2000 has again considered extraneous material and had ignored the directions contained in order dated 31.1.2000 in the earlier OA filed by the applicant and DPC has again resorted to the criteria of selection method for granting promotion rather than the seniority-cum-fitness whereas the court had held that the post in question was not a selection post and the seniority-cum-fitness should be the criteria for the purpose of considering promotion but the DPC has again adopted the criteria of comparative assessment and have promoted respondent Nos. 4 and 5. Thus it is in total contravention of the directions given by the Tribunal.

5. The applicant further alleges that there is nothing adverse against him which can justify his non-promotion and the respondents were unable to place any adverse material against the applicant which could affect his fitness so it is prayed that the impugned order be quashed and the applicant be brought on promotion list D w.e.f. 6.10.1994.

6. The respondents are contesting the OA. The respondents admitted that a regular DPC for filling up the post of ASI was held on 6.10.1994 on availability of eligible candidates under Rule 15(2) of the Delhi Police (Promotion and Confirmation) Rules. The case of the applicant was considered by the DPC along with others but after evaluating the service record, the name of the petitioner was not approved as he could not make up the

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grade. The petitioner had challenged the same by filing OA No. 799/96 and on receipt of the judgment dated 31.1.2000 in the said OA, the case of the applicant for empanelment to promotion list 'D' under Rule 15(2) of the Delhi Police (Promotion and Confirmation) Rules was examined and his name for empanelment to promotion list 'D' w.e.f. 6.10.1994 was again placed before the review DPC. The review DPC met on 20.6.2000 in compliance of the directions of the court. The review DPC assessed the service record as well as ACRs of the preceding 5 years for promotion to the rank of ASI and the review DPC adopted non-selection method as prescribed under para 7 of the consolidated instructions issued by the Government of India for DPCs. As per instructions for non-selection method, it is mentioned that while considering an officer 'fit' guidelines as per para 6.1.4 should be borne in mind by the DPC, which provides as under:-

" Government also desires to clear the misconception about 'Average' performance. While 'Average' may not be taken as adverse remark in respect of an officer, at the same time, it cannot be regarded as complimentary to the officer, as 'Average' performance should be regarded as routine and undistinguished. It is only performance that is above average and performance that is really noteworthy which should entitle an officer to recognition and suitable rewards in the matter of promotion".

7. On the basis of the guide-lines of the Government, the review DPC has found that the applicant has one good, one satisfactory and three average ACRs and the review DPC came to the conclusion that the applicant does not meet the fitness criteria prescribed by the Government for non-selection post so it is stated that since the review DPC has also found that the applicant is

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not fit for promotion, hence the impugned order was passed which is quite justified so the same should not be quashed.

8. We have heard the learned counsel for the parties and gone through the records of the case.

9. The department has also produced the DPC record as well as ACRs of the applicant.

10. The main contention of the applicant is that since the review DPC has again considered the ACRs and had made an assessment on the same pattern as if the applicant was being considered for promotion to a post to which promotion can be made only by selection method and thus review DPC had violated the directions and observations of the Tribunal in OA 799/96.

11. We have considered the contention of the learned counsel for the applicant. The Government instructions for the purpose of promotion to a non-selection post which is also enumerated in the Swamy's Book on Establishment and Administration, prescribes as under:-

"7. Where the promotions are to be made on non-selection basis according to Recruitment Rules, the DPC need not make a comparative assessment of the records of officers and it should categorise the officers as 'fit' or 'not yet fit' for promotion on the basis of assessment of their record of service. While considering an officer 'fit', guidelines in para 6.1.4 should be borne in mind. The officers categorised as 'fit' should be placed in the panel in the order of their seniority in the grade from which promotions are to be made".

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12. The perusal of these instructions show that the DPC while considering the promotions by non-selection method is not required to make a comparative assessment of the records of the officer and it has to categorise the officer whether fit or not fit on the basis of the record of the service and while considering an officer fit, guide-lines in para 6.4.1 are to be borne in mind. The contention of the applicant's counsel that the DPC should not have looked into the ACRs of the applicant is not tenable because if the service record of a candidate for promotion to the next higher post, may be a non-selection post, is not to be taken into consideration then there can be no method to find out whether an employee is fit or unfit for the next higher post. The duty cast upon the DPC for considering an employee for promotion to the next higher post is to see whether the employee is 'fit' or 'not yet fit' and for that assessment also, the record of service of the employee is the only criteria because otherwise there would be no material available to the DPC whether the employee is 'fit' or 'not yet fit'. The Government instructions also permit the DPC to keep instructions as enumerated at para 6.4.1 in mind even while considering the promotion to a non-selection post. If the contention of the applicant is to be accepted then holding of DPC is meaningless and promotion can be made only on seniority wise without taking into consideration whether a person is 'fit' or 'not fit' for promotion.

13. In this case we have called for the record of the DPC to find out as to what method the DPC had adopted while re-considering the case of the applicant for the


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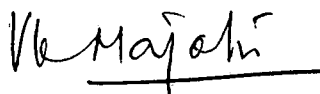
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purpose of his promotion to the next higher post. We have also gone through the minutes of the DPC and we find that the DPC had not made any comparative assessment of the records of the applicant vis-a-vis the private respondents but on considering the record of the applicant alone, the DPC came to the conclusion that the applicant does not meet fitness criteria and he was assessed as unfit.

14.. We are satisfied that the DPC has fully complied with the Government instructions and also the rules and as such no prejudice has been caused to the applicant.

15. In view of the above, OA does not call for any interference and the same is dismissed. No costs.


(KULDIP SINGH)
MEMBER (JUDL)


(W.K. MAJOTRA)
MEMBER (A)

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