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Central Administrative Tribunal, Principal Bench

Original Application No.2672 of 1999

New Delhi, this the 19th day of January, 2001

Hon'ble Mr.V.K.Majotra, Member (Admnv)
Hon'ble Mr.Shanker Raju, Member(J)

Rajbir Singh, S/o Sh.Mam Chand, R/o F-1/1
Police Colony, Andrews Ganj, New Delhi. - Applicant

(By Advocate Shri Shyam Babu)

Versus

1. Govt. of NCT Delhi through its Chief Secretary, 5, Sham Nath Marg, New Delhi.
2. Commissioner of Police Delhi, Police Headquarters, I.P.Estate, New Delhi.
3. Addl.Commissioner of Police(Establishment) Police Headquarters, I.P.Estate, New Delhi- Respondents

(By Advocate Mrs.Meera Chhibber)

O R D E R

By V.K.Majotra, Member(Admnv) -

The applicant has challenged order dated 24.8.1999 (Annexure-A) whereby he has been informed that there is no anomaly in the fixation of his seniority on the basis of his out of turn promotion under Rule 19(ii) of Delhi Police (Promotion & Confirmation) Rules, 1980 (hereinafter referred to as 'the Rules of 1980') made on adhoc basis on 5.8.1994 i.e. in the year 1994. Accordingly his name was placed in the promotion list 'F' (Exe.) drawn on 12.8.1994 at his appropriate place of seniority.

2. The applicant claims that though vide order dated 5.8.1994 (Annexure-B) his promotion under Rule 19(ii) ibid was termed as adhoc it was in fact on regular basis. The applicant's name was brought on promotion list 'F' (Exe.) for the post of Inspector (Exe.) with effect from 12.8.1994 in terms of Rule 17(i) of the Rules of 1980. In this order his name is at serial no.220 (Annexure-C). By another order dated 18.8.1994 the applicant was promoted to officiate as Inspector (Exe.) with effect from 18.8.1994. In the

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relevant order at Annexure-D his name is at serial no.204. The applicant made a representation (Annexure-G) on 6.7.1999 to the Commissioner of Police, Delhi for treating his promotion as Inspector (Exe.) with effect from 5.8.1994 on regular basis. The applicant has maintained that neither any DPC is required for promotion to the rank of Inspector (Exe.) nor is any lower/upper school training course prescribed for such promotion under Rule 19(ii) ibid. The applicant has sought quashing and setting aside of the impugned order dated 24.8.1999 and also declaration that his promotion as Inspector (Exe.) with effect from 5.8.1994 should be declared as on regular/ substantive basis and that he is entitled to all consequential benefits/ reliefs to this effect.

3. In their counter the respondents have contended that promotions under Rule 19(ii) ibid have to be made purely on adhoc basis and that for the purpose of seniority such promotees are required to be placed at the bottom of the promotion list drawn for that year. A list for admission of names of Sub Inspectors (Exe.) to promotion list 'F' (Exe.) for the post of Inspector (Exe.) was drawn during the month of August, 1994. Some Sub Inspectors (Exe.) of applicant's seniority were also admitted to that list. Under the aforestated rule the applicant's name was required to be placed at the bottom of the said promotion list. However, in view of the principles of natural justice his seniority was protected and instead of placing his name at the bottom, it was included at his appropriate place of seniority. According to the respondents although the representation made by the applicant in July, 1999 was time barred, it was considered and rejected by a reasoned order.

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4. The applicant has filed a rejoinder as well.

5. We have heard the learned counsel of both sides and considered the material on record.

6. At the outset Shri Shyam Babu, learned counsel of the applicant made a statement at the Bar for withdrawal of the relief relating to consequential benefits/ reliefs in case relief relating to considering applicant's promotion as Inspector (Exe.) under the provisions of Rule 19(ii) *ibid* is termed as regular instead of *ad hoc* contending that under the provisions of Rule 19(ii) *ibid* promotion thereunder do not earn seniority for the incumbents and for purposes of seniority such promotees have to be placed at the bottom of the promotion list drawn up for that year. Therefore, the learned counsel conceded that even if the applicant's promotion is treated to be regular under Rule 19(ii) he will not be entitled to any accelerated seniority.

7. The learned counsel of the respondents Mrs. Meera Chhibber raised the question of limitation in the present case. She stated that whereas the applicant was promoted under Rule 19(ii) on purely temporary and *ad hoc* basis on 5.8.1994 he made the representation there against only on 6.7.1999. In the meanwhile two seniority lists, namely, in 1997 and 1999 had also been issued and the applicant cannot be allowed after such a long delay ^{to agitate} how his promotion made in August, 1994 should be treated. Mrs. Chhibber contended that seniority of the applicant and other Inspectors has been settled for a long time and that it is a settled law that the settled position should not be unsettled after a lapse of long time. Shri Shyam Babu, learned counsel of the respondents stated that when the applicant is not seeking any consequential benefit such



as seniority etc. on the basis of his promotion as Inspector on 5.8.1994, the question of limitation has to be decided with reference to memorandum dated 24.8.1999 whereby the applicant's representation dated 6/13.7.1999 was rejected. Mrs.Chhibber pointed out that the applicant's representation substantively dealt with his demand for computing his seniority as Inspector(Exe.) with effect from 5.8.1994 for all purposes. Rejection of such a representation vide memorandum dated 24.8.1999 should not revive cause of action to challenge order dated 12.8.1994 whereby the applicant was promoted under Rule 19(ii) ibid. We find that the applicant had raised the issue of promotion on regular basis in his representation dated 6.7.1999 (Annexure-G) along with other matters such as seniority. The applicant's representation has been rejected vide order dated 24.8.1999 (Annexure-A) after due consideration by the respondents. It is a settled position of law that after the respondents have considered and rejected an issue related to an earlier period at a much later date they are estopped from raising an objection relating to limitation having condoned the delay themselves by considering the delayed representation. The learned counsel of the applicant relied on the ratio of Sualal Yadav Vs. The State of Rajasthan and others, AIR 1977 SC 2050. We are satisfied that the present OA is not hit by the limitation as the respondents have considered the issues raised by the applicant in his representation made on 6/13.7.1999 after inordinate delay when the order of promotion of the applicant was passed on 5.8.1994 (Annexure-B).

8. As the relief relating to seniority and other benefits on the basis of applicant's promotion on 5.8.1994 have been given up on behalf of the applicant



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we are restricting our consideration to the relief whether applicant's promotion with effect from 5.8.1994 as Inspector (Exe.) could be considered as regular instead of adhoc only. Rule 19(ii) ibid reads as follows:

"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 exceed 5 per cent of the vacancies likely to fall vacant in the given year not 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".

9. The learned counsel of the applicant contended that promotions made under Rule 19(ii) have to be treated as adhoc only for ranks other than that of an Inspector. Promotions made to ranks other than Inspectors have to be made on adhoc basis which can be regularised only after completion of the prescribed training courses. He maintained for the rank of Inspector (Exe.) no such training course is prescribed. Therefore, his promotion has to be treated as regular right away. However, for the purposes of seniority all such promotees have to be placed at the bottom of the promotion list drawn up for that particular year. The learned counsel of the respondents contended that promotions to every rank including that of Inspector has to be treated as adhoc under Rule 19(ii) even if there is no training course prescribed for the post of Inspector; it has to be regularised later on and the initial appointment on promotion has to be made on adhoc basis. In our view, when persons promoted to the rank of Inspectors are not required to undergo any training course, no purpose seems to be served by treating such

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promotions as adhoc. The provisions relating to treatment of such promotions as adhoc appears to be relating to promotions to the ranks other than that of Inspector. If promotions to the rank of Inspector are treated as regularised on promotion under Rule 19(ii) ibid there would be no violation of the provisions of this rule. Promotions as Inspector (Exe.) under Rule 19(ii) for which no training course is prescribed can be treated as regularised straightaway. Such treatment will not cause any hindrance for placement of such promotees for purposes of seniority at the bottom of the promotion list drawn for that year under this rule.

10. Having regard to the above reasons and discussions, the OA is partly allowed. The impugned order dated 24.8.1999 is quashed to the extent that whereas the applicant's promotion as Inspector (Exe.) under Rule 19(ii) ibid shall be treated as regular with effect from 5.8.1994, instead of purely adhoc, however, his placement in the promotion list 'F' (Exe.) drawn on 12.8.1994 at his appropriate place of seniority shall remain unchanged as indicated in the impugned order. No costs.

S. Raju

(Shanker Raju)
Member (J)

rkv

V.K. Majotra

(V.K. Majotra)
Member (Admnv)

19.1.2001