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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 2781/99

New Delhi: this the 12th day of January, 2001.

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HON'BLE MR.S.R.ADIGE, VICE CHAIRMAN (A).

HON'BLE DR.A.VEDAVALLI, MEMBER (J)

ASI Som Dev,
S/o Shri Surat Singh,
Village Khaira,
New Delhi-43

...Applicant.

(By Advocate: Shri B.S.Oberoi)

Versus

1. Delhi Administration,
Delhi
through its Chief Secretary,
5, Sham Nath Marg,
Delhi.

2. Addl. Commissioner of Police/Training,
Police Head Quarters, I.P.Estate,
New Delhi.

3. Deputy Commissioner of Police (Vigilance),
Police Head Quarters,
I.P.Estate,
New Delhi.

4. Deputy Commissioner of Police (HQ-I),
Police Hqs.,
I.P.Estate,
New Delhi

....Respondents.

(By Advocate: Shri Ajesh Luthra)

ORDER

S.R.Adige, VC(A):

Applicant impugns respondents' orders dated 23.6.99 (Annexure-A1) ; dated 24.4.98 (Annexure-A2) and dated 18.3.98 (Annexure-A-3). He seeks placement in Promotion List 'D' w.e.f. 28.1.91 at the appropriate place with consequential benefits.

2. Applicant who was appointed as a Constable on 2.3.82 and was promoted as Head Constable in 1988 and was further promoted as ASI on adhoc basis on 29.9.89, was suspended w.e.f. 19.4.90 and proceeded

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against departmentally on 10.9.90 on the charge of accepting illegal gratification. He was also brought onto the secret list of Officers of doubtful integrity w.e.f. 21.9.90. Applicant's case for admission to Promotion List 'D' (Min) for promotion as ASI (Min) was considered by the DPC on 28.1.91 and again on 8.11.91 but owing to the pendency of the departmental proceeding, his name was placed in sealed cover. On the finalisation of the DE, a major penalty of forfeiture of 3 years' approved service for a period of 3 years without cumulative effect was imposed vide order dated 2.5.92 and the suspension period was treated as period not spent on duty. The sealed cover of DPCs dated 28.1.91 and 8.11.91 were opened on 29.8.92, but not acted upon as applicant was awarded a major penalty. The matter regarding review of applicant's name on secret list was also taken up in view of the provisions contained in para 9(c) of S.O.No.265/87 and it was decided to continue his name on secret list for a period of 3 years w.e.f. 2.5.92 vide order dated 23.9.92. Applicant's adhoc promotion was also discontinued and he was reverted as Head Constable (Ministerial) w.e.f 14.11.92 vide order dated 17.11.92.

3. Applicant's name was removed from the secret list w.e.f. 2.5.95 vide order dated 25.7.95. He was also considered by the DPC for admission to Promotion List 'D' (Min) on 29.12.92; 6.10.94 and 16.1.96 but was not admitted to the same.

4. Applicant challenged the penalty order dated 2.5.92 in OA No.1879/93 and MA No.2200/96, which was

disposed of by order dated 16.1.97 with a direction that if applicant gave a representation, the same would be disposed of by respondents by a detailed and speaking order within two months.

5. On receipt of applicant's representation, respondents admit that the penalty order dated 2.5.92 was withdrawn by order dated 23.1.98 and the suspension period was treated as spent on duty. However, he was warned to be more careful in future.

6. Respondents state that due to the withdrawal of the punishment order dated 2.5.92 as well as removal of applicant's name from the secret list of persons of doubtful integrity, applicant's case for being admitted to Promotion List 'D' was placed for consideration before the review DPC w.e.f. 28.1.91; 8.11.91; 29.12.92; 6.10.94 and 16.1.96, but as applicant's integrity certificate remained withheld on account of his being on secret list of persons of doubtful integrity from 21.9.90 to 2.5.95, the review DPC graded him unfit for admission to Promotion List 'D' (Min) on all the aforementioned dates prior to 16.1.96. However, he was graded fit for admission to Promotion List 'D' (Min) w.e.f. 16.1.96 and was accordingly promoted as ASI (Min) on officiating basis w.e.f. 18.3.98 with proforma promotion from 18.1.96 to 17.3.98 vide notification dated 18.3.98. His probationary period was also declared successful w.e.f. 17.1.98 vide order dated 26.3.98.

7. After his promotion as ASI (Min) applicant represented for antedating his promotion w.e.f. 30.1.91.

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That representation was rejected, upon which he represented for removing his name from secret list retrospectively instead of 2.5.95 but that representation was also rejected on 23.6.99, giving rise to the present OA.

8. We have heard both sides.

9. Respondents have advanced two grounds, why in their view applicant's name cannot be removed from the Secret List retrospectively instead of 2.5.95. Firstly it is contended that there is no provisions to such effect in S.O.No.265/87 and secondly because he did not receive an honourable exoneration in the DE.

10. We have considered both the grounds carefully.

11. As regard the first ground, there are several rulings of the Tribunal that when a police official is brought on to the Secret List of persons of doubtful integrity on certain allegations, which also form the subject matter of a departmental proceeding and/or criminal case and he is exonerated/acquitted in the departmental proceeding/criminal case, his name will be deleted from the aforesaid Secret List with effect from the date it was originally inserted therein. Hence the first ground does not avail respondents.

12. Coming to the second ground, it is true that as per respondents' own averments, while withdrawing the penalty order dated 2.5.92 they warned applicant to be more careful in future, but such a warning couched in general terms cannot be said to justify retention of applicant's name in the Secret List of persons of doubtful integrity right up to 2.5.95. After withdrawal of the penalty order dated 2.5.95 by respondents by their order dated 23.1.98, applicant's

name should have been deleted from the Secret List of persons of doubtful integrity with effect from the date it was originally inserted therein, i.e. 21.9.90, and in the absence of any specific material with respondents to justify its retention in that list beyond that date, merely because he was warned to be more careful in future, was not adequate reason to retain his name on that list right up to 2.5.95.

13. In the result, this OA succeeds and is allowed to the extent that the impugned orders are quashed and set aside. Respondents should delete applicant's name from the Secret List of persons of doubtful integrity with effect from the date it was originally inserted therein i.e. 21.9.90 and thereafter consider applicant's claim for admission to Promotion List 'D' (Min) for promotion as ASI (Min) with effect from the date his immediate juniors were so promoted, within 3 months from the date of receipt of a copy of this order. If upon such consideration applicant is so promoted, he will be entitled to all consequential benefits admissible in accordance with rules, instructions and judicial pronouncements. No costs.

A.Vedavalli
(DR.A.VEDAVALLI)
MEMBER (J)

S.R.Adige
(S.R.ADIGE)
VICE CHAIRMAN (A).

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