Central Administrative Tribunal, Principal Bench

Original Application No.1785 of 1998

New Delhi, this the 15th day of November, 2000

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)
Hon'ble Mr.V.K.Majotra, Member (A)

ASI (Driver) Kanwar Singh, S/o Sh.Sukhbir
Singh, R/o -Vill- Bakkarwala, PO-Moundka,
Delhi-41.   - Applicant

(By Advocate Shri U.Srivastava)

Versus

National Capital Territory of Delhi Through

1. The   Secretary,   Govt.of   N.C.T.Delhi,
   5,Sham Nath Marg, New Delhi.

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

3. The Deputy Commissioner of Police, Police
   Headquarters, I.P.Estate,New Delhi.   - Respondents

(By Advocate Shri Rajinder Pandita)

O R D E R (Oral)

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

        The applicant has challenged the order dated
18.8.1998 (Annexure-A-1) issued by the Deputy
Commissioner of Police, respondent no.3, whereby
applicant's promotion to the rank of ASI (Driver)
Grade-II has been cancelled.

2.   The applicant has alleged that his promotion
has been cancelled without indicating any reason and
without giving him any show cause notice. Therefore,
the impugned order is illegal, arbitrary and against the
principles of natural justice. He has also averred that
after his promotion with effect from 29.7.1997 he had
functioned on the promotional post for more than one
year. The applicant has sought quashing of the impugned
order Annexure-A-1 with all consequential benefits.

3.   In their counter the respondents have stated
that the applicant had been awarded a major penalty on

7.7.1997 in a disciplinary case whereby penalty of withholding of increment for a period of three years with cumulative effect was imposed upon him. However, this fact was not brought to the notice of the DPC by mistake. If the said punishment had been brought to the notice well in time the DPC would not have recommended the applicant's name for promotion to the post of ASI (Driver). Later on his case was examined in Police Headquarters in accordance with the instructions dated 14.3.1963 printed below FR 31-A and it was discovered that the applicant's promotion was erroneous because the major punishment awarded to him on 7.7.1997 was not placed before the DPC held on 21.7.1997. Thus, the respondents cancelled the erroneous promotion vide the impugned order Annexure-A-1. According to the respondents the applicant was holding the rank of ASI (Driver) with effect from 29.7.1997 in an officiating capacity. As such the promotion orders have been cancelled in accordance with the instructions referred to above.

4.   We have heard the learned counsel of both sides and perused the material available on record.

5.   Shri U.Srivastava, learned counsel of the applicant has referred to the case of **Ram Ujarey** Vs. Union of India, 1999(2) SLJ 43, contending that the applicant had been reverted without affording any reasonable opportunity. Thus, the impugned order deserves to be set aside. He has also relied on the case of D.K.Yadav Vs. J.M.A. Industries Ltd., 1993 SCC (L&S) 723. On the other hand the learned counsel of the respondents maintained that the afore-stated decisions

are not applicable here as the facts of instant case and

the aforestated cases are entirely distinguishable.

According to the learned counsel of the respondents an

erroneous promotion could be set aside without issuing

any show cause notice and without affording any

opportunity. The learned counsel of the respondents has

also relied on the Govt. of India's orders contained

under FR 31-A which reads as follows:

> "The orders of notification of promotion or
> appointment 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
> concerned should, immediately on such
> cancellation, be brought to the position which
> he would have held but for the incorrect order
> of promotion or appointment. "   "   "
>
> Cases of erroneous promotion/appointment in
> a substantive or officiating capacity should be
> viewed with serious concern and suitable
> disciplinary action should be taken against the
> officers and staff responsible for such
> erroneous promotion."
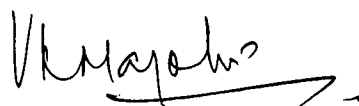> [G.I.M.F.,O.M.No.F.1(2)-Estt.III/59, dated the
> 14th March,1963]

6.   A more detailed procedure could have been

possible if the applicant had been promoted and

appointed to a post in a substantive capacity rahter

than in an officiating capacity as in the present case.

The instructions in that eventuality are also referred

to in the orders under FR 31-A. Relying on the ratio in

the cases of **M.Narainan & others Vs. Union of India,**

ATR 1986 CAT 130, Managing Director,ECIL,Hyderabad &

others Vs. B.Karunakar & others, 1993 SCC (L&S) 1184

State of Madhya Pradesh & others Vs. Shyama Pardhi &

others, (1996)7 SCC 118, combined with the afore-stated

order dated 14.3.1963 printed under FR 31A, we do not

think that any purpose would be served by asking the

respondents to issue a show cause notice to the
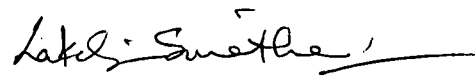
applicant at this stage.

7.   In the instant case the contention of the respondents that the factum of major punishment upon the applicant, had not been placed before the DPC, has not been contradicted by the applicant. In such an event the present case does not attract principles of natural justice. However, we take a serious view of the negligence of the concerned officials who had not brought the fact of major punishment awarded to the applicant a few days before the meeting of the DPC to the notice of the members of the DPC. Due to this omission the applicant was erroneously promoted as ASI (Driver) which had to be cancelled subsequently leading to the present litigation. In view of the instructions quoted above, we direct the respondents that this omission of the concerned official may be brought to the notice of the competent authority for suitable action in terms of the instructions quoted above.

8.   Having regard to the above discussion, the OA is dismissed with the above direction. No costs.

(V.K.Majotra)   (Mrs.Laksmi Swaminathan)
Member (A)   Member (J)

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