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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.528/98

New Delhi, this the 27th day of May, 1999.

Hon'ble Shri T.N. Bhat, Member(J)  
Hon'ble Shri S.P. Biswas, Member(A)

S/Shri

1. Nem Datt Bhardwaj,  
S/o late Sh. Murari Lal Bhardwaj,  
C-7/99, Yamuna Vihar,  
Delhi-53.
2. Jia Lal Sawhney,  
S/o late Sh. Dewan Chand Sawhney,  
1046/Viii, R.K. Puram,  
New Delhi-21.
3. Bhag Singh,  
S/o late Sh. Surjeet Singh,  
R/o A-5, Old Police Lines,  
Rajura Road, Delhi.
4. Harish Chander Joshi,  
S/o late Sh. D.D. Joshi,  
R/o S-XII/200,  
R.K. Puram,  
New Delhi-22.
5. Subash Chander Batra,  
S/o Sh. F.C. Batra,  
R/o C-2/276, Janakpuri,  
Delhi.
6. Rajendra Kumar,  
S/o late Sh. Chanan Ram,  
R/o F-1, Police Station,  
Lodhi Colony,  
New Delhi.
7. Tola Ram Mirwani,  
S/o Sh. P.R. Mirwani,  
R/o 1/56, Moti Nagar,  
Delhi.
8. Hawa Singh,  
S/o late Sh. Bhaleram,  
R/o C-1(SHO Flats P.S. Patel Nagar)  
New Delhi.
9. Gurbax Singh.  
S/o late Sh. Hukam Singh,  
R/o Sector-4/1329,  
R.K. Puram,  
New Delhi-22.
10. Abhey Ram,  
S/o late Sh. Jage Ram,  
R/o H.No.1965, Narela,  
Delhi-40.
11. Shakti Singh,  
S/o Ch. Har Prasad,  
R/o 240, Sector-3,  
R.P. Puram, Delhi-22.
12. Hanuman Singh,  
S/o Sh. Manphul Singh,  
R/o D-81, New Multan Nagar,  
Rohtak Road, New Delhi-56.
13. Hukam Chand Rana,  
S/o Sh. Giani ram,  
R/o K-3, Type-3,  
PS, Mandir Marg, New Delhi

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14. Vijay Kumar,  
 S/o late Sh. Ved Varat,  
 R/o A-274, Vikas Puri,  
 New Delhi.

15. Ramesh Chander Garg,  
 S/o Sh. Harish Chandra,  
 R/o B-7/32, Safdarjang Enclave,  
 New Delhi.

16. Sardar Singh Bhalla,  
 S/o late Sh. Jagannath Bhalla,  
 R/o Block No. 251-B, MIG Flat,  
 Rajouri Garden, New Delhi.

17. Daya Nand Kaushik,  
 S/o Sh. Surat Singh,  
 R/o 626, Baba Kharag Singh Marg,  
 New Delhi.

18. Madan Mohan,  
 S/o late Sh. Bharat Singh,  
 R/o Q.No.J/22, Police Colony,  
 Andrews Ganj, New Delhi.

19. Tejpal Singh,  
 S/o late Sh. Piara Singh,  
 Q.No.7, Parliament Street,  
 New Delhi-1.

20. Surender Kumar Kakar,  
 S/o Sh. Ram Lal,  
 R/o B-82, Lajpat Nagar-I,  
 New Delhi-24.

21. Ramesh Singh,  
 Q.No.457, Timarpur,  
 Delhi-54.

22. Prem Singh Patwal,  
 S/o late Sh. D.S. Patwal,  
 R/o A-35, Subash Park,  
 Uttam Nagar, New Delhi.

23. Surinder Singh Sandhu,  
 S/o late Sh. Saroop Singh,  
 R/o E-1 Police Station,  
 Srinivaspuri, New Delhi.

24. Shyam Sunder Chaturbedi,  
 S/o Sh. Shiv Charan Chaturbedi,  
 R/o Flat No.2/B, Ujjawal App.,  
 Vikas Puri, New Delhi-18.

25. Sita Ram Vohra,  
 S/o Sh. Ram Lubhaya,  
 R/o 59, Tarun Enclave,  
 Pitampura, Delhi.

26. Dharam Pal Sharma,  
 S/o Sh. Chander Bhawan Sharma,  
 R/o A 4/2 Police Station,  
 Defence Colony,  
 New Delhi.

27. Satish Kumar Ahuja,  
 S/o late Sh. Parsout Lal Ahuja,  
 R/o D-3, Pitampura Police Line,  
 Delhi-34.

28. Babu Lal Sharma,  
 S/o late Sh. Dev Dutt Sharma,  
 R/o E-151-E Ashok Vihar-I,  
 Delhi-52.

29. Mohan Lal,  
 S/o Sh. Gurdass,  
 R/o H.No.44, Police Station,  
 Gita Colony, Delhi.

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30. Sohan Vir Singh,  
S/o late Sh. Sri Chand,  
R/o H-33, Jyoti Nagar,  
Loni Road, Shahdara.

31. Gur Bax Lal Mehta,  
S/o Sh. B.L. Mehta,  
R/o G-2 P.P. R.K. Puram,  
Sector-IV, New Delhi.

32. Ashok Kumar Saxena,  
S/o Sh. O.P. Saxena,  
R/o Flat No.1 P.S.,  
Pt. Street, New Delhi.

33. Mohan Singh,  
S/o late Sh. Ujjagar Singh,  
R/o 1045, Sector-8,  
R.K. Puram, New Delhi.

34. Gur Charan Singh,  
S/o Sh. Sohan Singh,  
R/o 1028, Block No.26,  
Pt. Pant Marg,  
New Delhi.

35. Shushil Kumar,  
SHO, Janak Puri,  
S/o Sh. Balraj Bedi,  
R/o G-110, Preet Vihar,  
Delhi.

36. Suresh Chand,  
S/o Sh. Dharam Dutt,  
R/o C-9, P.S. R.K. Puram,  
New Delhi.

37. Ajit Singh,  
S/o late Sh. Balbir Singh,  
R/o C-45, Jyoti Nagar Extn.,  
Loni Road, Shahdara, Delhi.

38. Ved Parkash,  
S/o late Sh. Amar Nath,  
R/o WZ-D 101, East Uttam Nagar,  
New Delhi.

39. Ram Pal Singh Nehra,  
S/o Sh. Jhamel Singh,  
R/o F-1, P.S. Hazrat Nizamuddin,  
New Delhi.

40. Virender Singh,  
S/o Lt. Sh. G.S. Ahluwalia,  
R/o 1/9547, West Rohtash Nagar,  
Shahdara, Delhi.

41. Raj Pal Singh Nagar,  
S/o Lt. Sh. M. Lal Nagar,  
R/o A-408, Ganesh Nagar-II,  
Shakar Pur, Delhi.

42. Surya Narain Pandey,  
S/o Sh. Shrinath Pandey,  
R/o HC-II, PS Tilak Marg,  
New Delhi.

.... Applicants

(Through Sh. M.K. Gupta, advocate)

versus

1. Union of India through  
its Secretary,  
Ministry of Home Affairs,  
North Block,  
New Delhi-1.

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2. Lt. Governor,  
Govt. of NCT of Delhi,  
Raj Niwas,  
Delhi.
3. Commissioner,  
Delhi Police,  
Police Headquarters,  
I.P. Estate,  
New Delhi-2.
4. UPSC through  
its Secretary,  
Dholpur House,  
New Delhi-3.
5. Sh. Hari Bhusan, ACP
6. Sh. Sahansar Pal Singh, ACP
7. Sh. Rati Ram, ACP
8. Smt. Nirmal Verma, ACP
9. Sh. Shiv Kumar, ACP
10. Sh. Jai Bhagwan Malik, ACP
11. Sh. K.L. Dogra, ACP
12. Sh. Swatanter Kumar, ACP
13. Sh. HPS Cheena, ACP,  
through Commissioner of Police,  
Delhi Police, Police Hq.,  
I.P. Estate, New Delhi-2.
14. Sh. Man Phool Singh,  
IGI Airport Domestic,  
Shift B. Delhi.
15. Inspector Subhas Tandon,  
R/o A-17, Type-III, D I/887,  
New Police Line, Kingsway Camp,  
Delhi.
16. Inspector Dalu Ram,  
H.No.70, Vigyan Road,  
Delhi-92.
17. Inspector Rajender Bhatia,  
R/o B-146 Indra Nagar,  
Gali No.1, Adarsh Nagar,  
Delhi.

.. Respondents

(through Shri N.S. Mehta for R-1, Shri Anoop Bagai  
for Respondents No. 2 & 3 and Shri Shankar Raju  
for private respondents)

ORDER

Hon'ble Shri S.P. Biswas

The applicants, confirmed Inspectors of Delhi Police, are aggrieved because of (i) Respondents' failure in not convening the Departmental Promotion Committee (DPC for short) proceedings since 1992 for the purpose of effecting regular promotions to the grade of Assistant Commissioner of Police (ACP

of

for short) in Grade II Group B posts and (ii) adopting "pick and choose" policy to promote a large number of Inspectors to the rank of ACPs on ad-hoc/out-of-turn basis and even by adjusting them wrongly against ex-cadre posts. Consequently, they have sought reliefs in terms of quashing of Annexure A-1 colly orders dated 10.10.94 and series of other orders issued between 1995 and 1998 <sup>unlawfully</sup> favouring <sup>some</sup> private respondents as shown in the amended memo of parties from Sl.No.5 to 17.

2. Annexure A-1 orders have been challenged on the basis that promotions effected through that order were in exercise of powers under Rule 24(1) of DANIPS Rules, 1971, which has now been superceded by 1995 Rules and that DANIPS Rules, 1995 do not contain any provision for ad-hoc appointments to the post of ACPs.

3. Subsequent orders dated 14.7.97, 24.7.97, 4.11.97, 14.1.98, 29.3.98 and 10.7.98 have also been challenged mainly on two grounds. Firstly, the orders have been issued by an authority not competent to do so. This is because the revised Rules dated 9.12.1995 or those of 14.8.98 do not have any provision whatsoever empowering the Lt. Governor (LG for short) to make officiating appointments to the category of ACPs. Earlier Rule 24, which was inserted by amendment of 1991 (Annexure A-6) empowered LG/Administrator to make appointments purely on local arrangement basis for a period not exceeding 6 months. But the amended

of

Rules of 1995 (Annexure A-5) in supersession of those of 1991 (Annexure A-7) do not have any provisions authorising the LG to make out-of-turn promotions to the category of ACPs. Secondly, no "prior approval/approvals" as required under sub Rule 24(3) of 1991 Rules have been obtained from Central Government to continue those ad-hoc appointments after the expiry of six months/one year.

4. On the strength of judicial pronouncements of the apex court in the cases of *Raj Soni Vs. Air Office Incharge Admn.* 1990(3) SCC 261 and *State of UP Vs. Singhara Singh* 1964(4) SCR 489, Shri M.K. Gupta, learned counsel for the applicants argued that where a statute has conferred a power to do an act and had laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. He also cites the judgement of the Hon'ble Supreme Court in the case of *A.K.Bhatnagar Vs. UOI* 1991(1) SCC 544 to contend that the respondents ought to refrain from acting in a manner not contemplated under the rules.

5. The learned counsel for the applicants further submitted that there is no ex-cadre post in any one of the R/Rules of DANIPS. R-2 and 3 have tried to wrongly justify that 16 posts have been allocated to Delhi Police as ex-cadre (non-cadre) posts in the pre-revised scale of Rs.2000-3500. A bare

perusal of Rule 4 read with Schedule I of 1995 Rules would indicate that all posts shown therein are the sanctioned strength. Similarly, the sanctioned strength of Delhi Police (cadre wise) as on 31.12.97 issued vide circular dated 8.1.98 would only substantiate that there are 297 sanctioned posts of ACP out of which 281 belong to executive cadre and the remaining 16 pertain to various other categories like Women, Computer, Research, Traffic Engineer, Communication and M.T. etc. That apart, Schedule I annexed with the last DANIPS Rules dated 14.8.98 shows the number of such duty posts as 255. In the context of the aforesaid legal position, respondents have provided misleading details of the so-called ex-cadre/non-cadre posts vide their additional affidavit dated 15.2.99, the learned counsel for the applicants contended.

6. Respondents' actions in allowing 6 more cases of out-of-turn promotions to the rank of ACP on the lines of Inspector S.S.Rathi have also been questioned by the applicants. This has been done on the basis of details in the communication of the Ministry of Home Affairs (MHA for short) dated 2.8.93. The aforesaid letter of MHA mentions that "there is no provision in the DANIPS Rules for grant of out-of-turn promotion to Grade II of DANIPS for brevity etc. It is also not possible to relax any of the provisions of DANIPS Rules, 1971 for making such type of out-of-turn promotion". It was, however, suggested that Shri S.S.Rathi could be adjusted against one of the few non-cadre posts.

As per the applicants, MHA's letter aforementioned did not give any unfettered liberty to respondents to issue series of illegal orders between 1995 and 1998 unduly favouring certain officials in the garb of "Bravery and Gallantry" activities. To add strength to his above contention, the learned counsel cited the decision of the apex court in the case of State of Maharashtra vs. Admane Anita Moti, 1994(6) SCC 110. It was held therein that "One illegality cannot justify the other".

7. Shri Anoop Bagai, arguing on behalf of respondent Nos.2 and 3 submitted that ad-hoc appointments made vide order dated 10.10.94 were in accordance with the provisions laid down in the Rules, 1971 as amended subsequently in 1991. Nine Inspectors of Delhi Police who were promoted on ad-hoc basis to the grade of ACPs after the notification of 1995 Rules were left out cases and those persons were promoted either because of directions of the Central Administrative Tribunal or on grounds of similarly placed persons having been considered earlier. The respondents have also promoted 7 inspectors (S.S.Rathi, L.N.Rao, P.P.Singh, Rajbir Singh, Ravi Shankar, S.Kumar and S.P.S.Cheema) on out-of-turn basis to the rank of ACPs against ex-cadre posts available in Delhi Police on account of gallant and exemplary acts on the recommendations of the Commissioner of Police. These promotions given to eligible Inspectors of Delhi Police in terms of Rule 24(1) of DANIPS Rules, 1971 are not detrimental to applicants.

primarily because of the reasons that applicants are juniors to those Inspectors who have been promoted except SC & ST officers and those given out-of-turn promotions on account of gallant/exemplary activities, the counsel for the respondents submitted.

8. We have heard learned counsel for all the parties including Shri Shankar Raju representing those for intervenors, gone through the pleadings particularly additional affidavits and rejoinders filed by both sides. In the maze of seriously contested rival contentions, the following facts/issues emerge as undisputed by any of the parties:

(i) Regular DPCs have not been held for 7 years since 1992;

(ii) 1995 DANIPS Rules dated 9.12.95 do not have any provision empowering the LG to make such ad-hoc appointments. In fact R-2, vide his communication as at Annexure A-8 dated 18.3.96 sought permission from R-1 "to advise whether under the existing rules (i.e. of 1995), short-term appointments could be made by LG purely on local arrangement". R-1 did not send any reply or provide any advice persuant to 18.3.96 communication though Union of India is well aware of this

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lacuna in 1995 Rules as is evident in its counter reply (para 4(h) middle) dated 26.5.98.

(iii) Matters regarding continuance of promotions of these ad-hoc appointed ACPs beyond six months stand referred to MHA for the purpose of approval for further extensions;

(iv) No approval or prior permission of the Central Government has been obtained to continue Respondents No.5 to 17 and other similarly placed officials though they all have completed initial period of six months/one year on ad-hoc basis;

(v) Proposals convening the meeting of the selection committee to fill up the promotion quota vacancies for the year 1992, 1993, 1994 and 1995 were sent to UPSC by MHA in October, 1995. The Commission, however, expressed its inability to convene the meeting of the Committee on account of non-completion of Annual Confidential Reports of eligible officers. MHA has been repeatedly reminding the Delhi Police but the details sought for are still awaited from R-2 and 3.

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(vi) There is no formal provision in DANIPS Rules for grant of out-of-turn promotions to Grade II of Delhi Police Service for bravery/gallantry etc. Even MHA's letter dated 2.8.93 has mentioned of this deficiency. Nor there is any scheme formulated by R-3 setting out the criteria for consideration of such out-of-turn promotions and steps to be followed to adjust such posts within/without the cadre after promotions are ordered in deserving cases.

9. To satisfy our conscience as regards factual position in respect of the existence of ex-cadre posts for ACP, we directed Shri Anoop Bagai, counsel for R-2 and 3 on 17.11.98 to seek instructions on this controversial issue from the answering respondents. It was necessary to identify the ex-cadre posts since that goes to <sup>the</sup> root of legality or otherwise of promotional orders on out-of-turn basis in favour of R-5 to R-17. The learned counsel took several adjournments to obtain complete instructions on the question. As many as six opportunities were given and ultimately only on 21.4.99 and that too on the threat of an adverse inference that an additional affidavit on behalf of respondents No.2 and 3 was filed. In this affidavit filed by R-2 it has been mentioned that as per Schedule I annexed with the DANIPS Rules dated 14.8.98, there are 255 specific duty posts under the Govt. of NCT of Delhi and ~~post~~ of ACPs

beyond 255 already included in the cadre shall continue to remain outside the cadre till they are included in the cadre by amending the Schedule. There are 297 sanctioned posts of ACPs under Govt. of NCT of Delhi out of which 13 posts are technical posts and 255 are already included in the cadre leaving the balance 29 posts of ACPs outside the cadre which is termed as ex-cadre. It is against these 29 ex-cadre posts, out-of-turn promotions for gallantry acts etc. were given without any benefit of seniority in the rank of ACP. In the background of fresh details provided, records made available to us earlier and arguments now advanced, we are of the firm view that such a written submission as of 21.4.99 does not command acceptance. This is because in none of the schedules annexed to Rules right from 1971 to 1998, there is any mention of existence of ex-cadre posts. Even the statement of sanctioned strength as on 31.12.97 circulated vide order dated 8.1.98 and Schedule I to 14.8.98 Rules run contrary to ~~earlier~~ aforementioned latest written submissions.

10. Based on thorough scrutiny of the materials placed before us, we are persuaded to enter into findings as hereunder:

(a) Failure of official respondents in not conducting regular DPC proceedings since 1992 is in violation of the law laid down by the apex court in the case of UOI Vs.

N.R.Banerjee, 1997(9)SCC 287. Their Lordships in that case held that "DPC must be held for year-wise vacancies".

(b) Actions of respondents in promoting those Inspectors to the post of ACPs on ad-hoc basis vide orders dated 10.10.94, 19.1.95, 16.2.95, 6.6.95 and all such orders upto 9.12.95 cannot be faulted. Those promotional orders for short periods did have the approval of competent authority i.e. LG/Administrator.

However, Respondents' action in continuing the aforesaid ad-hoc appointments beyond the periods stipulated in the said orders are contrary to the rules/instructions on the subject and hence cannot be sustained in the eyes of law. Prior approval/approvals of R-1 should have been obtained to continue them and that has not been done at all.

(c) In continuing those Inspectors as ACPs, the respondents have violated instructions of DoPT in its OM dated 30.3.88 which reads as under:

"4. Conditions for making ad-hoc appointments in such exceptional circumstance - Ad-hoc appointments may be resorted subject to the following conditions:

(i) The total period for which the appointment/promotion may be made on ad-hoc basis, will be limited to one year only. The practice of giving a break periodically and appointing the same person on ad-hoc basis may not be

permitted. In case there are compulsions for extending any ad-hoc appointment/promotion beyond one year, the approval of DoPT may be sought by atleast two months in advance before the expiry of the one year period. If the approval of DoPT to the continuance of the ad-hoc arrangements beyond one year is not received before the expiry of the one year period, the ad-hoc appointment/promotion shall automatically cease on the expiry of the one year term".

(d) Promotional orders after 9.12.95 upto 10.7.98 when an order (in favour of H.Pal Singh) was issued during the pendency of the OA, including those two cases represented by Shri Shankar Raju, counsel for the intervenors, are void-ab-initio. This is because, as admitted by the Union of India that "in the revised rules of 1995, the provision of empowering LG, Delhi to make officiating appointments has been done away with and these rules came into existence from 9.12.95".

In respect of these set of orders even continuing those Inspectors as ACPs is equally impermissible in terms of position of law as in sub-para (c) above.

(e) Applicants are eligible for promotion as ACP and are also within the zone of consideration. Respondents have not denied this. Their rights to be considered for promotion cannot, therefore be denied in terms

of law laid down by the apex court in the case of Syed Khalid Rizvi Vs. UOI 1993 Supp (3) SCC 575.

11. It would be apposite to mention here that we cannot conceive of a situation where there will be no ad-hoc appointments, particularly for an expanding organisation like Delhi Police. Exigencies of service may warrant issuing such orders more often than not. What is wrong in the present case is that almost 160 ACPs, out of 297, are functioning on ad-hoc arrangements. This is because, admittedly, no DPCs have been held for those officials since 1992. Arbitrariness in such a situation cannot be ruled out (see Dr. Anuradha Bodi & Ors. Vs. MCD & Ors. 1998(5) SCC 293).

12. In the background of the detailed discussions above, we allow the OA with the following directions:

(i) A-1 (colly) and other ad-hoc promotional orders as in para 10(b) as well as those issued after 9.12.95 upto 10.7.98 as in para 10(d) shall stand quashed but only prospectively with effect from 1.12.1999. This is because in the facts and circumstances of the case, a vaccum in the administration of law and order cannot be created by quashing abruptly the massive ad-hoc promotional arrangements retrospectively or by making our orders operative as usual from the date of its issue;

(ii) Respondents shall convene and complete, in a phased manner, regular DPCs, on yearwise basis, to consider the applicants, all of those now working on

ad-hoc basis as well as other similarly placed officials for regular promotions as ACP in Grade II of Govt. of NCT, Delhi and Andaman & Nicobar Islands Police Service with all its consequences. Action in this respect shall be completed by 30.11.99;

(iii) If the cases of applicants get considered by DPC favourably, they will have their seniority counted from the dates their juniors were promoted. No backwages shall, however, be paid since they have not physically shouldered responsibilities of higher posts of ACPs.

(iv) Any fresh ad-hoc promotional orders for ACPs hereafter shall be issued only with prior approval of authorities competent to do so in terms of provisions under the relevant Rules and continuation thereof shall be in strict adherence to Rules/instructions on the subject.

(v) Respondents shall do well to adhere to the time limit given by us as in sub-para (ii) above;

(vi) There shall be no order as to costs.

  
(S.P. Biswas)  
Member (A)

  
27.5.99  
(T.N. Bhat)  
Member (J)

/gtv/