

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

DA No. 587 of 1998

New Delhi: this the 8th day of August, 2000.

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

HON'BLE MR. KULDIP SINGH, MEMBER (J)

Shri Ram Pratap Shukla,
S/o Shri Hira Mani Shukla,
R/o Qr. No. 326, Police Colony,
Ahata Kidara,
Sadar Bazar,

Delhi

....Applicant.

(By Advocate: Shri G. D. Gupta)

Versus

1. NCT of Delhi through
its Chief Secretary,
5, Sham Nath Marg,
Delhi-110054.

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

3. Addl. Commissioner of Police (Admn),
Police Headquarters,
I. P. Estate,
New Delhi.

4. Dy. Commissioner of Police,
Headquarters (I),
Police Headquarters,
I. P. Estate,
New Delhi -2

.....Respondents.

(By Advocate: Shri George paracken)

ORDER

Mr. S. R. Adige, VC (A):

Applicant impugns respondents' order dated 29.12.97 (Annexure-A1) rejecting his representation for promotion as ASI with retrospective effect.

2. Applicant seeks a direction to respondents to convene a review DPC to reconsider his case on the basis of seniority-cum-fitness and by taking into account his reports for five years preceding to 1.1.97.

and for considering his promotion for higher post with all consequential benefits.

3. Applicant who joined service as Constable on 8.3.68 and was promoted as Head Constable on 29.10.76 was placed under suspension for alleged gross misconduct vide order dated 1.1.80 (Annexure A-2) in connection with irregularities detected in Delhi Armed Police Canteen records when he was working as in Charge, Clothing Shop.

4. A criminal case under sec. 409 IPC was also instituted against him vide FIR No. 348 dated 11.4.80. Eventually he was reinstated from suspension on 30.6.87 (Annexure-A3) without prejudice to the criminal case pending against him.

5. Meanwhile applicant was proceeded against departmentally, which ended in his dismissal from service vide disciplinary authority's order dated 30.11.87, which was upheld in appeal vide appellate authority's order dated 22.4.88. Applicant challenged the same in OA No. 2397/88 before CAT PB which was allowed by order dated 17.5.95 and the dismissal order was quashed, whereupon applicant was reinstated, by order dated 13.10.95, he meanwhile having been acquitted by the District & Sessions Judge in the criminal case mentioned above, vide judgment dated 24.92 in criminal Appeal No. 98/90.

6. Meanwhile applicant was considered for promotion as A.S.I. by the DPC held on 21.8.87 but due to the pendency of the criminal case and the departmental proceeding against him his case was kept in sealed cover. Later when the sealed cover was opened, he was found to have been declared unfit for promotion as ASI.

7. As per applicant's own averment contained in his representation (Annexure-A1) subsequent DPCs were held on 7.12.88, 9.1.91 and 16.3.95 and review DPC was also held on 1.1.96 to consider applicant's promotion from the aforesaid dates but he was found unfit for promotion. He was again found unfit. Eventually he was declared fit for promotion in the DPC meeting held on 23.3.99 and 21.4.99.

8. We have heard applicant's counsel Shri G.D. Gupta and respondents' counsel Shri George Parackan.

9. Shri G.D. Gupta also filed written submissions in which he has contended that applicant's case for promotion was not properly considered in the DPC meeting held on 21.8.97, and in the review DPCs in accordance with provisions of Rule 5 Delhi Police (Promotion & Confirmation) Rules and Respondents' Circular dated 29.3.92 (Annexure-A1). It is urged that the DPC held on 21.8.87 was biased by the fact that applicant remained suspended from 1.1.80 to 30.6.87 and because of the pendency of the departmental proceedings and the criminal prosecution against him. It has been contended that as applicant stood suspended from 1.1.80 to 30.6.87, the DPC was required to see the records of the five years preceding 1.1.80 during which he had been graded as 'Very Good' and was not given any below average remarks in any of his reports, and no adverse remarks were even communicated to him. It is contended that as per Rule 5 Delhi Police (P & C) Rules the promotions were required to be made by selection tempered by seniority and, therefore seniority-cum-fitness should have formed the basis for consideration, and in that background, applicant could not have been

found unfit for promotion in earlier years. Reliance in this connection has been placed on CAT PB order dated 31.1.2000 in OA No. 799/96 Dev Prakash Vs. Union of India & Ors.

10. On the other hand respondents' counsel Shri George Parackan has contended that applicant was not found fit for promotion as ASI by the DPC held on 21.8.87 and subsequent DPCs for good and sufficient reasons and the decision not to promote applicant with effect from the date his juniors were promoted, was in accordance with law and the OA warrants no interference.

11. We have considered the matter carefully.

12. Rule 5 Delhi Police (Promotion & Confirmation) Rules lays down the general principles of promotion. Rule 5(1) provides that promotions from one rank to another and from lower grade to higher grade in the same rank shall be made by selection (emphasis supplied) tempered by seniority. Efficiency and honesty shall be the main factors governing selection. Zone of consideration will be determined in accordance with rules/instructions issued by Government from time to time. Rule 15(1) of these Rules regarding promotion from Head Constable to Assistant Sub-Inspector under List D (Executive) also speaks of selection (emphasis supplied) being made on the recommendations of the DPC and those so selected being brought onto list D keeping in view the number of vacancies likely to arise in the rank of ASI, in order of their respective seniority as Head Constables.

12. From the above, it is clear that inclusion

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in List D (Executive) is to be made through a positive act of selection from amongst those falling within the zone of consideration which depends upon the number of vacancies likely to arise in the rank of ASIs. It is only those who are thus selected who are brought on to list D (Ex.) in order of their respective seniority as Head Constables. While making the selections efficiency and honesty will be the governing factors. It is well settled that a duly constituted DPC is empowered to frame ^{its} own guidelines for evaluating the candidate whose selection is being considered, but with a view to ensure ^a certain degree of uniformity in the matter of assessment, a Circular dated 23.9.92 (Annexure-A17) has been issued for the benefit of ^{the} DPC which inter alia provides that officers having atleast 3 'Good or above' reports and without any 'below average or adverse' report during the last five years may be considered.

13. We have perused the DPC minutes of 23.3.99 and 21.4.99 which reveal that applicant was adjudged 'satisfactory' for the year 1975-76; Satisfactory/Very Good for the year 1976-77; Very Good in 1977-78; and Very Good in 1978-79. As applicant was suspended on 1.1.80, the DPC records that for the year 1979-80 applicant was under suspension. From the foregoing it is clear that applicant did not have the minimum three Good or above reports for the five years preceding 1979-80. He had Good and above reports for only two completed years out of these five and for part of a 3rd year, but not for the whole of that year.

14. In so far as the reliance on Dev Prakash's case (supra) is concerned, that case relates to the application of Rule 15(ii) of Delhi Police (P & C) Rules while the

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present case deals with the application of Rule 15(i) Delhi Police (P & C) Rules. Hence the ruling in Dev Prakash's case is distinguishable from the facts of the present case.

15. In the light of what has been stated above, the OA warrants no interference and it is dismissed. No costs.


(KULDIP SINGH)
MEMBER (J)


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

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