Central Administrative Tribunal
Principal Bench: New Delhi

OA No.144/95 with OA No.153, 1109/95

New Delhi this the 13th day of January 1997.

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

**OA No.144/95**

ASI Malti Bana
W/o Shri Mohan Kumar
R/o H-110 New Police Lines
Kingsway Camp
New Delhi. ...Applicant.

(By advocate: Mrs Meera Chhibber)

Versus

1. Govt. of NCT of Delhi
   Through Commissioner of Police
   Police Headquarters
   I.P.Estate
   New Delhi.

2. Additional Commissioner of Police (adm.)
   PHQ, I.P.Estate
   New Delhi.

3. Dy. Commissioner of Police
   HQI PHQ
   I.P.Estate
   New Delhi. ...Respondents.

(By advocate: Mr Rajinder Pandita & Mrs Jyotsana Kaushik)

**OA No. 153/95**

ASI Kamlesh 1864/D
Wife of Shri Ram Chander Dhankar
Resident of 14, Dhirpur
Delhi - 110 009. ...Applicant.

(By advocate: Mrs Meera Chhibber)

Versus

Union of India through

1. Secretary
   Ministry of Home Affairs
   North Block, New Delhi.

2. Govt. of NCT of Delhi through
   Commissioner of Police
   Police Headquarters
   IP Estate, New Delhi.

3. Additional Commissioner of Police
   (Admn.)
   PHQ, I.P.Estate
   New Delhi. ...Respondents.

(By advocate: Mr Rajinder Pandita)

OA No.1109/95

ASI Mukesh Devi
Wife of Shri Ravinder Kumar
Resident of N-4/2
P.S. Model Town
Delhi .

...Applicant.

(By advocate: Mrs Meera Chhibber)

Versus

Union of India through

1. Secretary
   Ministry of Home Affairs
   North Block, New Delhi.

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

3. Deputy Commissioner of Police
   HQA-1, Police HQs.
   MSO Building, I.P.Estawte
   New Delhi.

...Respondents.

(By advocate: Mr Arun Bhardwaj)

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O R D E R (oral)

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

In the four original applications referred to in the draft order of 9th February 1996 of the Division Bench, the applicants had prayed for reconstituting a review DPC for consideration of their case for inclusion in the list E-1 on grounds, among others, that the DPC had adopted a defective method of assessment of the service profile of the officers concerned. In the opinion of Hon'ble Shri N.V.Krishnan, Acting Chaiarman then, the OAs other than OA No. 546/95 had to be disposed of with the following declaration/directions:

[i] The circular dated 23.9.92 of the Commissioner of Police setting out the principles which should be observed by the DPC is not ultra vires of any provision of the Rules. However, the direction given regarding securing three 'good' or above reports should be taken into account after noting the fact that until the ACR form was amended in 1994, there was a specific mention in the ACR form that the overall grading should only be excellent, very good, average/below average and that there was no provision for grading any person as 'good' in column 19 of the ACR form. Therefore, in considering the overall grading, the DPC shall look into the grading or remarks for the individual factors in the ACR, and take an independent decision regarding overall grading keeping in view the direction given below.

[ii] In assessing the suitability, primary consideration should be given to honesty and efficiency as mentioned in Rule 5. The DPC may consider which of the factors mentioned in the ACR are relevant for assessing the honesty and efficiency of an officer and assess the grading of the office in respect of those qualities.

[iii] If the DPC grades the officer as 'good' or gives him an equivalent grading in respect of honesty and efficiency, it should consider whether the overall grading can be diluted to 'satisfactory' or 'average' merely because in respect of other factors not relevant for honesty or efficiency, the grading is 'average' or 'satisfactory' or 'below average' or whether the overall grading can be diluted if there are adverse remarks in respect of other factors.

[iv] The DPC shall ensure that the overall grading of the ACR is made by it independently of the assessment made by the reporting authority or the reviewing authority and that in making the overall assessment, the grading given in respect of the individual factors be considered and also that the assessment of an officer in respect of one year is consistent with the assessment made in respect of other year.

[v] The orders rejecting the representations of the applicants in these three OAs for reconsideration of their cases are quashed. The respondents are directed to convene a review DPC to consider thee cases of these applicants keeping in view the declarations and directions given above. This shall be done within a period of two months from the date of receipt of a copy of this order.

2. The Hon'ble Judicial Member Dr. A.Vedavalli was in full agreement with the declarations/directions proposed but had one reservation. She was of the view that by implementing the recommendations of the review DPC to be constituted as per the directions in the order, if somebody who had already been promoted would be adversely affected in the seniority, a notice should be given to such affected person before fixing the seniority of the applicants in the cases. Therefore, in her opinion, the learned Judicial Member suggested that the following should be added in the directions:

> "If by reason of any such recommendation of the review DPC, seniority of any other officer not being a party to this proceeding is likely to be adversely affected, such officer shall be given a reasonable opportunity to represent before final orders are passed by the competent authority."

When this opinion of the learned Judicial Member was sent to the learned Acting Chairman, he found the above suggestion unacceptable to him. In his considered view, it was not required to give any such notice to any person whose seniority might be affected on impelementation of the recommendations of the reveiw DPC. As there was this disagreement between the Members of the Division Bench, they agreed to place the matter before the Hon'ble Chairman for taking action under Section 26 of the Administrative Tirubnals Act to have the difference of opinion among them sorted out and for disposal of the OAs. The Hon'ble Chairman ordered the OAs to be placed before me for hearing the points of difference.

3. When the matter came up before me today, Mrs Meera Chhibber appeared for the applicants. Mr Rajinder Pandita, Mrs Jyotsana Kaushik and Mr Arun Bhardwaj appeared for the respondents.

4. At the outset, the counsel for the respondents submitted that the view taken by the Division Bench in regard to the declarations and directions proposed is contrary to the veiw taken by another Division Bench of the Tribunal in OA No. 362/95 titled Ranjit Singh Vs. Lt. Governor of NCT of Delhi and that, therefore, the respondents have filed three MAs for having the issues referred to a larger Bench for a solution and that these MAs may first be considered and then only the point of disagreement be considered. The MAs referred to by the learned counsel for the respondents have not been listed for hearing today. However, I directed the Registry to send the unnumbered MAs and have perused them. In the MAs (unnumbered), it has been alleged that the Division Bench in Ranjit Singh's case has considered the identical issue which was considered by the Division Bench in this case and the view held by the Division Bench in this case is contrary to the view taken in Ranjit Singh's case and that for the purpose of avoiding diversity of views and for having consistency, it is necessary that thee point is referred to a larger Bench for a solution. I have gone through the above judgement. I find that the Hon'ble Acting Chairman had after thorough discussion held that Ranjit Singh's case is distinguishable on facts and what was held in that case does not apply to the facts of the case on hand. This view of the Hon'ble Acting Chairman met with the full agreement of the Judicial Member also. So the Acting Chairman as well as the Judicial Member are unanimous in the view that the decision in Ranjit Singh's case has no relevance or application to the facts of this case as it is clearly distinguishable. Therefore, it is inappropriate to approach the third Member to go into the correctness of the view taken by two Members of the Division Bench. The third Member has only to consider the point of disagreement between the two

components of the Division Bench. The unnumbered MAs, therefore, do not merit consideration as the points put forth in these MAs have already been the subject matter of consideration by the Division Bench which has given its opinion on that.

5. Now I come to the point of difference. The short question is - whenever a review DPC is directed to be convened by an order or the Tribunal or court after being satisfied that the original DPC did not consider the case of the applicants before it in accordance with the rules and if the review DPC subsequently made its recommendations to promote the applicants, is it necessary to give notice to those who had already been promoted by the original DPC as their seniority position is likely to altered to their detriment. The learned Judicial Member is of the view that it is necessary to give notice to those who were already promoted and whose seniority would be adversely affected. This opinion was considered by the Hon'ble Acting Chairman as he then was and he found that it was not necessary to give such a notice. According to the Hon'ble Acting Chairman, the effect of the review DPC would be that the original proceedings of the DPC would stand amended with retrospective effect and that this would not confer any right on anybody to be heard before any orders are passed by the competent authority granting promotion on the basis of the review DPC. I am in full agreement with this view. The meeting of the review DPC is not a subsequent, separate or independent DPC. The committee is reviewing a process which has already been undertaken and the resultant recommendations thereof would have the same effect of the recommendations of the original DPC. In effect, the recommendations of the Review DPC are to be with retrospective effect. A direction to convene a review DPC is made by the Tribunal or court after being satisfied that the original DPC did not consider the case of the officers properly in accordance with the rules and the relevant facts. In such a case, if a review DPC is

held, there is likely to be variations in the seniority of the officers who have already been promoted. This does not require a notice being given to those who were promoted earlier. It should be noted that those who seek a review of the DPC have not been seeking any relief against those who have been promoted earlier but are seeking only enforcement of their right to be considered in accordance with the extant rules and instructions. Therefore, I agree with the opinion of the Hon'ble Acting Chairman and I am of the view that it is not necessary to insert the paragraph as suggested by the Hon'ble judicial Member.

6. In the result, as the Hon'ble Acting Chairman had already demitted the office, and as I am in full agreement with the view expressed by him, instead of directing the OA being placed before the Division Bench for disposal, the OA is disposed of in accordance with the majority view shared by me and the Hon'ble Acting Chairman. The OA is, therefore, disposed of with the declarations/directions contained in paragraph 24 of the judgement (Supra).

There is not order as to costs.

**[A.V.Haridasan]**
**Vice Chairman (J)**

**aa.**