

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 1530/95

New Delhi this the 1st day of September, 1999

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

Shri Lal Dhar,
ASI No. 2779/D,
S/O Shri Sripati,
Qtr. No. H-31, Police Station
Rajinder Nagar, New Delhi.

... Applicant

(By Advocate: Dr. M.P. Raju with
Shri S.K. Gupta)

versus

1. N.C.T. Delhi, through
Secretary
Secretariat, Rajpur Road
Delhi.
2. Commissioner of Police
Police Headquarters
ITO, New Delhi.
3. Dy. Commissioner of Police
New Delhi District, New Delhi. ... Respondents

(By Advocate: Shri Anup Bagai, through
proxy Shri Anil Singhal)

ORDER(ORAL)

Hon'ble Shri S.P. Biswas, M(A).

Basically two issues fall for determination
in this case. These are as follows:-

(i) Whether a set of three adverse remarks
of "Censure" reported against one particular
calendar year, can be taken into
consideration for the purposes of deciding
eligibility for promotion of an official in
Delhi Police after a lapse of six months
when the effect of "Censure" lapses?

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(ii) If the ACR of an official for the period from 1.4.1993 to 31.3.1994 has been held as adverse, can it be used for the purposes of denial of promotion to an official concerned without communicating the same to him at the relevant point of time?

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2. The applicant, who belongs to the SC community is aggrieved by the impugned order at Annexure A-1 dated 19.12.1994/12.12.1994 by which the adverse remarks for different periods of a year have been communicated to him for the acts of omissions and commissions allegedly perpetrated by the applicant between August, 1992 to December, 1993. The applicant is also aggrieved by the order dated 25.11.1995 (Annexure-VII) by which his name has not been included in List 'E-1' which is a pre-requisite for subsequent promotion to the post of Sub-Inspector (SI).

3. We have heard the learned counsel for the applicant as well as respondents and perused the records.

4. The instructions that govern finalisation of promotional orders in the facts and circumstances of such cases are that the working performance of the candidate seeking such promotion for a period of five years has to be seen. Years relevant for applicant's promotion herein relate to 1989-90 to 1993-94. Perusal of the ACRs and profile of personal service records of the applicant shows

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that out of five years, including 1993-94, the applicant had earned satisfactory performance for three years. It is only in the last year i.e. 1993-94, the applicant had three 'Censure' remarks on 7.4.1993, 27.7.1993 and 6.9.1993 for omission/commission committed by him on 30.12.1993, 2.11.1992 and 3.8.1992 respectively.

5. Learned counsel for the applicant would argue that validity of the "Censure" would be only for six months in terms of the instructions under Annexure-IX dated 23.9.1992. In other words, since the last adverse remarks of "Censure" were communicated to the applicant on 6.9.1993, the impact of the series of adverse remarks should have been continued only upto March, 1994. Nothing could have come in the way of applicant's promotion after March, 1994. Unfortunately, all those remarks were taken into consideration when the DPC was held on 25.10.1994 for consideration of applicant's promotion. To add insult to injury, even the promotional order was issued on 25.11.1994 following the DPC held in October, 1994. The respondents have thus legally faulted in not considering the applicant's case for promotion as SI. All this has happened because the impact of adverse remarks of "Censure" was wrongly allowed to take place although it had lapsed when the DPC was held, the counsel for the applicant contended. We find some force in the submissions made by the counsel because of the details in para (v) of the circular dated 23.9.1992 (Annexure A-IX) issued by the respondents. We also find infirmity in the

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matter of writing the ACR of the applicant. In Para 4.8 of the counter the respondents have submitted that "his ACR for the period from 1.4.1993 to 31.3.1994 is also adverse". This was neither communicated to the applicant nor the applicant was given any opportunity to represent against these remarks. (21)

6. In the light of details, as aforesaid, the applicant's plea for consideration of promotion to the post of SI from the date his juniors were promoted deserves to be considered. The application is, therefore, partly allowed with the following directions:

(i) Respondents shall consider expunging the adverse remarks in the ACR of the applicant for the period from 1.4.1993 to 31.3.1994.

(ii) Respondents shall also reconsider the applicant's case for inclusion of his name in the List E-I by holding review DPC for the year 1993-94.

(iii) If the applicant is found suitable/fit for inclusion of his name in 'E-1' List by the said DPC, the applicant will be entitled for promotion from 25.11.1994 i.e. from the date when his juniors were promoted. The applicant shall be eligible for consequential benefits in accordance with law.


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(iv) The exercise for holding the review DPC shall be completed within a period of three

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months from the date of issue of a copy of this order.

(v) No order as to costs.


(S.P. Biswas)
Member (A)


(Smt. Lakshmi Swaminathan)
Member (J)

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