

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

AB

O.A. No.1642/95

O.A. No.1643/95

O.A. No.1646/95 ✓

Hon'ble Shri Justice V.Rajagopala Reddy, Vice Chairman(J)
Hon'ble Shri R.K. Ahooja, Member(A)

New Delhi, this the 15th day of July, 1999

O.A. No.1642/95

Head Constable Ravinder Kumar Yadav, No.20/W
Delhi Police
through Mrs. Avnish Ahlawat, Advocate
243, Lawyers' Chambers
Delhi High Court, New DelhiApplicant

(By Advocate: Mrs. Avnish Ahlawat)

Versus

1. Union of India, through
Lt. Governor of Delhi, through
Commissioner of Police, Delhi
Police Headquarters
M.S.O. Building
I.P. Estate, New Delhi 110 002
2. Additional Commissioner of Police(HQ)
Police Headquarters
M.S.O. Building
I.P. Estate, New Delhi 110 002
3. Deputy Commissioner of Police(HQ/I)
Police Headquarters
M.S.O. Building
I.P. Estate, New Delhi 110 002Respondents

(By Advocate: Shri Girish Kathpalia)

O.A.No.1643/95

Head Constable Rajinder SIngh, No.147/L
Delhi Police, through
Mrs. Avnish ahlawat, Advocate
243, Lawyers' Chambers
Delhi High Court, New DelhiApplicant

(By Advocate: Mrs. Sumedha Sharma)

Versus

1. Union of India, through
Lt. Governor of Delhi, through
Commissioner of Police, Delhi
Police Headquarters
M.S.O. Building
I.P. Estate, New Delhi 110 002

DR

(34)

2. Additional Commissioner of Police(HQ)
 Police Headquarters
 M.S.O. Building
 I.P. Estate, New Delhi 110 002

3. Deputy Commissioner of Police(HQ/I)
 Police Headquarters
 M.S.O. Building
 I.P. Estate, New Delhi 110 002 Respondents

(By Advocate: Shri Anil Singhal)

O.A. No. 1646/95

Head Constable Chand Singh, No.42/NW
 Delhi Police
 Through Mrs. Avnish Ahlawat, Advocate
 243, Lawyers' Chambers
 Delhi High Court, New Delhi Applicant

(By Advocate: Mrs. Sumedha Sharma)

Versus

1. Union of India, through
 Lt. Governor of Delhi, through
 Commissioner of Police, Delhi
 Police Headquarters
 M.S.O. Building
 I.P. Estate, New Delhi 110 002

2. Additional Commissioner of Police(HQ)
 Police Headquarters
 M.S.O. Building
 I.P. Estate, New Delhi 110 002

3. Deputy Commissioner of Police(HQ/I)
 Police Headquarters
 M.S.O. Building
 I.P. Estate, New Delhi 110 002 Respondents

(By Advocate: Shri Girish Kathpalia)

O R D E R

(Hon'ble Shri R.K. Ahooja, member (A))

1. Since the main issue raised in the three OAs is the same, they are being disposed off by this common order.

2. The facts leading to the controversy in these OAs may be briefly stated.

O.A. No. 1642/95

2. The applicant who was promoted to the rank of Head Constable with effect from 24.6.1983 became eligible

d

(37)

for consideration for the post of Assistant Sub-Inspector on completion of five years service. Rule 15(1) of the Delhi Police (Promotion and Confirmation) Rules, 1980 provides that confirmed Head Constables with minimum five years service will be eligible for consideration on selection by a Departmental Promotion Committee. The names will be brought on list D-I keeping in view the number of vacancies likely to occur, whereafter they shall be detailed for training in the Intermediate School Course and after qualifying the said course, their names will be brought on the List D-2. Promotions to the post of Assistant Sub-Inspector will be made from this List D-2. The applicant was considered for List D-1 on the basis of letter dated 13.7.1994 but was not included in the list published and notified by order dated 13.7.1994 though many of his juniors found place in the said list. The applicant claims that the general instructions issued on 9.10.1994 for the Departmental Promotion Committee prescribed that individuals having atleast three good or above average reports and without any adverse or below average reports during the past five years should be empanelled. According to the applicant his record for the previous five years was either excellent or very good and he had earned a number of commendation certificates. However he was awarded a censure by an order dated February 11, 1992 on the ground that he alongwith two other officials had brought some persons to the Police Station and after giving them a beating had removed a sum of Rs.17,850/- from their pockets. The applicant states that censure is one of the minor punishments and as per the orders of the Commissioner of Police the punishment bars promotion only for a period of six months. His grievance is that the

0-

4

(3b)

respondents have wrongly rejected his case for inclusion in the List D-I in 1995 on the basis of a censure issued in 1992 even though its adverse effect had lapsed after six months.

O.A. No.1643/95

4. The applicant was promoted to the rank of Head Constable on 24.6.1983. He was also considered for promotion to the rank of Assistant Sub-Inspector on the basis of the letter dated 13.7.1994 but his name did not find a place in the List D-I published with order dated 16.3.1995. He also claims that he had an excellent or very good record for the previous five years and had earned a number of commendation certificates. He was also awarded a censure by order dated 24.2.1995 after departmental proceedings under Section 14 of the Delhi Police Act alongwith another officer on the allegation that he alongwith four others had brought two persons to the Police Station on the false charge of eve-teasing and on the threat of arrest extorted from them Rs.2,000/-. The applicant also submits that the effect of the censure could be only for six months whereafter he should have been promoted on the basis of his excellent record.

O.A. No.1646/95

5. The applicant was promoted to the rank of Head Constable on 28.4.1983. He was also considered for promotion to the rank of Assistant Sub-Inspector on the basis of the letter dated 13.7.1994. His grievance also is that his name was omitted from List D-I notified by order dated 16.3.1995. The applicant claims that his previous record of five years was excellent or very good and though his ACR for the period 18.8.1993 to 31.3.1994

(2)

OJ

it was graded as 'C' it was converted into 'Good' by the appellate authority. However a censure was awarded to him in 1994 on the basis of a departmental enquiry on the allegation that he remained unauthorisedly absent from 10.9.1993 to 14.2.1994 for a period of 156 days.

6. The applicant claims that the enquiry authority had accepted that his absence was on account of injuries sustained in an accident and the only default found was that he had not been able to inform the department about his injury. It is his contention that the adverse effect of censure is washed away after six months and in any case the default for which this censure was awarded did not involve moral turpitude or lack of integrity.

7. In the backdrop of the above facts, we have to consider the question as to whether the penalty of censure can stand in the way of promotions of the applicants.

8. We have heard the counsel for the applicants in all the three OAs and the counsel for the respondent in O.A. No.1643/95. It has been brought to our notice that the applicants in OA Nos.1643/95 and 1646/95 have since been included in the List D-I on the basis of selections made in 1998 and in their case now the only relief sought is that they may be given seniority on the basis of their next juniors promoted as per List D-I notified by the order dated 16.3.1995. However, the applicant in O.A. No.1643/95 has not yet been promoted.

OJ

9. It is an admitted position that in neither of the three cases the applicants had appealed against the penalty order of censure. An attempt was made by the learned counsel for the applicants to argue that the penalty orders were uncalled for, that proper opportunity was not afforded to the applicants before imposing the penalty, and that there was a lack of application of mind by the disciplinary authority. None of these arguments are now relevant since the penalty orders were not challenged and have become final. We are not therefore called upon to go into these points.

10. A point was raised before us that one of the reasons on account of which the penalty orders were not challenged was that as per the understanding of the applicants the penalty orders would cease to have any adverse effect after the expiry of a period of six months. Be that as it may, the point at issue is whether the departmental promotion committee could take into account the penalty which assessed the suitability of the applicants for the next higher rank.

11. The relevant provisions of Delhi Police (Promotion and Confirmation) Rules, 1980 read as follows:-

5. General Principles of Promotion. - (1) "Promotion from one rank to another and from lower grade to the higher grade in the same rank shall be made by selection tempered by seniority. Efficiency and honesty shall be the main factors governing selection. (emphasis supplied)

15(1) List-D (Executive). - "Confirmed HeadConstables, who have put in minimum of 5 years service in the rank, shall be eligible. The selection shall be made on the recommendations of the Departmental Promotion Committee. The Head Constables, so selected, shall be brought on list D-I, keeping in view the number of vacancies likely to occur in the rank of Assistant Sub-Inspector in the following one

(21)

year, in order of their respective seniority in the rank of Head Constable. They shall be detailed for training in the Intermediate School Course. Those, who successfully qualify the Intermediate School Course, shall be brought on List D-II, as per their respective seniority on List D-I. Promotions shall be ordered from amongst the Head Constables on List D-II as and when vacancies occur." (emphasis supplied).

12. It is clear that the departmental promotion committee has to consider the Head Constables with five years service on the basis of selection. It was contended on behalf of the applicants that the penalty of censure ~~was~~ washed out after a period of six months and is no longer to be taken into account. We have seen from the facts of the case enumerated above that in the case of applicants in O.A. Nos. 1642/95 and 1643/95 the penalty of censure was imposed on the allegation of extortion of money which clearly indicated lack of integrity and moral turpitude. As per the circular issued by the Commissioner of Police the penalty of censure could not constitute an embargo after six months on promotion. However, the penalty order since it constituted an important and significant reflection on the conduct of the applicants continued to form part of their service record. It would be illogical to contend that, while an adverse entry in the annual report of an official would continue to remain and be taken into account at the time of promotion yet an established fact of misconduct resulting in a penalty would not be considered. The departmental promotion committee while making a selection has to see the record of the official for the previous five years, and if there is a penalty, then it has to take into account and weigh it against any other excellent or very good reports which the official may have earned. In the presence of these penalty orders within the period of consideration it cannot be said that

Dr



the departmental promotion committee had no basis for rejecting the cases of the applicants. There would, therefore, be no basis for interference with the order of the respondents in refusing promotion to the applicants. It is also relevant to note that in respect of applicant in O.A. No.1646/95, the penalty of censure was not even six months old when the DPC met and hence his case fell within the embargo period.

13. We find that this issue had also come up in an earlier O.A. No.1912/95 Harish Chander Yati Vs. Commissioner of Police decided on 18.7.1996 by a Division Bench (of which one of us was also a Member). It was observed by the Tribunal in that O.A. that "the guidelines issued by the Commissioner of Police in circular dated 22.9.92 in regard to the effect of censure to debarring officials from promotion for a period of six months cannot be interpreted to mean that the punishment of censure ceases to be a relevant factor after a period of six months."

14. Being in respectful agreement with the observations and conclusions of the coordinate bench in O.A. No.1912/95 and in view of the reasons stated by us earlier, we consider that the applicants have no good ground for challenging the decision of the respondents in not promoting them in 1995. Accordingly all the OAs are dismissed without any order as to costs.

Member(A)

Vice Chairman(J)

sct

Original judgement in OA/1642/95

6/8
15/12/99
C.O. CIV