

2

9

Central Administrative Tribunal
Principal Bench

O.A. 2034/95

New Delhi this the 27 th day of October, 1999

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

Sub-Inspector Narender Kumar Tyagi,
No. D-3079, Delhi Police,
F.R.R.O., Hans Bhavan,
New Delhi.

.... Applicant.

By Advocate Mrs. Avnish Ahlawat.

Versus

1. Union of India, through
Government of National Capital
Territory of Delhi through
Lt. Governor of Delhi,
Raj Niwas,
Delhi.

2. Commissioner of Police, Delhi,
Police Headquarters,
MSD Building, I.P. Estate,
New Delhi-110 002.

.... Respondents.

By Advocate Shri S.K. Gupta proxy for Shri B.S. Gupta.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved that the respondents have taken arbitrary and discriminatory action against him in not awarding out of turn promotion while giving the same to some other persons, who were working under him. He had made a representation against this action of the respondents which was returned to him by the impugned order dated 1.2.1995 stating that there was no justification in sending such representation/requests to the Headquarters, which has been stated as showing that either his case has already been considered and could not be acceded to or the same is under consideration.

13

2. The brief facts of the case are that the applicant joined Delhi Police as Constable (Executive) on 2.1.1982 and was promoted as Sub Inspector (Executive) on 9.7.1990. The Delhi Police was looking for a criminal by the name of Naresh @ Nasso, a bad character of the Police Station Kotwali, who was wanted in a number of cases of murder, attempt to murder and one case of armed robbery. He was involved in over 18 criminal cases. The applicant has stated that he had jumped the bail granted to him in one of the cases and let loose a reign of terror resorting to killing all over Delhi. The respondents had received a secret information that Naresh may visit his sister in Agra on Raksha Bandhan day and the team headed by the applicant along with one Head Constable and three Constables were sent to Agra. The applicant along with the local police reached the address of the sister of the criminal Naresh and when he was challenged, he had fired at the police party. Finally, Naresh and his associate were killed by the police. For this daring act, the applicant has stated that he had been given Asadharan Karya Puruskar (AKP) which carried a cash award of Rs.3000/-. The two Constables in his team, namely, Constables Pramod Kumar and Praveen Kumar were given out of turn promotion under Rule 19(ii) of the Delhi Police (Promotion and Confirmation) Rules, 1980 (hereinafter referred to as 'the Rules'). The other Sub-Inspector Mahipal Singh, who was also connected with the operation dealing Naresh was also awarded "AKP".

3. The learned counsel for the applicant has submitted that when Naresh and his accomplice shot at the police party, the applicant was also exposed to great danger and he had shown exemplary devotion to duty. She has submitted that for this act of bravery, the respondents should have considered the applicant, who was leader of the

team, for out of turn promotion. In the O.A. the applicant has referred to a number of other cases, who have been given out of turn promotion. In paragraph 4.10 of the O.A., the applicant has stated that in order to encourage outstanding sportsmen, marksmen and officers who have shown exceptional gallantry and devotion to duty, they have been given promotion under Rule 19(ii) of the Rules. Learned counsel has submitted that even in a case where the person is neither outstanding sportsman or marksman or officer nor has shown any exceptional gallantry and devotion to duty, but because of his posting in a hospital he has established excellent relations with the members of the staff and has rendered invaluable assistance in getting proper treatment to the members of the Delhi Police in the hospital, he has been given out of turn promotion under Rule 19 (ii) of the Rules. She has referred to the case of Head Constable Iqbal Singh, who was given out of turn promotion merely because he had been able to establish good relations with the members of AIIMS and he could, therefore, get medical treatment to the police officers. She has stated that the applicant's name had been recommended by the Deputy Commissioner of Police (North-District) for out of turn promotion because of his dedication and strong sense of devotion to duty as a dangerous and desperate character/gangster had been killed in police encounter, but in spite of that the same had not been granted. Learned counsel has very vehemently submitted that the action of the respondents is wholly arbitrary and discriminatory as the respondents could not have ignored at least the head of the team in giving out of turn promotion. She has also submitted that the recommendation of the DCP was for the whole team which was headed by the applicant. The applicant has, therefore, sought a direction to the respondents that he may be given out of turn promotion along

V2/

○ with his team members w.e.f. 5.8.1994 when other members were given ad hoc promotion with all consequential benefits, including pay and allowances, seniority, etc.

4. The respondents in their reply have submitted that for making out of turn promotion, the applicant cannot claim this as a matter of right. In August, 1993, the Police Headquarters had received a citation in respect of the six officers, namely, (1) SI Narender Kumar; (2) SI Mahipal Singh; (3) HC Nafe Singh; (4) Const. Pramod Kumar; (5) Const. Parveen Kumar; (6) Const. Mukesh Kumar, for out of turn promotion under Rule 19(ii) of the Rules. They have stated that various units of Delhi Police had formed special teams to trace Nasso but he always appeared to be one step ahead of the police. However, on receipt of a secret information that the criminal Nasso would be visiting his sister in Agra, a special team consisting of the applicant and four others excepting SI Mahipal Singh, who had received the secret information, was despatched to Agra. They have submitted that a total of 156 recommendations had been placed before the Incentive Committee involving 105 officers (17 SIs, 5 ASIs, 20 HCs and 63 Constables), including the name of SI Mahipal Singh, for out of turn promotion. The Incentive Committee had cleared the names of 4 SIs, 3 ASIs, 8 HCs and 19 Constables for out of turn promotion and the rest were either granted AKP or Commendation Rolls/Certificates, etc.

5. Shri S.K. Gupta, learned proxy counsel, has submitted that there is a stipulation in the Rules governing such promotions that it should not exceed 5% of the vacancies in a given year. The respondents have also stated that while giving out of turn promotions, the Incentive Committee has to keep in mind the limited number of officers, who can be

granted out of turn promotion, keeping in view the vacancy position and, therefore, it selects only those persons whose cases are really outstanding in comparison to others in the lot placed before it. They have submitted that the recommendation of the DCP, North District, was duly considered by the Incentive Committee. The role of Constables Pramod Kumar and Praveen Kumar, was found to be vital with reference to the individual gallant act at the given situation and as such their names were approved for out of turn promotion. The applicant and SI Mahipal Singh, were recommended for the grant of AKP and the role of the other Constables and Head Constables were not found to be of high order requiring any award, as such they were left out. They have submitted that the petitioner had given an exaggerated version of himself. The respondents have admitted that he was in charge of the team and had also shown exemplary devotion to duty but the two Constables who were given out of turn promotions, were the persons who had really displayed courage and gallant act during the encounter. Shri S.K. Gupta, learned counsel, has also submitted the relevant departmental records. In the Return Information filed on 4.8.1993 in the case, it has been stated that Constables Pramod and Praveen Kumar had fired 6/5 rounds from their arms during the encounter. The records also show that the Addl. Commissioner of Police had recommended out of turn promotions only to Constables Pramod and Praveen Kumar and AKP to the two SIs in the police party. Learned counsel, has, therefore, submitted that there is no discrimination as alleged by the applicant, as the case of the applicant as well as the other persons have been fully considered by the Incentive Committee in accordance with the Rules and established practice. Besides, he has submitted that the applicant has been awarded the AKP and cash award and he

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cannot claim the out of turn promotion as a matter of right. He has also stated that with regard to the other cases mentioned by the applicant's counsel in which out of turn promotions were given, he has submitted that all these cases have been dealt with on merits. He has, therefore, submitted that the O.A. may be dismissed.

6. We have also seen the rejoinder filed by the applicant and heard Mrs. Avnish Ahlawat, learned counsel, in reply, who has drawn our attention to a number of other cases where Sub-Inspectors have been given out of turn promotions, who, according to her, have not shown exceptional gallantry or devotion to duty. She has reiterated that the applicant should be given out of turn promotion for his actions in the encounter with the criminal Nasso.

7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

8. In the present case, it is not disputed that the applicant headed the team which was sent by the Delhi Police to Agra to confront the dreaded criminal Naresh in August, 1993. It is also not disputed that six officers/men were in this team, namely, 2 SIs, 1 Head Constable and 3 Constables. Out of these six persons, only two persons, namely, Constables Pramod and Parveen Kumar have been recommended for promotion under Rule 19(ii) of the Rules. The two Sub-Inspectors, including the applicant, have been given AKP and the other two persons have got nothing special for their work in the team. The contention of the applicant that he should also be given an out of turn promotion as he was the head of the team is not tenable. There is no doubt on perusal of the relevant official records that the applicant's

8/

15

claim had also been duly considered by the Incentive Committee for out of turn promotion in accordance with the Rules and instructions. Although the DCP had recommended all the six persons for out of turn promotion in his letter dated 27.8.1993, but Addl. Commissioner of Police had agreed this in respect of only the two Constables, and AKP to the two SIs. The report dated 4.8.1993 which has been recorded when the raiding party returns at PS Kotwali, specifically states that the Constables who had been given the out of turn promotion had fired from their weapons during the encounter. Rule 19(ii) reads as follows:

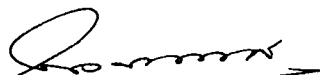
"To encourage outstanding sportsmen, marksmen, officers who have shown exceptional gallantry and devotion to duty, the Commissioner of Police may, with prior approval of Administrator, promote such officers to the next higher rank provided vacancies exist. Such promotions shall not exceed 5 per cent of the vacancies likely to fall vacant in the given year in the rank. Such promotions shall be treated as ad hoc and will be regularised when the persons so promoted have successfully completed the training course prescribed like (Lower School Course), if any. For purposes of seniority such promotees shall be placed at the bottom of the promotion list drawn up for that year".

9. The respondents have submitted that the recommendations for out of turn promotion have been considered by the Incentive Committee of the Commissioner of Police, Delhi and the two Addl. Commissioners of Police of the Headquarters. The meetings of the Committee are normally held quarterly and all the recommendations are kept before it for scrutiny. As per the provisions of Rule 19(ii), out of turn promotion cannot exceed 5% of the vacancies likely to fall in the given year in the rank. Merely because the applicant had headed the team in the aforesaid case does not automatically entitle him for grant of out of turn promotion and in any case he had been given the AKP whereas two other persons in the same team have not been found fit for any such special award. The other cases mentioned by Mrs. Avnish


92/1

Ahlawat, learned counsel, who have been given out of turn promotions, cannot also help the applicant because each of the cases have been considered on the facts and merit of the case. It is also seen from perusal of the records submitted by the respondents that in several other cases also the Incentive Committee had not given out of turn promotion to all those who had been recommended for the same by their immediate senior officer. The contention of Mrs. Avnish Ahlawat, learned counsel, that merely because some Constable posted in AIIMS Hospital has been given an out of turn promotion and, therefore, the applicant should also be given the same award, is misconceived. The other contention of the learned counsel for the applicant that the other Sub-Inspector i.e. SI Mahipal Singh, who was only instrumental in getting certain secret information and did not even deserve to get the AKP will also not help the applicant in establishing his claim ^{out of turn} for turn promotion. In the facts and circumstances of the case, we are unable to agree with the applicant's counsel that the respondents have acted either arbitrarily or in a discriminatory manner against the applicant. The fact is that his case has been considered by the competent authority, keeping in view the provisions of Rule 19(ii) of the Rules, which includes granting promotions on out of turn basis, subject to availability of vacancies in the given year in the rank and taking into account the particular facts of the case. In the facts and circumstances of the case, no such direction as prayed for can be granted by the Tribunal as the respondents have acted in accordance with the rules and instructions.

10. In the result, for the reasons given above, we find no merit in this application. The O.A. is accordingly dismissed. No order as to costs.


(S.P. Biswas)
Member(A)

'SRD'


(Smt. Lakshmi Swaminathan)
Member(J)