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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.No. 2074/95

New Delhi this the 7th Day of March 2000
HON'BLE MR. JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MR. V.K. MAJOTRA, MEMBER (A)

Satish Kumar (1069/DAP)
Son of late Shri Kundar Lal,
R/o Quarter No. 415, Police Colony,
Akata Kidara,
Sardar Bazar,
Delhi-110 006.

Applicant

Vs.

1. The Commissioner of Police,
Delhi,
Police Headquarters,
I.P. Estate,
New Delhi-110 002.
2. Deputy Commissioner of Police,
2nd Bn., Delhi Armed Police,
New Police Lines,
Kingsway Camp,
Delhi-110 009.
3. Shri Harish Chander (2055/DAP),
Working as ASI in the North
East District of Delhi Police,
(Service to be effected through
DCP, North East District,
P.S. Welcome, Seelampur,
Delhi. Respondents

(Shri Rameshwar Nath, SI, Departmental Representative)

O R D E R (Oral)

HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)

The applicant has assailed respondents's order dated 18.10.1995, Annexure A, whereby rejection of his representation by the Addl. Commissioner of Police, the Appellate Authority regarding ante-dating confirmation in the rank of Head Constable (Executive) was conveyed by the Deputy Commissioner of Police. The applicant was appointed as Constable (Executive) in Delhi Police on 31.1.1975. He was promoted as Head Constable (Executive) in June 1983.

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He completed two years of probation as Head Constable in June 1985. However, he was awarded penalty of censure on 28.8.1985 for an act of misconduct. His juniors/batchmates were confirmed on 22.11.1985. The applicant was confirmed on 22.5.1986. His juniors have been placed in the List D-1 (Executive) on 16.3.1995. Applicant's name was brought down to Serial No. 260 of list D-1 (Executive) as he was confirmed as Head Constable (Executive) from 22.5.1986. His juniors, respondent 3, Harish Chander who was confirmed on 22.11.1985 was shown at Serial No. 151 in the list dated 16.3.1985, Annexure E. The applicant has averred that his seniority should have been based on the basis of date of promotion and not on the basis of confirmation. It has also been contended that the punishment of censure cannot come in the way of promotion particularly in view of the instructions of Delhi Police providing that the effect of censure would last only for six months. The applicant has sought that respondents be directed to give seniority to the applicant as Head Constable (Executive) from June 1983 when he was promoted as such on regular basis directing the respondents to confirm the applicant as Head Constable (Executive) w.e.f. 22.11.1985 when his juniors/batchmates were so confirmed. He has sought further directions to the respondents to put applicant's name in D-1 list (Executive) dated 16.3.1995, Annexure E, at the proper place in view of the relief claimed above. He has sought promotion as ASI (Executive) on ad hoc basis from 16.5.1995.

2. In their counter, the respondents have stated that on the date of completion of two years of service of the applicant on 24.6.1985, permanent posts was not available. The same became available on 22.11.1985. Thus, a number of his seniors as well as juniors who were found fit were declared as confirmed from 22.11.1985 but the applicant was passed over for a period of six months due to censure awarded to him vide order dated 28.8.1985. They have also taken the plea that the applicant had made representation after a long delay of 8 years. The applicant has filed their rejoinder, as well.

3. At the time of hearing, written arguments were filed on behalf of the applicant and the respondents had filed a Circular No. 13794-876/CB dated 19.4.1980.

4. We have carefully considered the material on record.

5. The basic question for adjudication in this case is whether seniority should be based on the date of appointment or it should be determined on the basis of confirmation. Another point arising for determination is what the effect of the penalty of censure is on confirmation.

6. The applicant has relied on this Tribunal's judgement dated 27.10.1999 in the case of Virender Kumar Jain Vs. Union of India wherein it

was held that "once an incumbent is appointed to a post in accordance with the rules seniority has to be counted from the date of appointment and not according to the date of confirmation". A Division Bench of this Tribunal in the case of Manoj Kumar Sharma Vs. Delhi Administration again examined this controversy in the context of Rule 18(i) of the Delhi Police (Promotion and Confirmation) Rules 22 of the Delhi Police (Appointment and Recruitment) Rules and held that the seniority in Delhi Police cannot be given on the basis of confirmation. In the light of the ratio of the aforesaid rules, we are inclined to agree with the applicant that the date of appointment to a particular post should form the basis of seniority rather than confirmation against that post.

7. Now we propose to address ourselves to the next issue as to the impact of the penalty of censure on confirmation. The respondents have brought to our attention Circular 13794-876/CB dated 19.4.1980 wherein it is envisaged that a minor punishment will have the effect of postponing confirmation for six months and a major punishment or an adverse annual report for one year w.e.f. the date of permanent post becoming available. The applicant has referred to Circular order No. 39225-325/CB-I dated 23.9.1992. One of the principles for observation by the Departmental Promotion Committee mentioned in the circular is "Officers who have been awarded censures during the last six months with no other punishment may also be allowed to be brought on promotion list provided they do not have any other major punishment.

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However, the effect of censure by debarring the official for promotion by six months shall continue." In the present case, the applicant has no other major punishment and he has been visited with only a by punishment of censure. In the light of the above Circular order, the effect of censure can debar the applicant for promotion only by six months. In the normal course, the applicant should have been confirmed on completion of 2 years in June 1985 under Rule 5 (e) of Delhi Police (Promotion and Confirmation) Rules 1980. His batchmates were confirmed on 22.11.1985. The applicant was not confirmed ~~as~~ along with them as in the meanwhile, he was censured on 28.8.1985. As per the Circular order quoted above, the effect of censure could have been only for a period of six months from 28.8.1985 and not from 22.11.1985. The applicant should have been confirmed on 28.2.1986. The applicant's promotion to the post of ASI (Executive) should therefore have been considered by reckoning the date of confirmation of the applicant w.e.f. 28.2.1986.

7. In view of the above discussion, the respondents are directed to confirm the applicant as Head Constable (Executive) w.e.f. 28.2.1986 i.e. six months after the date of censure. The respondents are further directed to review the placement of applicant in the list D-1 (Executive) at an appropriate place deeming 28.2.1986 as his date of confirmation in the post of Head Constable (Executive).

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8. There is no order as to costs.

Ashok Agarwal
(Ashok Agarwal)
Chairman
V.K. Majotra
(V.K. Majotra)
Member (A)

Mittal