

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 544/95

109

T.A. No.

DATE OF DECISION : 20-9-99

Smt. Veena Sharma

....Petitioner

Sh. Shyam Babu

....Advocate for the
Petitioner(s)

VERSUS

Commissioner of Police and
Ors.

....Respondent

Sh. Raj Singh, learned counselAdvocate for
through proxy counsel Sh. A. K. Singh Respondents.

CORAM

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

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to a
Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)

Member (J)

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-544/95

New Delhi this the 20th day of September, 1999.

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

Smt. Veena Sharma,
W/o Sh. Vishnu Sharma,
R/o Q.No.121, Police Colony,
Hauz Khas, I.I.T. Gate,
New Delhi-16. Applicant

(through Sh. Shyam Babu, Advocate)

versus

1. Commissioner of Police, Delhi
Police Headquarters, I.P. Estate,
New Delhi-2.
2. Dy. Commissioner of Police(Hq.(I)),
Police Headquarters, I.P. Estate,
New Delhi-2. Respondents

(through Sh. A.K. Singh, proxy counsel for Sh. Raj Singh,
Advocate)

ORDER(ORAL)

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

The applicant is aggrieved by the orders passed by the respondents, namely, Deputy Commissioner of Police, Headquarters, Delhi dated 23.02.94 and 24.06.94 by which her representation dated 08.03.94 was rejected by the same official (Annexures A & B).

2. We have heard Shri Shyam Babu, learned counsel for the applicant and Sh. A.K. Singh, learned proxy counsel for the respondents.

3. Admittedly, the applicant was promoted with the prior approval of the Inspector General of

82

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Police, Delhi as Sub-Inspector on purely temporary and ad hoc basis w.e.f. 09.12.75 by order dated 12.12.75. By another order dated 30.04.87 she was regularised as Sub-Inspector (Woman) and placed on promotion list 'E' (Executive) and E-II (Executive) w.e.f. 09.12.75. By another Order No.18904/CB-III dated 01.05.87 published in the Delhi Police Gazette, the applicant, whose name appears at Serial No.23, was confirmed as Sub-Inspector(Woman) w.e.f. 05.09.79. After these various orders have been passed by the respondents, the respondents after nearly seven years passed the aforesaid impugned order dated 23.02.94. By this order they have cancelled the order dated 30.04.87 relating to the applicant so far as admission of her name to list 'E'(Executive) is concerned as well as cancelling the regularisation of promotion of Sub-Inspector (Woman) w.e.f. 09.12.75. In this order, they have stated that her name also figures above the name of Jagtar Kaur and below the name of Kanwaljit Kaur in the seniority of Sub-Inspectors (Women).

4. The learned counsel for the applicant has raised two main grounds to assail the cancellation order dated 23.02.94 and revise the seniority list. The first ground taken by him is that under Government of India orders under FR 31(A), the action for cancellation of the promotion and appointment orders could have been taken only by the next higher authority than the appointing authority. In this case

8

13

he has submitted that the various promotion orders which had been passed prior to 23.02.94 have been passed by the Deputy Commissioner of Police and the impugned cancellation order dated 23.02.94 has been passed by the same rank officer i.e. Deputy Commissioner of Police, Headquarters, Delhi.

5. The respondents in their reply have not controverted this allegation specifically excepting to state that any erroneous promotion and appointment order that might have been passed can be corrected by way of cancellation under FR 31(A) which does not attract the principles of natural justice or the provisions of Article 311(2) of the Constitution. The learned proxy counsel for the respondents has not been able to show that the respondents have complied with the Government of India, M.F. O.M. No. F.1(2)-Estt.III/59, dated 14.03.63. The relevant portion of the O.M. reads as follows:-

"Except where the appointing authority is the President, the question whether promotion/appointment of a particular Government servant to a post was erroneous or not should be decided by an authority next higher than the appointing authority in accordance with the established principles governing promotions/appointments. Where the appointing authority is the President the decision should rest with the President and should be final. The Ministry of Home Affairs should be consulted in respect of promotions/appointments in the Service administratively controlled by that Ministry. In other cases also, the Ministry of Home Affairs may be consulted if any point is doubtful."

29
(emphasis added)

6. From the facts mentioned above, it is seen that the impugned cancellation order dated 23.02.94 which was directed to be published in the Delhi Police Gazette has been issued by the Deputy Commissioner of Police, Headquarters, Delhi and it is a fact that the confirmation and appointment orders placing the applicant in promotion list 'E' (Executive and E-II (Executive) previously have also been issued by an officer of the same rank i.e. the Deputy Commissioner of Police. Therefore, on this ground, the application is entitled to succeed as the respondents have not complied with the aforesaid instructions contained in O.M. dated 14.03.63 of hearing the issue decided by an officer of higher rank than the appointing authority.

7. The second ground taken by the learned counsel for the applicant is that no opportunity of hearing was given nor any explanation offered to the applicant before passing the impugned cancellation order dated 23.02.94 and this was in fact a bolt from the blue after nearly seven years. The learned counsel for the applicant relies on the decision of the Tribunal in the case of M. Rajalingam Vs. U.O.I. (SLJ 1992(2) 206) (Madras Bench).

8. The learned counsel for the respondents has tried to argue that in such a case the principles of natural justice are not required to be complied with because the rule does not provide for it and such

18.

compliance is, therefore, not called for. He further submits that the cancellation of the promotion order is also not a punitive order. The arguments of the learned proxy counsel for the respondents cannot be accepted because the impugned cancellation order will certainly have an adverse affect on the applicant and visit her with civil consequences, as her previous promotion and confirmation orders have been cancelled and her seniority in the list of Sub-Inspectors (Women) depressed by the order dated 23.02.94. The respondents have also not placed on record the reasons why they considered the earlier promotion and confirmation orders of the applicant erroneous, for them to take action under the provisions of FR 31(A) after nearly seven years.

9. The decision of the Supreme Court in State of Orissa Vs. Dr. (Miss) Binapani Dei & Ors. (AIR 1967 SC 1269), followed in a catena of decisions of the Apex Court (see for example Maneka Gandhi Vs. U.O.I. (1978(1)SCC 248), is applicable to the facts and circumstances of this case. In Dr. (Miss) Binapani Dei's case (supra), the Apex Court held that:-

"An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fair play. The deciding authority is.....under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice."

In the present case, as the impugned order will have adverse affect on the applicant, the respondents ought to have issued a show cause notice and given an opportunity to the applicant to reply to the same, which they have failed to do. The fact that there has been a lapse of nearly seven years between the order of promotion and the order of cancellation is also very relevant to note. Therefore, the contention of the learned proxy counsel for the respondents that no show cause notice is called for in the present case as Article 311(2) of the Constitution is not attracted is rejected as it is settled law that in such cases the principle of natural justice will supplement the rules to the extent that the respondents ought to have given a show cause notice before proceeding to cancel the promotion orders under FR 31(A). The observations of the Tribunal in Rajalingam's case (supra) are also applicable to the present case.

10. For the reasons given above, the application succeeds and is allowed. The impugned cancellation order dated 23.02.94 and the rejection letter dated 24.06.94 are quashed and set aside. The applicant shall be entitled to all consequential benefits, including revision of seniority as existing prior to the impugned orders. Respondents shall take necessary action within three months from the date of receipt of a copy of this order. However, our order

8r

will not be a bar to the respondents proceeding in the matter strictly in accordance with rules and regulations.

No order as to costs.

S. P. Biswas
(S.P. Biswas)
Member(A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

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