

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1760 of 1996

New Delhi, this 1st day of March, 2000

Hon'ble Shri Justice V. Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

Richpal Singh (4706/DAP0
S/o Shri Ram Saroop
R/o F.4/216 Sector 16-A
Rohini, Delhi. Applicant

(By Shri Shyam Babu, Advocate - not present)

versus

1. The Commissioner of Police Delhi
Police Headquarters
I.P.Estate, New Delhi
2. Deputy Commissioner of Police(Hqr.I)
Police Headquarters
I.P.Estate
New Delhi. Respondents

(By Shri Arun Bhardwaj, Advocate - not present)

ORDER(oral)

By Reddy, J. -

The applicant is present. He submits that the counsel has not come because of 'strike'. Written arguments are however submitted by the counsel for the applicant. Departmental representative Shri Baljit Singh, HC is present on behalf of respondents though his counsel is not present. Since the matter is of 1996, we have proceeded to dispose of the same on merits after perusing the pleadings on record.

2. The applicant joined Delhi Police as Constable(Executive) on 1.11.1984. His name was brought on promotion list 'A' (Executive) with effect from 2.12.1992. Subsequently by an order dated 16.5.1994, the applicant was awarded the

(V.R.R.)

(5)

punishment of forfeiture of three years of approved service, his pay was reduced by three stages from Rs.1110 to Rs.1050 per month, the applicant was also not to earn increments of pay during the period of reduction and on the expiry of this period the reduction will have the effect of postponing the future increments of pay. The applicant preferred an appeal against the order of punishment on 15.6.1994. Meanwhile the applicant was deputed to the Lower School Training Course under Rule 12 of the Delhi Police (Promotion & Confirmation) Rules as his name was in the promotion list 'A' on 28.7.1994. The appeal preferred by the applicant has been disposed of by the appellate authority by an order dated 8.11.1994 reducing the punishment to one year's forfeiture of service permanently. The other things in the punishment remained the same. The respondents issued a show cause notice dated 28.3.1995 why his name should not be removed from the promotion list 'A'. He submitted representation and thereafter the impugned order dated 23.5.1995 was passed removing the applicant's name from the promotion list 'A'. The representation made by the applicant against the impugned order has been rejected. Aggrieved by the order of removing his name from the promotion list 'A', the applicant came up before us in the present OA.



(b)

3. We have perused the pleadings as well as written arguments given on behalf of the applicant. The main submission in the written arguments is that Rule 7(ii) of Delhi Police (Promotion & Confirmation) Rules, 1980 (for short, the Rules) is unconstitutional. It is contended that as the removal of the name from the list 'A' is having the effect of reduction in rank, the same should be preceded ~~only after~~ ^{by} an enquiry.
 ↙ ~~Par~~ No such enquiry is contemplated in Rule 7 (ii) of the Rules. We do not find any substance in this submission. It is seen from the ~~above~~ facts stated supra that the applicant's name has been included in the promotion list 'A' (executive) on 2.12.1992 and thereafter he was deputed ~~on~~ 28.7.1994, under Rule 12 of Delhi Police (Promotion & Confirmation) Rules to the training school. The applicant was thereafter awarded the punishment of three years' forfeiture of service, reduction in pay as stated supra, which was however reduced by the appellate authority to a lesser punishment. At this juncture it is necessary to note Rule 12 of the Rules. Police (Promotion & Confirmation) Rules. The Promotion List 'A' is the list of confirmed Constables (Executive) considered fit to be sent to Lower School Course. As per this Rule 12 of the Rules, confirmed constables having ~~a~~ minimum of 5 years' ^{1 are to} service ~~shall~~ be eligible for consideration to be brought into the list. The list shall be framed

(AB)

(A)

on the recommendations of the departmental promotion committee which shall adopt the evaluation system based on (1) Service Record (2) seniority (3) Annual Confidential Reports (4) Acquittance in professional test which shall cover the subjects (i) Physical Training and Parade (ii) Elementary law and Police practical work (iii) General Knowledge and (iv) Professional work done. List 'B', as per Rule 13, is the list to be drawn up from among the candidates who had qualified in the Lower School Course. The applicant has been brought to this list in 1992 considering the record of service of the applicant was satisfactory so as to bring him into the list. Subsequently, however, the applicant has been awarded major punishment under the rules. Now Rule 7(ii) comes into play which provides that the conduct and efficiency of men on promotion list shall be, at all times, watched with special care. Any officer whose name exists on the promotion list, if found guilty of a misconduct of nature reflecting upon his character or fitness for responsibility or by his record if he is unfit for promotion to the higher rank, action can be taken by the appointing authority for removal of his name from the promotion list after giving show cause notice to the individual. Accordingly, invoking the power under Rule 7(ii) of the Rules finding that the applicant was penalised, and the appointing

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authority has found him unfit to continue in the Promotion List 'A' and removed his name [✓] ~~was removed~~ from the said list after giving due notice.

4. It should be kept in mind that the inclusion in the Promotion List 'A' is not an appointment by way of promotion to any higher post. It is only one step in the direction of promotion mainly for the purpose of maintaining the priority list for sending the candidates to the Lower School course for the purpose of training. The removal of name therefore does not amount [✓] to reduction in rank so as to hold an enquiry. We find from this rule that the action was taken by the respondents on valid considerations. The rule is based upon public policy that police officers with doubtful records should not be considered for promotion. The question of any enquiry to be made for removal of the name from the list will not arise as the removal of the name is not reduction in rank and the Article 311(2) of the Constitution has no application in this matter. // The contention that as the order of removal under Rule 7(ii) was passed by the Deputy Commissioner of Police, Head Quarters who is lesser in rank to the appointing authority, the impugned order is in violation of Article 311(2) of the Constitution, is devoid of substance, [✓] either for the same reason that the

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removal of his name from the list 'A' would not tantamount to an order reduction in rank within the meaning of Article 311(2) of the Constitution.

5. The contention that no opinion ~~has been~~ formed as to the effect of misconduct proved in the disciplinary proceedingss upon the character of the applicant and that Rule 7(ii) of the Rules has not been complied with, is not tenable. As per Rule 7(ii) it is the competent authority who has to form an opinion. It is not for this Tribunal to make an objective assessment of the ~~fact~~ ~~individual~~ and then come to a different opinion as the rule clearly says that the decision shall be taken by the appointing authority. A reading of the impugned order clearly reflects that such a decision has been taken by the appointing authority. In the circumstances, it cannot be said that no opinion has been formed as to the effect of misconduct proved in the disciplinary proceedings upon the character of the applicant.

6. In the circumstances, we find no merit in the OA. The OA is, therefore, dismissed. No order as to costs.

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(Smt. Shanta Shastry)
Member(A)

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(V.Rajagopala Reddy)
Vice-Chairman(J)