

Central Administrative Tribunal, Principal Bench

Original Application No.2531 of 1996

New Delhi, this the <sup>12<sup>th</sup></sup> 9th day of May, 2000

Hon'ble Mr. Justice Ashok Agarwal Chairman  
Hon'ble Mr. V.K. Majotra, Member (Admnv)

Shri Devi Ram S/o Jai Lal, working as Warder  
in Central Jail, Tihar, New Delhi-110064.  
r/o G-11-A, West Sagarpur, New Delhi-110046. - Applicant

(By Advocate Shri S.C. Luthra)

Versus

1. Govt. of N.C.T. of Delhi through its  
Secretary (Home), 5, Shamnath Marg,  
Delhi-110054.
  2. Inspector General of Prisons, Prison H.Q.  
Tihar, New Delhi-110064.
  3. Shri Tota Ram, \$ All working under  
Asstt. Supdt. \$ respondent no. 2 and
  4. Shri Ram Niwas \$ to be served through
  5. Shri Ram Phal \$ him.
- Respondents

(By Advocate Shri Vijay Pandita)

O R D E R (C R A L)

By V.K. Majotra, Member (Admnv) -

The applicant has assailed order dated 6.3.96 (Annexure-A-1) passed by respondent 2. by which the applicant was promoted as Assistant Superintendent (Rs.1400-2300) against a sealed cover vacancy of Shri Ram Chander, Warder alleging that he should have been promoted in his own right against a clear cut vacancy. The applicant has also assailed order dated 4.10.1996 (Annexure-A-2) whereby respondents 3 and 4 have been promoted to the post of Assistant Superintendent on the recommendations of the DPC held on 25.9.1996, leading to reversion of the applicant to his substantive post as Warder vide order dated 10.10.1996 (Annexure-A-3), and his name has been considered by the DPC for the post of Head Warder and the DPC recommendation in this respect has been kept in the sealed cover. The applicant has

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also challenged order dated 18.10.1996 (Annexure-A-4) whereby Shri Ram Phal, Head Warder has been promoted on adhoc basis against the sealed cover vacancy by respondent no.2.

2. The applicant, who joined the Central Jail as Warder, was promoted as Assistant Superintendent on 6.3.1996 vide order Annexure-A-1 against the sealed cover vacancy of Shri Ram Chander, Warder for which the DPC had been held on 16.2.1996. According to the applicant the DPC approved a panel of 7 Head Warders<sup>Warders</sup> on regular basis against 8 vacancies. The recommendation in respect of Shri Ram Chander, Warder at serial no.6 was kept in sealed cover and the applicant, who was at serial no.7, was promoted against the sealed cover vacancy. The post of Assistant Superintendent is a selection post and the feeder categories include both Head Warders and Warders, as per the recruitment rules (Annexure-A-5).

3. The applicant claims that between 10.2.1996 and 25.9.1996 no fresh vacancies arose in the category of Assistant Superintendent. However, the respondents convened a DPC meeting on 25.9.1996 and consequently two Head Warders, namely, Shri Tota Ram and Shri Ram Niwas were promoted to the post of Assistant Superintendent vide Annexure-A-2. Shri Tota Ram and Shri Ram Niwas, Head Warders were not eligible for the post of Assistant Superintendent on 10.2.1996 when the DPC was held earlier as they did not possess the requisite minimum

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educational qualification. They acquired these qualifications after 10.2.1996, Whereafter a DPC was convened and their names were cleared for two vacancies. After the promotion of these two Head Warders on 4.10.1996 the impugned order Annexure-A-3 was passed on 10.10.1996 reverting the applicant to the post of Warder and he was further informed that the DPC had recommended to keep the findings in the sealed cover in respect of the post of Head Warder. The applicant has contended that as he was found fit for the post of Assistant Superintendent by the DPC which was held on 16.2.1996 and was again considered for the lower post of Head Warder, when recommendations in that respect were kept in the sealed cover; his case should have been considered for the post of Assistant Superintendent in the DPC held on 25.9.1996. The applicant was served articles of charges vide memo dated 20.9.1996 for an event which took place on 1.5.1996. The applicant has stated that before he replied to the articles of charges, respondents issued his reversion order vide Annexure-A-3. He made a representation dated 13.10.1996 (Annexure-A-6) on receipt of orders at Annexure-A-3, which was rejected vide order dated 11.11.1996 (Annexure-A-7). The applicant has sought quashing of Annexure-A-2 whereby respondents 3 and 4 were promoted and also Annexure-A-1 to the extent that the respondents were not justified to promote the applicant on 6.3.1996 on adhoc basis against sealed cover case of Shri Ram Chander and that the respondents be directed to modify

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Annexure-A-1 so as to promote the applicant on regular basis with effect from 6.3.1996. He has also sought quashing of his reversion and that recommendations regarding him should not be kept in the sealed cover. He has further sought a declaration that when earlier on he had been promoted on adhoc basis, he had been recommended for promotion to the post of Assistant Superintendent by the DPC held on 10.2.1996, his reconsideration for the post of Head Warder was not tenable.

4. In the counter the respondents have taken the preliminary objection that while the applicant was working as Assistant Superintendent on adhoc basis a prisoner escaped from his custody for which the applicant was suspended and later his promotion was not extended beyond six months and he was reverted to his substantive post i.e. Warder on 10.10.1996. The applicant had been charge-sheeted on 20.9.1996 under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 and, therefore, he cannot be considered for further promotion. His case was considered by the DPC for the post of Head Warder and the DPC recommended to keep their findings in the sealed cover till the DE was over. The respondents have refuted the claim of the applicant that his name had been recommended for promotion in the minutes of the DPC held on 16.2.1996. According to the respondents the promotions were considered to fill up six vacancies only and not 8 vacancies as claimed by the applicant. As per

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the recruitment rules relating to Assistant Superintendents, the mode of recruitment is 75% by direct recruitment and 25% by promotion. On 16.2.1996 when the DPC was held on the first occasion there were 63 sanctioned posts of Assistant Superintendent and, therefore, the promotion quota was calculated to 16 posts. Since the department had already promoted 11 officials out of which 2 had retired on the date of DPC, only 7 vacancies <sup>h</sup>~~were~~ existed for promotion. The roster position indicated 5 posts for general category, 1 for scheduled caste and 1 for scheduled tribe. The department filled 5 general vacancies and 1 SC vacancy. Since no ST candidate was available on the date of the DPC, the vacancy earmarked for ST category was shifted to direct quota.

5. We have seen the departmental records in accordance with which a total of 7 posts were to be filled by promotion. Since no ST candidate was available fulfilling the requirements under the recruitment rules, the vacancy was carried forward till a ST candidate was available. Thus, only six vacancies of Assistant Superintendent for promotion (5 general and 1 SC) were available for filling up as on the date of the 1st DPC held on 16.2.1996.

6. The respondents have further maintained that the applicant was not the senior most Head Warder but being a matriculate was eligible to officiate against the sealed cover vacancy. The respondents have countered the averment of the applicant that no fresh

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vacancies of Assistant Superintendent arose between 10.2.1996 and 25.<sup>9<sup>th</sup></sup>2.1996. In fact, as per Annexure-R-3, 5 new posts of Assistant Superintendents were sanctioned on 12.<sup>3<sup>rd</sup></sup>3.1996. As per the departmental records out of the 5 sanctioned posts 2 fell within the regular promotion quota for which DPC meeting was held on 25.9.1996. The DPC recommended Shri Tota Ram and Shri Ram Niwas who are senior to the applicant and had become eligible on acquiring the requisite academic qualifications for promotion. The DPC also reviewed the case of Shri Ram Chander, Warder and advised continuation with the officiating promotion against the sealed cover case of Shri Ram Chander, Warder. The respondents have further stated that on occurrence of new vacancies in promotion quota another DPC<sup>was</sup> convened on 25.9.1996 after an interval of six months from the holding of the previous DPC. The applicant's name was also considered for promotion to the post of Assistant Superintendent on regular basis but Shri Tota Ram and Shri Ram Niwas who were senior to the applicant and had become eligible for promotion were recommended by the DPC against the afore-stated 2 vacancies. Some more vacancies of Head Warder had also arisen and it was considered necessary to consider the applicant for that post as the post of Warder is the feeder cadre for the post of Head Warder/ Assistant Superintendent. Thus, the applicant was considered for promotion to the post of Assistant Superintendent as also for the post of Head Warder. According to the respondents since the

applicant had been asked to officiate against the sealed cover case of Shri Ram Chander, as per adhoc promotion rules and since disciplinary proceedings had been initiated against him, while he held the adhoc appointment of a period of less than one year, he was reverted to the post held by him substantively. In view of their submissions, the respondents sought dismissal of the OA.

7. We have heard the learned counsel of the parties and perused the material in the file and the departmental records.

8. From the records, it is found that on 16.2.1996 when the first DPC was held to consider the promotion of Matric Head Warders/ Warders for the post of Assistant Superintendent (Rs.1400-2300), out of 16 promotion quota posts, the department had already promoted 11 Head Warders, out of which 2 had already retired. Thus, 7 such posts were available for promotion from Head Warders/ Warders. One post meant for ST was to be kept vacant for non-availability of eligible ST candidate. The DPC after considering the service records etc. recommended 5 general category candidates and 1 <sup>lb</sup> ST candidate. It was also decided to appoint the junior of Shri Ram Chander to officiate against that sealed cover vacancy till the sealed cover was opened or the junior became eligible for promotion in regular manner. We find that the applicant's name had not been recommended on 16.2.1996 by the DPC for promotion to the post of Assistant Superintendent on

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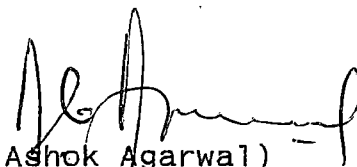
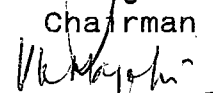
regular basis. However, the respondents decided to promote the applicant on adhoc basis against the sealed cover vacancy of Shri Ram Chander, Warder on 6.3.1996 vide Annexure-A-1. From the records, it is also established that on sanction of 5 posts of Assistant Superintendent, DPC considered filling up 2, which fell to the share of promotion quota, and recommended Shri Tota Ram and Shri Ram Niwas, Head Warder for promotion, who had become eligible on attaining the requisite academic qualifications. The sealed cover case of Shri Ram Chander was also considered. The DPC observed that there was no material change in the position since the last DPC meeting held on 16.2.1996 which had denied him promotion on the ground of his suspension and pendency of a court case against him. Thus, he was not considered fit for promotion. The appointing authority was advised by the DPC to continue with the officiating promotion against the sealed cover case of Shri Ram Chander, Warder. We find that 11 eligible candidates including the applicant had been considered for 2 posts of Assistant Superintendent. However, the senior most Shri Tota Ram and Shri Ram Niwas were recommended for promotion. Since the applicant's name was not among the 2 senior most candidates his name did not appear in the panel. As per rules, the applicant could be considered for promotion both for the posts of Assistant Superintendent and Head Warder. The applicant, who had been asked to officiate on adhoc basis against the sealed cover vacancy of Shri Ram Chander, on initiation

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of a disciplinary proceeding against him, was reverted to his substantive post as he had held the adhoc appointment for a period less than one year. He had been promoted on adhoc basis on 6.3.1996. He was charge-sheeted on 20.9.1996 i.e. he had officiated on the post of Assistant Superintendent for a period of about six months only and under the adhoc promotion rules could be reverted to his substantive post within a year of his promotion on initiation of departmental enquiry against him. Under the rules, we find that there was nothing wrong for considering him for <sup>promotion to the</sup> the post of Head Warder as per his seniority as Warder.

9. Having regard to the above discussion, we do not find any merit in the OA, which is accordingly dismissed. No order as to costs.

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

12.5.2000