

S
CAT
AL

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2539/96
T.A. No.

199

DATE OF DECISION 9.2.98

Sh. Narayan Singh Meena

Petitioner

Miss Jasvinder Kaur

Advocate for the Petitioner(s)

versus
Commissioner of Police

Respondent

Sh. Surat Singh

Advocate for the Respondent

CORAM

The Hon'ble Shri S.R. Adige, Vice Chairman (A)

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

1. To be referred to the Reporter or not? *Yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

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

Central Administrative Tribunal
Principal Bench

O.A. 2539/96

New Delhi this the 9th day of February, 1998

Hon'ble Shri S.R. Adige, Vice Chairman(A)
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Narayan Singh Meena,
Sub-Inspector No. D/522,
8th Bn. D.A.P.;
P.T.S. Malaviya Nagar,
New Delhi. Applicant.

By Advocate Ms Jasvinder Kaur.

Versus

The Commissioner of Police,
Police Headquarters,
I.P. Estate, Respondent.
New Delhi.

By Advocate Shri Surat Singh.

O R D E R

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

The applicant is aggrieved by the order passed by the respondents dated 17.10.1996 rejecting his representation for inclusion of his name in the promotion list of Inspector (Executive); and the order dated 9.3.1996 in which it has been stated that although the adverse remarks recorded in his ACR for the period 5.5.89 to 2.2.90 have been expunged/toned down but the adverse entries regarding the false criminal case which has ended in acquittal on merits have not been expunged/toned down.

2. The applicant while working as Sub Inspector of Police with the respondents was placed under suspension w.e.f. 28.1.1990 in view of registration of FIR No. 3 dated 28.1.1990 against him under Sections 7 and 13 of the Prevention of Corruption Act. However, during the trial of the criminal case, the suspension was revoked and the

13.

(7)

applicant resumed duty w.e.f. 28.11.1993. In the meantime, by order dated 6.5.1993 certain other persons were promoted in List F in which the applicant's name was omitted. He was informed that his name has been kept in a sealed cover and will be considered after finalisation of the criminal case pending against him. The applicant was acquitted in the criminal case by order dated 22.9.1995 which, he claims, is on merits. Later, the disciplinary authority treated the period of suspension as spent on duty. The applicant then filed the representation dated 26.12.1995 for opening the sealed cover and he was informed that he has been found graded as 'Unfit' by the DPC. He had also made a representation for expunging of the adverse remarks for the period from 5.5.1989 to 2.2.1990 which had been considered and the remarks were expunged/toned down by order dated 9.9.1996. According to the applicant, since he has been acquitted in the criminal case, which was then pending against him on merits, he would be entitled for promotion w.e.f. 6.5.1993, the date on which the persons junior to him had been promoted to the post of Inspector as there was nothing adverse against him. Ms. Jasvinder Kaur, learned counsel, has also submitted that the applicant has earned 51 commendations during his career. She has also submitted that as the criminal proceedings which were pending against the applicant have now resulted in his acquittal, the applicant was entitled for promotion along with his junior's w.e.f. 6.5.1993. The learned counsel has also submitted that the record of the applicant was otherwise very good and there was no reason why he should not be promoted from May, 1993 along with his juniors.

3. The respondents have filed their reply controverting the above facts regarding applicant's claim for promotion with retrospective effect and we have heard Shri Surat Singh, learned counsel. They have submitted that the duly constituted DPC which met on 15.8.92 and 11.11.93 had considered 'the candidature of the applicant and had declared him 'Unfit' and the certificate of integrity was withheld in his case since he was involved in a corruption case. The DPC held on 12.8.1994 had also considered his case along with the other SIs and had kept the recommendations in a sealed cover due to the pendency of the criminal case against him. After finalisation of the criminal case, sealed cover was opened and it was found that he was graded 'Unfit' and he was accordingly informed. During the course of hearing, the respondents have stated that the applicant got the following remarks for the relevant 5 years which were considered by the DPC:

| | | |
|--------------------|---------|--------------------------|
| 1988-89 | - | Excellent |
| 1989-90 | - | Adverse |
| 1990-91 | - | He was under suspension. |
| 1991-92 | - | -do- |
| 1992-93 | - | -do- |
| <i>Re. Quel in</i> | 1993-94 | - u/s/average |

They have submitted that the adverse remarks against which he had made representation had been duly considered by them and the same had been toned down/expunged. They have submitted that since the applicant had only ^a right of consideration by the DPC which has been duly done, he cannot claim promotion as a matter of right. They have relied on the judgement of this Tribunal in Ranjit

(9)

-4-

Singh Vs. Lt. Governor of NCT and Anr. (O.A. 562/95).

That case is not applicable to the facts in the present case which is discussed below.

4. In the reply to the submissions made by the respondents Ms. Jasvinder Kaur, learned counsel, has submitted that when the DPC had considered the applicant's case in ~~August 94~~, ^{By 20} when he was under suspension ^{earlier 13} from the records as mentioned by the respondents themselves there was no confidential report for 3 years from 1990 to 1993. She has, therefore, submitted that, in accordance with the Government of India instructions dealing with the consequences where confidential reports for some reason have not been written during the relevant period, it was necessary for the DPC to consider the ACRs for the years preceding the years in question. She has submitted that this procedure had not been adopted by the respondents in this case. She also relies on the judgement of the Supreme Court in B. Kashyap and Anr. Vs. Indian Airlines and Ors. (1984 SCC (L&S) 823). The respondents have stated that for the previous three years preceding the period in question, i.e. for the years 1985-86, 1986-87 and 1987-88, the applicant had received the gradings of 'satisfactory', 'good' and 'satisfactory' respectively in his ACRs and they have submitted that this would not make any difference to his overall assessment. The learned counsel for the applicant, on the other hand, submits that since the respondents have not admittedly followed the relevant instructions, a direction may be given that the applicant may be promoted or considered for promotion.

192

5. After careful consideration of the pleadings and the submissions made by the learned counsel for the parties, we are of the view that the application has to be allowed for the following reasons:

5. From the records submitted by the respondents and referred to above, it is seen that the applicant was not given any grading for 3 years from 1990-1993 when he was under suspension. This was the period when a criminal case under the Prevention of Corruption Act was pending against him which finally ended in his acquittal by the order dated 22.9.1995. It is also relevant to note that the respondents have treated the period of suspension as period spent on duty. From the records, it is not clear as to whether the DPC which had met in 1992, 1993 and 1994 and which had graded him 'Unfit' had only considered the ACRs for the relevant period of 5 years from 1988 to 1993 or had in the absence of the ACRs for ^{the} 3 years considered the 3 ACRs preceding the period in question in arriving at their conclusion that he was 'Unfit'. Para 44(c) of the Govt. of India instructions (Swamy's Compilation of Confidential Reports, Second Edition P-38) provides as follows:

(c) Where one or more C.Rs. have not been written for any reason during the relevant period, the DPC should consider the C.Rs. of the years preceding the period in question....."

13

7. These procedural guidelines for judging the suitability of persons within the zone of consideration have been upheld by the Supreme Court in B.Kashyap's case (*Supra*). Therefore, as the respondents have not stated that they have followed these guidelines in assessing the suitability of the applicant during the assessment made by the DPC which considered the applicant's case along with others for promotion to List F, the applicant's case has to be allowed. It is, however, well settled law that the Tribunal cannot direct that the respondents should promote the applicant but a direction may be given to the respondents to review the case in accordance with the rules for promotion to the post of Inspector.

8. The consequent impugned order dated 9.9.1996 is the order passed by the respondents on expunction/toning down of the adverse ACRs for the period from 5.5.1989 to 2.2.1990. There is merit in the submission made by the learned counsel for the applicant that repetition of the case history in FIR No. 3 dated 28.1.1990 that the applicant was caught red handed which case, however, ended in acquittal and giving him the benefit of doubt appears, in the context of the final acquittal of the applicant in the same case, ~~xxxxxxxxxx~~ ¹² xx xx unnecessary in the ACR which, therefore, should be deleted. Subject to this, there is no infirmity in the impugned order.

9. In view of what has been stated above, this application partly succeeds. The impugned order dated 17.10.1996 is quashed and set aside and the impugned order dated 9.9.1996 stands modified, as mentioned above. The respondents are directed to consider the case of the

12
x Corroborated on 6.5.93
vide order dt 27.3.88

applicant for promotion w.e.f. the date his junior was promoted i.e. 6.5.1996 as Inspector (Executive) by holding a review DPC in accordance with the relevant rules/instructions and having regard to the observations made above. This action shall be taken within three months from the date of receipt of a copy of this order. If he is found fit, he shall be entitled to consequential benefits in accordance with ~~XXX~~ law which shall also be given to him within one month thereafter.

No order as to costs.

Lakshmi

(Smt. Lakshmi Swaminathan)
Member (J)

Adige
(S.R. Adige)
Vice Chairman (A)

5RD1