

(19)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO.497/96
with
O.A.No. 548/96

New Delhi, this the 26th day of April, 1996

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

O.A.No.497/96

Inspector Bal Kishan, No.D-1519,
Delhi Police,
c/o Mrs. Avnish Ahlawat,
243, Lawyers' Chambers,
Delhi High Court,
New Delhi.

... Applicant

By Advocate: Mrs. Avnish Ahlawat

Vs.

1. Union of India through
Govt. of National Capital
Territory of Delhi, through
Commissioner of Police,
Police Headquarters,
MSO Building, I.P. Estate,
New Delhi.

2. Shri V.N. Singh,
Senior Additional Commissioner
of Police (Admn.)
Delhi Police,
Police Headquarters,
MSO Building,
I.P. Estate, New Delhi.

... Respondents

By Advocate: Shri Arun Bhardwaj

O.A. NO. 548/96

Head Constable Hukam Chand, No.21-A
(PIS No.28720432), Delhi Police
c/o Mrs. Avnish Ahlawat,
243, Lawyers' Chambers,
Delhi High Court,
New Delhi.

... Applicant

By Advocate: Mrs. Avnish Ahlawat

Vs.

1. Union of India through
Govt. of National Capital
Territory of Delhi, through
Commissioner of Police, Delhi,
Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi.

2. Shri M.A. Sayed,
Deputy Commissioner of Police/HQ(I),
Delhi Police,
Police Headquarters,
MSO Building,
I.P. Estate,
New Delhi.

... Respondents

By Advocate: Shri Arun Bhardwaj

O R D E R

Mrs. Lakshmi Swaminathan, Member (J)

The applicants in these two applications
(O.A. No.497/96 and O.A.No.548/96) are aggrieved by the
issue of the show cause notices dated 15.2.96 and 19.2.96
issued by respondent No.2, respectively. In the show
cause notices, the applicants have been asked to show cause
as to why their promotions to the higher ranks passed with
effect from 1987 and 1985, respectively, should not be
cancelled and they be reverted to their substantive ranks
of SI(Exe) and Constable with immediate effect as per the
provisions contained in FR-31-A. Both the applicants had
been allowed a period of 15 days to give their reply
to the show cause notices.

2. In O.A. 497/96 the applicant had prayed for an interim direction to the respondents restraining them from proceeding further in respect of show cause notice dated 15.2.96. Interim direction had been given on 13.3.96 that any action taken by the respondents would be subject to the outcome of the O.A. Another order had been passed by the Hon'ble Acting Chairman on 18.3.96 that O.A. 548/96 should be placed for consideration for admission alongwith O.A. 497/96. The respondents have filed a short reply in application ~~in~~ O.A. 497/96 and rejoinder had also been filed. Since both these cases raise similar issues, they were heard together and are being disposed of by this order.

3. For the sake of convenience the brief facts in O.A. 497/96 are being referred to here. The applicant, who joined the Delhi Police as Sub-Inspector (Executive) on 7.4.77, was confirmed in that post on 31.12.86. In a robbery and theft case in 1985 which was investigated by the officials of Police Station Sultanpuri, one of the accused filed a petition in the Supreme Court in which the Court directed that the respondents - Delhi Police - should investigate the matter against all the officials who were investigating that case. Consequent upon that investigation FIR No.11 under sections 341/342/323/330/161 IPC was registered at Police Station Sultanpuri on 12.1.85.

That case is still pending trial in the court.

According to the applicant, on 27.6.85 he was conveyed certain adverse remarks by the Reviewing Officer in his ACR for the period 1.4.84 to 21.9.1984. The Reviewing Officer in his remarks had mentioned that the applicant had been named in the FIR as a Police Officer for beating the accused persons. The applicant made a representation against these remarks which he states is still pending. The FIR against the applicant was filed by the Crime Branch of Delhi Police in February, 1986 but the applicants mentioned in the challan were not arrested. On 31.12.1986 the applicant was confirmed as Sub Inspector. Again at the time of crossing the efficiency bar, the applicant was not allowed to cross the same because of the pendency of the FIR. However, the applicant was given an out of turn promotion on 23.9.1987 under Rule 19(ii) of Delhi Police (P romotion & ¹²C onfirmation) Rules, 1980, because he claims that he was able to solve an old bank robbery-cum-murder case where a large amount of money was involved. Thereafter, a regular list 'F' was prepared on 23.5.1988 and the applicant was promoted as Sub-Inspector on regular basis also.

4. Mrs Avnish Ahlawat, learned counsel for the applicant submits that at each time the applicant was

considered for promotion/regularisation in his higher post, the respondents must have considered his ACRs in the entirety. Therefore, she submits that it was not correct for the respondents to say in the impugned show cause notice that they became aware of the pending criminal case in FIR 11/85 only in March, 1994 while dealing with ^{another} case of ^{1/2} one S.I. Jai Chand.

Regarding the case of S.I. Jai Chand, whom the applicant states is one of the accused in the FIR, he had filed O.A. in the Tribunal (OA No.804/87) in 1987 and the department was aware of the pendency of the case against all the officials even in 1987. Later a show cause notice issued to Shri Jai Chand on 17.8.93, was also challenged by him in a petition (OA No.1918/93) before this Tribunal which was finally disposed of by a judgment dated 8.7.94. Mrs Avnish Ahlawat, learned counsel, therefore, submits that to say in the impugned show cause notice that the respondents got notice of the FIR and the pending case against the applicant only in March, 1994 on the face of it is factually incorrect. The learned counsel submits that the respondents were fully aware of the applicant's involvement in the criminal case but because he was otherwise a good officer who had earned commendation certificates and outstanding reports he has earned several promotions, ignoring the FIR.

5. The second argument of the learned counsel for the applicants is that this is not a case of erroneous promotion which is covered under FR 31-A and there are no rules and regulations which prohibit promotions merely because of pendency of a criminal case, when otherwise the applicant is considered fit by the department. She has also submitted that under the provisions of Rule 19(ii) of the Delhi Police (Promotion & Confirmation) Rules, 1980, under which the applicant got an out of turn promotion, this has been done by the Commissioner of Police with prior approval of the Administrator i.e. the Lt. Governor of Delhi whereas the show cause notice has been issued only by a Senior Additional Commissioner of Police, who is not the competent authority. It has also been pointed out that the officers concerned in FIR 11/85, including the applicant, have been defended by the respondents and no arrests have been made so far, as they have been granted bail by the court.

6. In the above circumstances, Mrs Avnish Ahlawat, learned counsel has strongly urged that the impugned show cause notices against the applicants may be quashed and they may not be reverted to a lower rank after they have worked as Inspector for more than nine years

in the case of applicant in OA 497/96, and as Head Constable in the case of applicant in OA 548/96 who had been promoted to that post more than 11 years back. She relies on the judgments of the Supreme Court in Upendra Singh v. UOI (JT 1994(1) SC 658) and State of Punjab & Ors v. Chaman Lal Goyal (1995) 2 SCC 750 to show that in exceptional cases, like the ones here, where the applicants had worked for a number of years in the promoted posts without blemish, there was no reason to revert them, as threatened in the show cause notices. Therefore, she has prayed that the show cause notices dated 15.2.96 and 19.2.1996 in the two applications may be quashed. Alternatively, the learned counsel has submitted that if this prayer is not granted at this stage, in the facts and circumstances of the case since both the applicants have worked in the higher posts for a long time, and if the respondents were to pass an adverse order reverting them from the posts of Inspector and Head Constable, respectively, to the lower posts, the Tribunal may be pleased to stay the operation of the orders for an appropriate period, of say three weeks, as has been done by the Tribunal in order dated 11.9.95 in OA No. 1678/95 (Copy of the order placed on record).

7. The respondents have filed a short reply and we have also heard Shri Arun Bhardwaj, learned counsel for the respondents. The respondents have contended that this application is not maintainable and should be rejected. Shri Arun Bhardwaj, learned counsel, has contended that a show cause notice is not an 'order' which has been passed by the respondents within the provisions of section 19 of the Administrative Tribunals Act, 1985. He relies on the judgement of the Supreme Court in State of U.P. v. Shri Brahm Dutt Sharma & Anr. (JT 1987 (1) SC 571). He contends that the purpose of issuing the show cause notice is to afford an opportunity of hearing to the applicant and only thereafter the competent authority will pass an order. A final decision will be taken by the competent authority after the applicant files his reply, against which ¹⁸he ~~applicant~~ can file an application in the Tribunal, if he is aggrieved. He, therefore, contends that the applicants are in no way justified in asking for the quashing of the show cause notices at this stage. He further contends that under the provisions of FR 31-A, any erroneous promotion can be cancelled when it is brought to the notice of the appointing authority. He has also drawn our attention in the file in which the Commissioner of Police had ordered the issue of the impugned show cause

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notice. He contends that the respondents have power to rectify any erroneous promotions with consequential results of reverting the officer, if the full facts had not been placed before the competent authority at the time of promotion, as was the facts in this case. He relies on Bal Kishan v. Delhi Administration & Anr. (AIR 1990 SC 100). He, therefore, submits that the applicants have not made out any case for quashing the show cause notices at this stage and it is for the competent authority to consider the matter and pass an appropriate order. He further submits that at this stage the Tribunal ought not to pass any order staying the operation of any order that might be passed by the competent authority in pursuance of the show cause notices. He submits that such an order would hamper the powers and discretion of the respondents to pass an appropriate order and the applicant can approach the Tribunal after such an order is passed, if aggrieved.

8. We have carefully considered the record and the arguments of both the learned counsel for the parties.

9. In the case of Bal Kishan, Inspector, the show cause notice dated 15-2-96 was received by him on 4.3.96. He had filed this application on 6.3.96 and thereafter he has filed a detailed reply to the show cause notice addressed to the Senior Additional Commissioner of Police on 15.3.1996. We note that in this reply, the applicant has referred to all the grounds he has taken

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✓ in this application, including controverting the statements made in the show cause notice that the respondents got notice of the criminal case in FIR 11/85 only in March, 1994. The respondents have taken the stand that all these points will be considered by the competent authority while passing the final order.

10. One of the grounds alleged by Mrs Avnish Ahlawat, learned counsel for the applicants was that the show cause notice has not been issued by the competent authority. Her point was that since the applicant had earned an out of turn promotion under Rule 19(ii) of the Delhi Police (Promotion and Confirmation) Rules, 1980, which had been done by the Commissioner of Police with the prior approval of the Lt. Governor of Delhi, the show cause notice cannot be issued by the Senior Additional Commissioner of Police. We have seen the record, which was produced by Shri Arun Bhardwaj, learned counsel for the respondents, which shows that the show cause notice has been issued with the approval of the Commissioner of Police. This cannot be taken as a final order and we do not, therefore, see any legal infirmity in the show cause notice being issued by the Senior Additional Commissioner of Police.

11. The other contentions raised by the applicant are factual in nature and have to be necessarily verified from the records. As already mentioned above, these very

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points have been elaborately taken by the applicant in the reply to the show cause notice addressed to the Senior Additional Commissioner of Police.

12. In *UOI & Ors v. Upendra Singh* (1994(3) SCC 357) the Supreme Court has held in a similar case where charges had been framed in a disciplinary inquiry that "the Tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law." It was further held that at that stage, "the Tribunal had no jurisdiction to go into the correctness or truth of the charges and the Tribunal cannot take over the functions of the disciplinary authority." (See also the recent judgment of the Supreme Court in State of Tamil Nadu and another v. S. Subramaniam (JT 1996(2) SC 114)). The principle laid down in Upendra Singh's case is fully applicable to the facts in the present case, as the competent authority has still to take a decision in the matter in which the impugned show cause notices have been issued. This is also a case which involves the verification of facts from records available with the respondents. Even after the competent authority takes a decision on which the

✓ applicant feels aggrieved, the matter can be brought before the Tribunal, which can then look into the correctness of the findings recorded by the competent authority taking into account the facts in the case.

13. Having regard to the observations of the Supreme Court in UOI & Ors v. Upendra Singh (supra) and State of Tamil Nadu v. S. Subramaniam (supra), we are of the view that in the circumstances of the case, in the first instance it is only correct and fair that the competent authority considers the issues raised by the applicant in the reply by passing a detailed and a speaking order after verifying the facts from the records. In the circumstances of the case we do not think that the impugned show cause notices dated 15.2.96 and 19.2.1996 in the two applications dealt with here should be quashed at this stage. This prayer is accordingly rejected.

14. However, we feel that in the particular facts and circumstances of the case the alternative prayer of the applicants has merit. It is noted that the applicants Bal Kishan and Hukam Chand have been promoted with effect from 23.9.87 and 20.12.1985, respectively, and they have since been discharging the duties of the higher posts from those dates for a number of years satisfactorily. The only ground taken by the respondents in the show cause notices as to why they propose to cancel the promotion orders and


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revert the applicants to their substantive ranks with immediate effect, is on the ground that the promotions were erroneous because certain facts were not brought to their notice till March, 1994. Taking into account these facts we see force in the argument of the learned counsel for the applicants that any adverse reversion order which may be passed by the competent authority should be stayed for a reasonable time so as to enable them to seek such remedy as is open to them in accordance with law. We find that the balance of convenience is in favour of the applicants and also that irreparable damage will be done to them if any adverse order that may be passed by the competent authority is not kept in abeyance in order to enable them to seek such remedy as may be available to them in accordance with law. We do not agree with the submission of the learned counsel for the respondents that such an order in any way hampers the discretion of the respondents to pass an appropriate order.

15. In the result while we do not think that this is a fit case to interfere ^{with} the show cause notices at this stage, we dispose of the two applications (O.A.No.497/96 and O.A.No.548/96) with the following directions:-

- i) In O.A. 497/96 since the applicant has already filed a reply to the show cause notice dated 15.2.96, the respondents are directed to pass a detailed, reasoned and speaking order taking into account each of the grounds taken in the representation within one month of the receipt of a copy of this order, after giving him a reasonable opportunity of being personally heard.
- ii) In O.A. 549/96, in case the applicant has not filed the reply to the show cause notice dated 19.2.96 so far, he should do so forthwith even at this stage, which shall be considered by the respondents. The respondents shall thereafter pass a detailed, reasoned and speaking order thereon, after taking into account each of the grounds urged by him and giving him a reasonable opportunity of personal hearing, if he so desires, within one month of the receipt of his reply to the show cause notice.
- iii) In the event the respondents pass any order which adversely affects the applicants, as proposed by them in the show cause notices, that decision shall be kept in abeyance for a period of three weeks from the date the order is communicated to the applicants.

16. The O.A. is disposed of in terms of paragraph 15 above. No order as to costs.


(SMT. LAKSHMI SWAMINATHAN)
MEMBER(J)


(S.R. ADIGE)
MEMBER(A)

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