

25

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 610 /1996

DATE OF DECISION : 1-2-2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)
~~MEMBER~~

Sukhbir Singh

... Applicant(s)

-Versus-

Commissioner of Police, Delhi & ors.

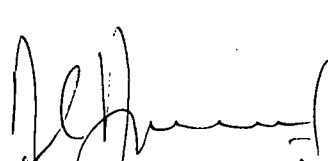
... Respondent(s)

Advocates :

Mr./~~Ms~~ Shyam Babu _____ for Applicant(s)

Mr./~~Ms~~ Rajinder Pandita _____ for Respondent(s)

1. Whether to be referred to Reporter? Yes
2. Whether to be circulated to other Benches? No


(ASHOK AGARWAL)
CHAIRMAN

26

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 610/1996

New Delhi this the 1st day of February, 2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

Sukhbir Singh
S/o Shri Bhim Singh
R/o C-507, P.T.S. Colony
Malviya Nagar
New Delhi.

... Applicant

(By Advocate Shri Shyam Babu)

-versus-

- ✓
1. Commissioner of Police, Delhi
Police Headquarters, I.P. Estate
New Delhi-110017.
 2. Government of National Capital
Territory of Delhi through its
Chief Secretary
5. Sham Nath Marg
New Delhi-110054.
 3. Deputy Commissioner of Police (HQ) I
Police Headquarters
I.P. Estate
New Delhi-110002.

.... Respondents

(By Advocate Shri Rajinder Pandita)

O R D E R (ORAL)

Shri Justice Ashok Agarwal:

Applicant, at the relevant time, was a Sub Inspector (Executive) in Delhi Police. He was initially appointed on 27.5.1975 as Sub Inspector (Executive) (Temporary). He was confirmed as Sub Inspector (Executive) in June 1978. Applicant, after putting in 6 years service in the confirmed rank of Sub Inspector became an aspirant for promotion to the post of Inspector (Executive) (List-F (Executive)). Two meetings of the Departmental Promotion Committee (D.P.C.) were held; one on 26.8.1992 and the other on 12.8.1994 when the claim of the applicant for being

28

placed on List-'F' (Executive) was considered and he was found unfit.

2. Prior to the convening of the aforesaid D.P.Cs, two penalties had been issued against the applicant; one on 1.10.1990 and the other on 20.5.1994. Penalties were of censure. As far as penalty of censure of 1.10.1990 is concerned, the same was issued on the following allegations:-

"that during a surprise check organised by DCP/Traffic on 28.3.90 at 4.35 p.m. in Punjabi Bagh Circle, it was found that radar checking was being conducted by TI/Punjabi Bagh alongwith 4 ZOs at Pitampura on Outer Ring Road. SI Sukhbir, Singh No.D-1425, (applicant herein), a ZO challaned one truck driver in which he seized his driving licence. Later he was found to have accepted Rs.200/- as compounding fee from the driver and returned the driving licence. The Sub Inspector only acknowledged the receipt of that amount on the copy of the challan given to the driver but did not make any entry on the copy in his challan book which should have been done simultaneously. The above act on the part of SI Sukhbir Singh amounted to gross misconduct in the discharge of his official duty."

3. A perusal of the relevant entry to be found in the D.P.C. proceedings shows that the aforesaid penalty of censure has been issued against the applicant for taking bribe of Rs.200/-. As far as the second censure which has been issued on 20.5.1994 is concerned, it is not necessary to dilate upon the same as the same has been set aside in appeal filed by the applicant.

Ref

96

4. As far as the first order of censure is concerned, applicant had impugned the same by instituting an OA being OA No.1031/1993 which has been decided by an order passed on 16.3.1999 by observing as follows:-

"3. Respondents' counsel Shri Mathur states that the applicant was not brought on to promotion list 'F' (Executive) w.e.f.26.8.92 because of punishment of censure inflicted upon him on 1.10.90 and very fairly concedes that the penalty of censure had lost its value after six months of its infliction and the applicant could not be justifiably denied the consideration for being brought on to promotion List 'F' (Exe.) w.e.f.26.8.92.

"4. Accordingly, the OA is disposed of with a direction to respondents to consider applicant's prayer for bringing his name on Promotion List 'F' (Exec) w.e.f.26.8.92, with all consequential benefits, within a period of one month from the date of receipt of a copy of this order, after ignoring the censure date i.e. 1.10.90. No costs."

5. Aforesaid order, it is clear, records the concession given by the learned counsel appearing on behalf of the respondents and based on the concession, directions have been issued to consider the applicant for being brought on promotion List-'F' (Executive) with effect from 26.8.1992 with all consequential benefits after ignoring the censure of 1.10.1990.

6. Aforesaid order of the Tribunal was carried by the respondents to the High Court by preferring Civil Writ Peition being CWP No.5624 of 1999. By an ad interim order passed on 17.8.1999, aforesaid order of the Tribunal was stayed. By a later order passed on 13.9.2000, aforesaid writ petition came be

97

dismissed. As a consequence, aforesaid ad- interim order stood vacated. Respondents have not pursued the matter further. As a result, the order of the Tribunal of 16.3.1999 passed in OA No.1031/1993 thus holds the field.

7. Applicant in the meanwhile on 19.3.1996 has instituted the present OA being OA No.610/1996 wherein he has, inter alia, claimed promotion to the post of Inspector (List 'F' (Executive)) with effect from 12.8.1994, the date on which the second D.P.C. was convened. By a judgement and order passed on 24.1.2000 to which one of us (Justice Ashok Agarwal, Chairman) was a party, aforesaid OA was allowed and a direction was issued to hold a review D.P.C. and to consider the applicant for promotion to the post of Inspector (Executive) as in 1994, ignoring the aforesaid censure. Aforesaid order was passed in the absence of the learned counsel for the respondents. The same was passed after hearing the learned advocate of the applicant and after perusing the counter filed by the respondents. Two Review Applications were filed; one by the applicant and other by the respondents. The same were based on a controversy as to whether the High Court had or had not passed an interim order of stay in CWP No.5624 of 1999. Based on the information furnished by the learned advocate for the applicant, an averment was made in the aforesaid judgement of 24.1.2000 that no interim order of stay had been issued. An interim order had in fact been issued on 17.8.1999. Based on the said order of

stay, RA No.61/2000 which was filed on behalf of the applicant was rejected by an order passed on 31.3.2000 whereas RA No.85/2000 filed on behalf of the respondents was allowed by an order passed on the very same day and the order passed on 24.1.2000 in OA No.610/1996 was recalled. It is in these circumstances, that the present OA being OA No.610/1996 is now taken up for hearing and final disposal.

8. We have heard Shri Shyam Babu, the learned counsel appearing in support of the OA and Shri Rajinder Pandita, the learned advocate appearing on behalf of the respondents at considerable length. Shri Shyam Babu has vehemently urged that as far as the parties to the present lis are concerned, the order of this Tribunal passed on 16.3.1999 in OA No.1031/1993 holds the field. The same is, therefore, binding upon the parties. The same on the principle of res judicata cannot be set aside or altered. It will, therefore, not be open to us to take a view contrary to the one which has been taken in the aforesaid order.

9. Shri Shyam Babu has further submitted that the only controversy which has led to the filing of the Review Applications being RA No. 61/2000 and RA No.85/2000 was in respect of the factual position as to whether an interim order of stay had or had not been issued by the High Court. The said controversy has now been put to rest by the dismissal of the writ

petition. Hence we are left with the position of their being no stay of the order of the Tribunal. Hence the only course open to us is to pass the very same order which had been passed on 16.3.1999.

10. Shri Rajinder Pandita on the other hand has with equal vehemence submitted that aforesaid order of 16.3.1999 is based on a concession which had erroneously been given. The same was on an erroneous hypothesis that penalty of censure will cease to hold the field after the lapse of six months from the date of its imposition. According to him, for a period of six months, a candidate will not even be eligible for being considered for promotion. That however, does not mean that after the lapse of the aforesaid period, the penalty will stand expunged. According to him, the same will continue to remain in the service record unless expunged by a specific order passed in that behalf. In the circumstances, the D.P.C. was fully justified in taking into account the said order of censure even though the same had been issued prior to six months of the date of holding of the D.P.Cs. In support of the aforesaid contention, he has relied upon certain judgements of this Tribunal. It is enough to mention one of them, namely Shri Harish Chandra Yati vs. The Commissioner of Police, OA No.1912/1995 decided by the Principal Bench (Mr. Justice A.P. Ravani, Chairman and Shri R.K. Ahooja, Member (A)) on 18.7.1996. In the circumstances, the aforesaid decision of 16.3.1999 in OA No.1031/1993 which has been based on a concession and on a misconception of

the law on the point cannot be sustained. Present OA, in the circumstances, is liable to be dismissed.

11. Having considered the rival contentions advanced by the learned counsel and having considered the peculiar facts and circumstances arising in the present case, we find that this is not a fit case which calls for interference in our extraordinary and discretionary jurisdiction which is analogous to Article 226 of the Constitution of India. We are not a civil court and this is not a suit. Present OA is in the nature of a writ petition and our jurisdiction is akin to the one provided under Article 226 which jurisdiction is both extraordinary as also discretionary.

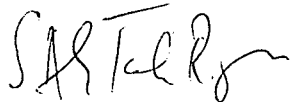
12. We have noticed that applicant has, pending the present OA, been promoted and brought on List-'F' (Executive) by a D.P.C. which has been convened in December 1998. We further find that applicant has been issued a penalty of censure on a charge of receiving bribe of Rs.200/-. Aforesaid order of penalty was issued within a period of six years from the date when the D.P.C. met on 12.8.1994. The said D.P.C. was, therefore, fully justified in taking into account the said penalty while considering the claim of the applicant for promotion. Integrity plays a vital role while considering claims of police officers for promotion. A reference to Rule 5 of the Delhi Police (Promotion and Confirmation) Rules, 1980 can usefully be made:-

"5. General principles of promotion- (i) Promotions from one rank to another and from lower grade to the higher grade in the same rank shall be made by selection tempered by seniority. Efficiency and honesty shall be the main factors governing selection...."

(Emphasis provided)

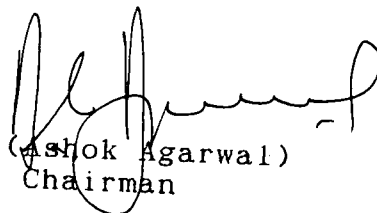
13. Matters of promotion are essentially the domain of the D.P.C. Whether a particular candidate is or is not entitled to the grant of promotion is for the D.P.C. to decide. This is not and cannot be the domain of the Tribunal. Claim of the applicant for promotion has been considered by the D.P.C. It is, therefore, not a case of non-consideration. After due consideration, he has been found unfit. This has been done after considering the aforesaid penalty of censure which has been issued for a serious charge of corruption. The D.P.C. was fully justified in considering the same. In the circumstances though the applicant may have a strong technical ground in his favour based on the decision of the Tribunal of 16.3.1999 in OA No. 1031/1993, we do not find this, as already stated, a fit case for interference in our extraordinary and discretionary jurisdiction.

14. Present OA, in the circumstances, is dismissed but without any order as to costs.



(S.A.T. Rizvi)
Member (A)

/sns/


(Ashok Agarwal)
Chairman