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Central Administrative Tribunal
Principal Bench

O.A. 1415/96
with
O.A. 66/96

New Delhi this the 25th day of May, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri V.K. Majotra, Member(A).

O.A. 1415/96

Uma Kant Tiwari (D/107),
S/o Shri R.S. Tiwari,
R/o A-19, Indira Puri,
Loni (Ghaziabad).

... Applicant.

By Advocate Shri Shyam Babu.

Versus

1. Commissioner of Police Delhi,
Police Headquarters,
I.P. Estate,
New Delhi.
2. Senior Additional Commissioner
of Police (Admn.),
Police Headquarters,
I.P. Estate,
New Delhi.
3. Shri Pratap Singh (D-115),
service to be effected through
Respondent No.1.

... Respondents.

By Advocate Shri Ajesh Luthra.

O.A. 66/96

Jagdish Chander (D-908) son of ✓
Shri S.R. Thagela, resident of
F-4, Police Station, Kalkaji,
New Delhi-110019.

... Applicant.

By Advocate Shri Shyam Babu.

Versus

1. Commissioner of Police Delhi,
Police Headquarters,
I.P. Estate,
New Delhi-110002.
2. Senior Additional Commissioner
of Police (Administration),
Police Headquarters,
I.P. Estate,
New Delhi-110002.

... Respondents.

By Advocate Shri Harvir Singh.

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O R D E R

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

In the aforesaid two O.As, the applicants have impugned the action and orders passed by the respondents in not promoting them from Sub-Inspectors to Inspectors by placing them in List 'F' (Ministerial/Executive) in terms of Rule 17 (iii) of the Delhi Police (Promotion & Confirmation) Rules, 1980 (hereinafter referred to as 'the Rules'). Both these cases were tagged together as the learned counsel for the parties have submitted that the issues raised are identical and hence they are also being disposed of by a common order.

2. For the sake of convenience, the facts in O.A. 1415/96 are referred to in order to focus on the issues raised in the cases. The applicant, Shri Uma Kant Tiwari, has impugned the order dated 6.5.1996 passed by the respondents and has prayed that the same may be set aside with the direction to bring his name between Serial Nos. 16 and 17 of the list and promote him to the rank of Inspector (Min.) with all consequential benefits. The applicant joined Delhi Police as Constable on 30.3.1970 and was promoted as ASI (Steno) w.e.f. 6.3.1973. Later, he was promoted as Sub-Inspector (Min.) in September, 1987 and confirmed in that post in September, 1989. His name was called for promotion to List 'F' in March, 1994. The particulars were again called in January, 1996. According to him, a DPC was held to promote eligible Sub-Inspectors (Min.) to the rank of Inspector (Min.). The respondents published the impugned order, bringing a list of 35 candidates on the promotion list w.e.f. 30.4.1996 in terms of Rule 17(iii) of the Rules, but his name was not included in

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that list. He made a representation to the Commissioner of Police (CP) Delhi on 10.5.1996 which was rejected on 4.6.1996. In this letter, it has been mentioned that the DPC had found his service record below the desired level and hence he could not be included in the promotion list 'F' (Min.) w.e.f. 30.4.1996. Being dissatisfied with this reply, the applicant has filed this O.A.

3. Shri Shyam Babu, learned counsel has assailed the action of the respondents in not promoting the applicants in the two O.As on a number of grounds. The first ground is that the post of Inspector (Min.) is not a selection post and the criteria should only be seniority-cum-fitness. He has contended that as nothing adverse had been communicated to the applicants during the relevant period when the service record had been considered by the DPC, they ought to have been promoted and placed in list 'F'. He has also submitted that the DPC cannot lay down any criteria for selection which is contrary to the Rules. He has relied upon Rule 5 of the Rules in which it has been laid down that "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". The constitution of the Departmental Promotion Committee (DPC) for the posts in question is provided in Rule 8 and in the present case it consists of the Commissioner of Police and two Addl. Commissioners of Police to be nominated by CP. Under Rule 17 (iii) of the Rules, confirmed Sub-Inspectors having 6 years' service in that rank are eligible for selection which is to be made on the recommendations of the DPC. Learned counsel for the applicants has very vehemently submitted that the DPC has taken into account a wrong criteria or has wrongly interpreted the material before it and has failed to

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appreciate that the only criteria for selection as provided in Rule 17(iii) of the Rules is one of seniority. He has submitted that the DPC has adopted a criteria which has been laid down by the respondents in their circular/order dated 23.9.1992 which they cannot adopt or follow as a proper procedure. He relies on the judgement of the Supreme Court in Dr. K.C. Sahu Vs. State of Orissa (1995(6) SCC P-1). According to him, only the appropriate Government i.e. the Central Government under Article 73 and the State Government under Article 162 of the Constitution alone have powers to issue executive instructions and none else as held in that case. He has emphasised that in the present case, the DPC could not, therefore, have adopted the criteria that they have done which is outside the provisions of Rules 5,8 and 17(iii) of the Rules. He has submitted that the Office Memorandum issued by the Government of India, Department of Personnel and Training, Ministry of Public Grievances and Pensions, dated 10.3.1989 (copy placed on record), relied upon by the respondents, cannot also apply to the present case.

4. The DPC for promotion of the applicant, Shri Jagdish Chander, in OA 66/96 was held on 26.8.1992 and in the case of other applicant, Shri Uma Kant Tiwari, in OA 1415/96, on 30.4.1996. Shri Shyam Babu, learned counsel has submitted that the DPC has almost verbatim followed the procedure given in the circular/order issued on behalf of the CP on 23.9.1992 which criteria, according to him, is beyond the powers of the DPC as it is contrary to the aforesaid Rules. He has also relied on the judgement of the Tribunal in Dev Prakash Vs. Lt. Governor & Ors. (OA 799/96), decided on 31.1.2000 (copy placed on record). In this case, the applicant had impugned the promotion granted to Respondents 3 and 4 as Assistant

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Sub-Inspectors (MT Store Keeper) in preference to him in which certain directions were given by the Tribunal to hold a review DPC for the purpose of considering the claim of the applicant for promotion. In that case, a reference had been made to Rule 5 and 15 of the Rules in which it has been observed that the use of the word 'selection' in the said Rules cannot be construed to mean that the promotion is to be on the basis of selection and not on the basis of seniority-cum-fitness.

5. We have seen the reply filed by the respondents and have also heard Shri Ajesh Luthra, learned counsel. Shri Harvir Singh, learned counsel in the other application (OA 66/96) has adopted the arguments of Shri Ajesh Luthra in OA 1415/96. Learned counsel has submitted that the DPC had duly considered the applicant in accordance with the relevant Rules but had not recommended his name for inclusion in promotion list 'F' as he could not make the grade and, therefore, could not be promoted. He has submitted that promotions to subordinate ranks in the Delhi Police are governed by the provisions of Rule 5, which is by way of "selection tempered by seniority". He has submitted that the DPC is empowered to devise its own method and procedure for objective assessment of the suitability of the candidates which it has done. He has also submitted the DPC Minutes and records pertaining to the applicants for our perusal. He has also distinguished the judgement of the Tribunal relied upon by the learned counsel for the applicants in Dev Parkash's case (supra), on the ground that the promotion sought by the applicant in that case was to a non-selection post of Assistant Sub-Inspector (MT Store Keeper), with which comments we generally agree. That case is not applicable to the present case, as the selection here is to the rank of Inspector under Rule 5 of the Rules.

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Shri Ajesh Luthra, learned counsel has also relied on SI Ranjit Singh Vs. Lt. Governor & Anr. (OA 362/95), decided on 22.9.1995 (copy placed on record). In that case, the applicant had impugned the action of the respondents in not bringing his name in promotion list 'E-1', where Rule 5 of the Rules had been considered. The criteria and assessment made by the DPC had also been referred to in which it was stated that the DPC was guided by its own assessment and no reference has been made to the Police Commissioner's impugned Standing Order dated 23.9.1992, which has also been referred to in the present O.As. It was observed that merely because the DPC's basis of assessment coincided with the Police Commissioner's guidelines, it does not vitiate that assessment. He has also relied on the DOP&T O.M. dated 10.3.1989 and the records of the DPC meetings held by the respondents dated 26.8.1992 and 30.4.1996. According to him, the assessments of the DPCs have been done in accordance with the relevant Rules and there is nothing illegal as held in Ranjit Singh's case (supra). He has, therefore, submitted that the submissions of the learned counsel for the applicants that the DPC had relied on the instructions issued by the CP on 23.9.1992 cannot be accepted as the DPCs had correctly made the assessments in accordance with the Rules and DOP&T Instructions, of the eligible officers. In the circumstances, he has prayed that the O.As may be dismissed.

6. We have seen the rejoinder as well as further heard Shri Shyam Babu, learned counsel. He has reiterated that the promotions have to be made in accordance with Rule 17 (iii) of the Rules which means that it has to be on the basis

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of seniority alone subject to fitness and no further assessments whatsoever can be made of the eligible candidates by the DPC which has, therefore, adopted a wrong procedure.

7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. As the learned counsel for the applicants had heavily relied on the judgement of the Hon'ble Supreme Court in Dr. K.C. Sahu's case (supra), we think it appropriate to deal with this case first. In that case, it has been held as follows:

"Power to make rules regulating the conditions of persons appointed on Government posts is available to the Governor of the State under the proviso to Article 309 and it was in exercise of this power that the present rules were made. If the statutory rules, in a given case, have not been made, either by Parliament or the State Legislature, or, for that matter, by the Governor of the State, it would be open to the appropriate Government (the Central Government under Article 73 and the State Government under Article 162) to issue executive instructions. However, if the rules have been made but they are silent on any subject or point in issue, the omission can be supplied and the rules can be supplemented by executive instructions. (See Sant Ram Sharma Vs. State of Rajasthan (AIR 1967 SC 1910))."

In the instant case, the Government did neither issue any administrative instruction nor did it supply the omission with regard to the criteria on the basis of which suitability of the candidates was to be determined...."

(Emphasis added)

Learned counsel had submitted that on the basis of the above judgement, the executive instructions can only be laid down either by the Central Government under Article 73 or the State Government under Article 162 of the Constitution and none else. That is so, as seen from the earlier part of the judgement where it is held that "if the statutory rules in a given case have not been made". That is not the position in the present cases as Parliament has enacted the Delhi Police Act, 1978, for regulation of the Police in Union Territory of Delhi under which the Rules of 1980 have also been

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made. In the O.M. dated 10.3.1989 issued by the GOI, DOP&T, it has been laid down that each Departmental ^{Promotion} Committee can decide its own method and procedure for objective assessment of the suitability of the candidates. Shri Shyam Babu, learned counsel, has contended that the Circular issued by the CP dated 23.9.1992 has not been issued by the competent authority and cannot be relied upon by the respondents. On perusal of the DPC Minutes held on 26.8.1992 to select Sub-Inspectors (Exec.) for appointment to promotion list 'F' (Exec.), it is seen that the DPC has considered the eligible officers falling within the zone of consideration and graded the officers as fit or otherwise after scrutinising the total service record in the rank of Sub-Inspector and ACRs for the last five years. They had also laid down the guidelines in declaring the candidates fit or otherwise which in substance, no doubt, coincides with the criteria laid down in the impugned circular/order dated 23.9.1992. In Ranjit Singh's case (supra) (in which one of us, Smt. Lakshmi Swaminathan, Member(J) was also a Member), the similar procedure adopted by the DPC in making assessment of the eligible officers has been upheld where, like in the present case, no reference has been made to the CP's impugned Standing Order dated 23.9.1992. The mere fact that the basis of assessment made by the DPC coincides with the order passed by CP on 23.9.1992 cannot vitiate the procedure adopted by the DPC. The respondents have stated that this has been issued for information of the concerned officers.

8. Rule 5 of the Rules provides that promotion is to be made by "selection tempered by seniority". Rule 8 which gives the constitution of the DPC provides that fitness of personnel for promotion to various ranks in different

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grades/cadres shall be judged by a Departmental Promotion Committee, which shall be constituted by the CP. Rule 17(iii) provides that confirmed Sub-Inspectors with 6 years' service shall be eligible for consideration by the DPC and selection shall be made on the recommendations of the Committee. It is further provided that "the names of Sub-Insprs. (Min.)....so selected shall be brought on list 'F' (Min.) in order of their respective seniority, keeping in view the number of vacancies likely to occur in the following one year, and promotions made to the rank of Inspr. (Min.) from this list as and when vacancies become available". We see force in the submissions made by the learned counsel for the respondents that the promotion is not to be made only on the basis of seniority, but keeping in view the respective seniority after the selection is made by the DPC. The Supreme Court in Sant Ram Sharma's case (supra) has held:

"In our opinion, the respondents are right in their contention that the ranking or position in the Gradation List does not confer any right on the petitioner to be promoted to selection post and that it is a well established rule that promotion to selection grades or selection posts is to be based primarily on merit and not on seniority alone. The principle is that when the claims of officers to selection posts is under consideration, seniority should be regarded except where the merit of the officers is judged to be equal..."

Therefore, having regard to the provisions of the relevant Rules referred to above, we are unable to agree with the contentions of the learned counsel for the applicants that the selection for promotion is based only on seniority or that the DPC has followed an erroneous procedure. As laid down in Rule 17(iii), the selection is to be made on the recommendations of the DPC and the names of the selected

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candidates are to be brought on list 'F' (Min.) in order of their respective seniority and this, therefore, involves a selection process.

9. As held in Dr. Sahu's case (supra), if the rules have been made as in the present case, but they are silent on any subject or point in issue, the omission can be supplied and the rules can be supplemented by executive instructions. In this case, the Govt. of India, DOP&T O.M. dated 10.3.1989 had laid down that each DPC can decide its own method and procedure for objective assessment of the suitability of the candidates. The DPC in the present case has adopted certain guidelines which it has followed for objective assessment of all the eligible candidates. We are in respectful agreement with the reasoning given in Ranjit Singh's case (supra) that the applicant's case can succeed if he establishes that although he possessed a better record of service for the relevant period, he has been passed over for promotion or those with lesser service record than him have been promoted. This has neither been the case of the learned counsel for the applicants nor established by him. It is also settled law that the applicants have only a right to be considered for promotion by a duly constituted DPC, which has been done in the present two O.As. The decision taken by the DPC, based on the assessment of the ACRs of the eligible candidates and the criteria adopted by them for such assessment cannot, therefore, be held to be arbitrary or illegal justifying any interference in the matters. The criteria adopted by the DPC for assessment of the eligible candidates cannot also be held to be contrary to the Rules as the relevant Rules mentioned above clearly state that it is by method of "selection

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tempered by seniority". It is settled law that guidelines or executive instructions can supplement Rules but cannot supplant them. See the observations of the Supreme Court in State of M.P. Vs. G.S. Dall & Flour Mills (1992 Supp (1) SCC 150), in which it has been held that "Executive instructions can supplement a statute or cover areas to which the statute does not extend. But they cannot run contrary to statutory provisions or whittle down their effect".

10. In the result, we find no good grounds to warrant judicial interference in these cases. O.A. 1415/96 and O.A. 66/96 fail and are dismissed. No order as to costs.

11. Let a copy of this order be placed in O.A. 66/96.

(V.K. Majotra)
Member(A)

(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'

Attended
25/5/2000
CO-CC-VI