

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.799 of 1996

8

Dated this 31st day of January, 2000

HON'BLE MR.JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MRS. SHANTA SHASTRY, MEMBER (A)

Dev Parkash (189/L)
S/o Shri Makhan Lal
R/o Village & P.O. Kadipur
Dist. Gurgaon
Presently working in the Office
of the D.C.P.(Prov. & Lines)
Delhi.

...Applicant

(By Advocate: Shri Shyam Babu)

versus

1. Lt. Governor, Delhi
Raj Niwas
Delhi.
2. Commissioner of Police, Delhi
Police Headquarters
I.P. Estate
New Delhi-110002.
3. Madan Lal (137/L), presently
working as ASI (M.T. Store Keeper)
in the office of D.C.P.(P&L), Delhi
(Service to be effected through
Respondent No.2).
4. Vijender Singh (208/L), presently
working as ASI (M.T. Store Keeper)
in the office of D.C.P.(P&L), Delhi
(Service to be effected through
Respondent No.2).

... Respondents

(By Advocate: Shri Anil Singhal, proxy
Ms. Jasmine Ahmed).

O R D E R (Oral)

Hon'ble Mr Justice Ashok Agarwal

By the present OA applicant impugns the promotion granted to respondent nos.3&4 as Assistant Sub. Inspector (M.T. Store Keeper) on 7.10.1994 in preference to him. It is undisputed that applicant is senior to respondent nos.3&4 in

9

the post of Head Constable M.T. Store Clerk which is a feeder post to the post of Assistant Sub Inspector (M.T. Store Keeper). However, when the DPC met on 6.10.1994 for the purpose of considering the case for promotion it has followed the selection process and not promotion process. It has directed promotion of respondent nos.3&4 on the basis of their possessing higher merit than the applicant.

2. We have perused the relevant recruitment rules and we find that the post of Assistant Sub Inspector (M.T. Store Keeper) is a non selection post. In the circumstances, the criteria adopted by the DPC in considering the post as a selection post and thereby promoting respondent nos.3&4 in preference to applicant is unjustified.

3. Shri Anil Singhal, learned counsel appearing on behalf of the respondents has however placed reliance on a circular order of 23.9.1992 issued by Commissioner of Police, Delhi for stating that the aforesaid post is a selection post. In our view, the said circular order which is of an administrative nature, cannot over ride the statutory provisions contained in the recruitment rules.

4. It is undisputed that the DPC has followed the criteria of selection as laid down



10

in the aforesaid circular dated 23.9.1992. The same cannot justify the promotion of respondent nos.3&4 by ignoring the claim of the applicant on the erroneous criteria adopted, i.e. criteria for selection. The post being one of promotion ~~non~~ selection the same has to be on the basis of seniority-cum-fitness and not on the basis of selection as has been done in the instant case.

5. Learned counsel for the respondents has sought to place reliance on Rule 5 & Rule 15(ii) of the Delhi Police (Promotion & Confirmation) Rules, 1980. Rule 5 deals with general principles of promotion. The same inter alia provides that promotions from one rank to another shall be made by selection tempered by seniority. Similarly Rule 15(ii) provides for eligibility to the post of list 'D' (Technical). The same speaks of a selection to be made on the basis of the recommendations made by the DPC. In our view, the use of 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.

6. The term 'selection' relates to the process of making promotions. The same does not relate to the mode or method to be adopted for making promotions. This is made clear by the subsequent clause which follows and which provides that:

De. J.

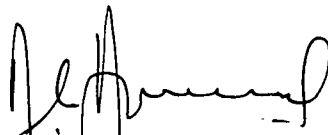
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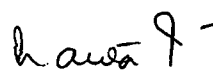
"The Head Constable so selected shall be brought on the list 'D' (Technical) in order of their respective seniority." (emphasis provided).

7. Aforesaid provision makes it abundantly clear that the appointment to the post of Assistant Sub Inspector (M.T. Store Keeper) is to be on the basis of seniority-cum-fitness and not on the basis of selection as has been done in the instant case.

8. In the circumstances, we direct the respondents to hold a review DPC for the purpose of considering the claim of the applicant for promotion as on 7.10.1994, the date on which respondent nos.3&4 were promoted. It goes without saying that in case applicant is found eligible, he shall be ranked senior to respondent nos.3&4 in the post of Assistant Sub Inspector (M.T. Store Keeper).

9. The present OA is allowed in the aforestated terms. There shall be no order as to costs.


(Ashok Agarwal)
Chairman


(Mrs. Shanta Shastry)
Member(A)