

Central Administrative Tribunal
Principal Bench

O.A. No. 869 of 1996
~ R.A. No. 241 of 1997

New Delhi, dated this the 6th JANUARY, 1999

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Bhalinder Singh,
S/o Shri Charan Singh,
Sub-Inspector,
Delhi Police,
R/o 3-E, Police Colony,
Model Town Phase II,
Delhi.

.... Applicant

(By Advocate: Shri B.B. Raval)

Versus

1. Union of India through
the Secretary,
Ministry of Home Affairs, New Delhi.

2. The Commissioner of Police,
Delhi Police, Police Hqrs.,
MSO Building, I.P. Estate, New Delhi.

3. Shri Virender Singh (D/89)
4. Shri Dalbir Singh (D/2039)
5. Shri Ishwar Singh (D/1915)
6. Shri Kishore Kumar (D/2009)
7. Shri Ram Singh (D/272)
8. Shri Ganga Ram (D/1470)
9. Shri Orijinder Singh (D/1898)
10. Shri Mohinder Singh (D/1360)
11. Shri Swatantair Singh (D/257)
12. Shri Kulbhushan Singh (D/348)
13. Shri Shiv Dayal (D/2017)
14. Shri Harcharan Verma (D/1762)
15. Shri Abhey Singh (D/2024)
16. Shri Raj Kumar (D/1873)
17. Shri Abhey Kumar (D/2057)
18. Shri Sunil Kumar (D/2077)
19. Shri Dharam Bir Singh (D/1772)
20. Shri Randeep Talwar
21. Ms. Shagun Sharma, Lady S.I.
22. Shri Gurdev Singh (D/1412) Respondents

(By Advocate: Shri S.K. Gupta proxy
for Shri B.S. Gupta)

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BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant had filed O.A. No. 869/96 impugning respondents' order dated 2.5.95 (Ann. A) rejecting his representation dated 12.8.94 for inclusion in promotion list 'F' (Executive) w.e.f. 12.8.94 and had sought inclusion in the aforesaid list and promotion as Inspector w.e.f. the date of promotion of his immediate juniors with arrears of pay and allowances with all consequential benefits together with interest @ 18% p.a. thereon.

2. That O.A. was heard and disposed of along with O.A. No. 1652/94 and connected cases by the order of this very Bench dated 18.8.97.

3. In that order dated 18.8.97 it was noted that as the entire impugned promotion list 'F' (Ex.) dated 12.8.94 and the promotion orders dated 12.8.94 and 18.8.94 had separately been quashed and set aside by another Bench of this Tribunal by order dated 28.5.97 in O.A. No. 1563/95 Rameshwar Singh & Ors. Vs. Commissioner of Police and Ors. this Bench was not required to go into the merits of applicants' challenge to the same. As nothing had been shown to this Bench till the time order dated 18.8.97 was passed to establish that the aforesaid order dated 28.5.97 had been stayed, modified or set aside, it followed that owing to the quashing of the aforesaid impugned promotion List 'F' (Ex.) dated 12.8.94 and the two promotion orders dated 12.8.94 and 18.8.94 based thereon.

respondents were now required to prepare Promotion List 'F' (Ex.) afresh after considering the cases of all those who were eligible and within the zone of consideration in accordance with rules, instructions and judicial pronouncements on the subject.

4. Meanwhile upon an appeal being filed in Rameshwar Singh's case (Supra) the Delhi High Court by its order dated 4.11.1997 has set aside the Tribunal's order dated 28.5.97 and remanded that case back to the Tribunal for disposal in accordance with law. As we had based our order dated 18.8.97 on the decision dated 28.5.97 of a Coordinate Bench in Rameshwar Singh's case (Supra), and had not gone into, the merits of applicant's claims, now that the aforesaid order dated 28.5.97 has been quashed and set aside by the Delhi High Court and that matter has been remanded to the Tribunal for disposal in accordance with law.

5. Meanwhile applicant Shri Bhalinder Singh had also filed R.A. No. 241/97 praying for review of the order dated 18.8.97 to the extent it affects him. After issuing notice in the R.A. and hearing both sides we hold that the R.A. deserves to succeed and is allowed and we are therefore reviewing our aforesaid order dated 18.8.97 to the extent it affects the present applicant.

6. To appreciate the merits of the case, a brief recital of the rival contentions is essential.

7. Applicant's case is that he joined service as an S.I. of Police on 1.12.83 and was confirmed as such w.e.f. 1.1.86. He states that he served in various police stations and has an unblemished service record, with as many as 39 commendation certificates/cash prizes. He admits that while posted at I.G.I. Airport he received a censure on 24.7.92 for misconduct alleged to have been committed on 9/10.9.91, but as per Delhi Police (P&A) Rules its effect is valid only for a period 6 months from the date of occurrence of the incident, and secondly it cannot act as a bar to his promotion. Applicant asserts that he was eligible and was within the consideration zone for promotion as Sub-Inspector in accordance with Respondents guidelines dated 23.9.92 (Ann. A-3) but was surprised to find that his name was not in the list of 337 Sub-Inspectors brought onto Promotion List 'F' (Ex.) dated 12.8.94 nor indeed in the list of 63 officers, whose names had been kept in sealed cover in accordance with Rule 5(iii) D.P. (P&C) Rules. Applicant asserts that he was shocked to learn that vide Promotion order dated 18.8.94 respondents have promoted 267 Sub-Inspectors as Inspectors on regular basis and 43 other S.Is on purely temporary and ad hoc basis. He states that the promotion of four other SIs whose names stood on Promotion List 'F' (Ex.) w.e.f. 12.8.94 was defined as they had been awarded censures during the previous six months, but they have also been promoted as Inspectors upon completion of six

months after award of censure, and he asserts that many others who he has arranged as Respondents 7 to 22 have also been promoted notwithstanding the fact that they are facing criminal charges, vigilance inquires, or departmental proceedings, details of which have been furnished in the O.A. Applicant therefore assails his non-inclusion in Promotion List 'F' (Ex.) dated 12.8.94 and his consequent non-promotion to the rank of Inspector as illegal, arbitrary and malafide and discriminatory and states that as his representation to respondents has been rejected has been compelled to file the O.A.

8. Respondents in their reply challenge the O.A. They state that applicant was considered for promotion as Inspector by a regularly constituted DPC along with the others as per guidelines contained in Para 1 of their reply. One of the guidelines was that officers who stood in the Secret List of doubtful integrity was not considered fit for promotion as per S.O. No. 265/87. They state that applicant was awarded punishment of censure vide order dated 24.7.92 on the allegation that while detailed for duty at IGI Airport he took 2 bags from a passenger who disembarked and put them in the cabin of the duty officer to avoid customs clearance. One bag contained a blanket and the other contained electronic parts of a VCR (contraband article). Consequent on the censure applicant's name was brought onto the Secret List of officers of doubtful integrity and as per S.O.

No. 265/87, the existence of applicant's name on the Secret List operates as a bar to his promotion. It is stated that the DPC assessed the applicant's suitability for promotion on the basis of his total record of service and the ACRs for the preceding 5 years i.e. 1989-90; 1990-91; 1991-92; 1993-94 and in his overall assessment, he was assessed as unfit by the DPC as he could not make the grade as per criteria adopted for making selection, against which he represented and that representation was rejected by the competent authority and he was informed accordingly vide order dated 28.4.95.

9. Applicant has filed rejoinder in which besides raising preliminary objection on the competence of the answering respondents to file reply on behalf of the private respondents, has asserted that as the bulk promotion of as many as 337 Sub-Inspectors was as a result of restructuring owing to upgradation, therefore the procedure for promotion was to be seniority-cum-fitness subject to rejection of unfit and not by way of selection. Secondly it has been asserted that many promotions were made in violation of the guidelines and no criteria has been laid down to exclude a person on grounds of corruption or moral turpitude as a result of which exclusion on these grounds can become arbitrary. Thirdly it has been contended that no criteria has been laid down for inclusion or exclusion of names of persons from the Secret List, which itself can be arbitrary exercise of power. It has been emphasised that the censure was

awarded to applicant on 24.7.92 for an incident alleged to have been committed on 9/10.9.91 and the censure was valid if at all only for six months from the date of the incident and not from the date of its award. It has also been asserted that denial of promotion to applicant on the basis of the aforementioned censure amounts in effect to double punishment, which applicant asserts is even more galling when others with far worse records of service including multiple censures, departmental proceedings, vigilance inquiries, and even criminal proceedings against them have been promoted.

10. We have heard applicant's counsel Shri Rawal and respondents' proxy counsel Shri S.K.Gupta. Both sides have reiterated the contents of their pleadings noticed above. Shri Rawal has argued at length and has relied upon the rulings in 1992 (21) ATC 290; 1987 (4) ATC 385; and 1973 92) SLR 257 in support of his contention that as the promotional posts arose out of restructuring, there can be no element of selection and the promotions have to be made on the basis of seniority subject to rejection of the unfit. He has also relied upon the rulings in 1989 (10) ATC 209; 1993 (1) ATJ 348 and 1992 92) ATC 480 on the point that the penalty of censure awarded to applicant cannot operate as a bar to his promotion.

11. We have considered the rival contentions carefully.

12. In the orders creating the posts against which the promotions were made it was clearly stated that the promotions were to be made according to rules. Rule 5(1) Delhi Police (P&C) Rules provides that promotion from one rank to another from lower 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. Further Rule 17(1) Delhi Police (P&C) Rules relating to preparation of List 'F' (Ex.) provides that confirmed Sub-Inspector (Ex.) who have put in a minimum of 6 years service in the rank of Sub-Inspector shall be eligible. The selection shall be made on the recommendation of the DPC. The names of selected SIs shall be admitted to List 'F' (Ex.) on the basis of their respective seniority keeping in view the number of vacancies likely to occur in the following year and promotion made to the rank of Inspector from this list as and when vacancies become available. Under the circumstances, it is clear that the promotions to List 'F' (Ex.) were to be made by selection through a DPC and contentions to the contrary is rejected.

13. In this connection it is not denied that the selections were made by a duly constituted DPC. The membership of that DPC has not been challenged, and there is no specific allegation of malafide against any of its members. That DPC considered the names of all those who came within the zone of consideration, and it is not applicant's case that

his name was not considered. It is well settled that no Govt. employee has an enforceable legal right to be promoted. He has only an enforceable legal right to be considered for selection, provided he is eligible and comes within the zone of consideration, and admittedly applicant's case was considered.

14. However there are certain features of applicant's case that merit attention.

15. Admittedly the names of those coming within the zone of consideration were considered in accordance with certain guidelines one of which specifically was that officers whose names stood on the Secret List of doubtful integrity were not considered fit as per S.O. No. 265/87. while that S.O. no doubt provides shows that one of the consequences of being brought onto the Secret List is for that officers' promotion to be withheld: para 7 of that S.O. lists the circumstances in which an officer's name is to be brought onto the Secret List, which include:

- i) officials convicted in a Court of Law...
- ii) officials who are awarded a major penalty departmentally
- iii) officials against whom proceedings for a major penalty or a Court trial are in progress
- iv) officials who are prosecuted but acquitted on technical grounds

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6 16. Clearly when the DPC considered the promotion cases applicant did not fall into any of the above categories. Respondents in their reply have admitted that he was brought onto the Secret List because of the punishment of censure inflicted on him 24.7.92. It is not respondents' case that applicant was brought onto the Secret List because he was convicted in a Court of Law or because he was prosecuted but acquitted on technical grounds. Moreover a censure is not even a major penalty but only a minor one vide Rule 6(ii) Delhi Police (P&A) Rules.

17. In this background the question whether applicant's name should have been included in the Secret List on the basis of the aforesaid censure and the rejection of his inclusion in the Promotion List 'F' (Ex.) by the DPC on this particular ground requires further examination by the Respondents. They have no doubt stated in their reply that his suitability for promotion was considered on the basis of his total record and the ACRs for the preceding 5 years and he was assessed as 'unfit' on that basis but what specific factors in coming to their conclusion have not been stated by them. In this connection we have seen the DPC minutes relating to the applicant. Against his name we find that respondents have assessed his performance as reflected in his ACRs for 1988-89 as Very Good; for 1989-90 as Very Good/Satisfactory; for 1990-91 as Good; for 1991-92 as Average; for 1992-93 as Average/Outstanding; and for 1993-94 as Very Good.

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~~Very~~ ~~Good~~. Even if we average out the remarks for the years 1989-90 and 1992-93 it cannot be denied that applicant has secured the minimum of three 'Goods' required as per Respondents' own guidelines. Against his name it is stated that (i) he was censured on 24.7.92 and (ii) his name was in the Secret List and in the remarks column, there is only the word 'unfit'. No reasons have been given in the DPC Minutes as to why respondents concluded that he was unfit for promotion. Clearly what weighed with them was the fact that applicant's name was on the Secret List but in the light of the facts noticed above, the question whether applicant's name should have been placed on the Secret List in terms of S.O. 265/87 is itself open to question.

19. In the facts and circumstances noticed above this O.A. is disposed of with a direction to respondents to reconsider within three months from the date of receipt of a copy of this order applicant's prayer for inclusion in the impugned promotion list 'F' (Ex.) by means of a reasoned order in accordance with rules, instructions and judicial pronouncements, and in case respondents find him fit for inclusion in the aforesaid list, so include him with effect from the date his immediate junior was included, with consequential benefits. No costs.

A. Vedaravalli

(DR. A. VEDAVALLI)
Member (J)

Aradhya

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

(C.K.)