

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2286/1997

New Delhi this the 23rd day of May, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

Shri Mahavir Singh
S/o Shri Dhanpat Singh
R/O Village Chatana
P.O.Mohra, Distt. & Teh.Sonipat
Haryana.

... Applicant

(By Shri N. Safaya, Advocate)

-Versus-

1. Commissioner of Police
Police Headquarters
I.P. Estate
New Delhi.
2. Dy. Commissioner of Police
Headquarters (I)
I.P. Estate
New Delhi-110050.

... Respondents

(Shri Anil Singhal, proxy counsel
for Ms.Jasmine Ahmed, counsel
for the respondents)

O R D E R (ORAL)

Shri V.K.Majotra, AM :

The Applicant was enlisted in Delhi Police as a Constable (Executive) on 2.2.1982 and confirmed as such with effect from 1.2.1987. A departmental enquiry was ordered against him on the allegation that on on 23.4.1988, while he was posted at Police Station Samaipur Badli, North District Delhi, he took a sum of Rs.500/- from one Sabeer son of Shri Razak, who had allegedly raped a woman, for not taking legal action against him and that he failed to inform his senior officers about the said incident. A case FIR No.92 dated 24.4.1998 under Section 376 I.P.C. was

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registered against the accused. The applicant was dismissed from service vide order dated 15.6.1989. He filed OA No.1013/1990 against the aforesaid order of dismissal. The Tribunal quashed and set aside the punishment order vide its judgement and order dated 21.9.1994 and directed the respondents to reinstate the applicant within three months from the date of receipt of a copy of the order with all consequential benefits. In compliance of these orders, the applicant was reinstated as a Constable from the date of dismissal i.e. 15.6.1989 with all consequential benefits vide order dated 15.5.1995. The applicant has alleged that he has been deprived of his right to appear in the requisite tests for promotion held in 1989 and 1992 during which period persons junior to him had been promoted. The applicant served a legal notice dated 29.3.1996 on the respondents seeking promotion like his batchmates and juniors to him. He has cited an example of one Kaptan Singh, Constable who in similar circumstances through OA No.2395/1994 was reinstated and given promotion to the post of Head Constable with effect from an earlier date, 8.2.1995 along with all consequential benefits. The applicant has sought a direction to the respondents to promote him to the post Head Constable prior to the date his juniors were so promoted and also a further direction for restoration of his seniority with all consequential benefits.

2. In the counter, the respondents have contended that due to dismissal, the applicant was not

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found entitled to take a departmental promotion from back date during the years 1989 and 1992 when Promotion List 'A' tests were held. However, his seniority in the rank of Constable (Executive) has been accorded to him from the date of dismissal, i.e. 15.6.1989. According to the respondents, allowing consequential benefits does not entitle a person to take a departmental promotion from back date. They have further maintained that as soon as a charge is served upon a person in a departmental enquiry, he loses his right to be considered for promotion. The applicant has filed a rejoinder as well.

3. We have heard the learned counsel for the parties and examined the material available on record carefully.

4. Our attention was drawn by the learned counsel for the respondents to Rule 12 of the Delhi Police (Promotion and Confirmation) Rules, 1980, ~~contending~~ contending that a confirmed Constable having a minimum of 5 years' service after confirmation is eligible for consideration for being sent to lower School Course. The aforesaid rule reads as under:-

"12. Promotion List 'A' - (i)(a) Promotion list 'A' (Executive) shall be a list of confirmed constables (Executive) considered fit for being sent to lower School Course. Confirmed Constables having a minimum of 5 years service shall be eligible for consideration. The list shall be framed on the recommendations of the departmental promotion committee which shall adopt the evaluation system based on (1) Service record (2), Seniority (3) Annual

Confidential reports (4) Acquittance in Professional test which shall cover following subjects:

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- (i) Physical Training and Parade,
- (ii) Elementary law and police practical work,
- (iii) General Knowledge,
- (iv) Professional work done.

A constable up to 40 years of age shall be eligible to take tests and only ten chances will be allowed. The names of selected constables shall be brought on list 'A' in order of their seniority keeping in view the number of vacancies in the rank of Head Constables likely to be available in the following one year.

The selected constables will be sent for lower School Course subject to their medical fitness by the Civil Surgeon.

(b) Constables with a minimum of 2 years of service shall be eligible to undergo Drill Instructors Course. On satisfactory completion of the course with Ist Class proficiency certificate, their names shall be brought on promotion list 'A' and sent for training in the next Lower School Course alongwith others, irrespective of their seniority. It is subject to the medical fitness by the Civil Surgeon."

We intend to look into ^{to} ~~a different way to~~ the interpretation given by the counsel for the respondents to aforesaid Rule 12 regarding eligibility for inclusion in Promotion List 'A'. The expression "a minimum of 5 years' service" for eligibility is not the service after confirmation as a Constable but ^{rationally} a five years' service commencing ^{from} appointment as a Constable. In this view of the matter, the applicant would be eligible for inclusion in Promotion List 'A' under Rule 12 in the year 1987.

5. Impugned order at Annexure-'A', inter alia states that the applicant had appeared in the

Promotion List 'A' test held in 1987 but could not make the grade. As such, his request for promotion to the rank of Head Constable was rejected and he was informed accordingly on 9.4.1987. The respondents have stated in the counter that the applicant was not considered for inclusion in Promotion List 'A' during the years 1989 and 1992. There is no quarrel with the outcome of the consideration of the applicant for inclusion in Promotion List 'A' test held in 1987 as he could not make the grade but the direct implication of this Tribunal's judgement in OA No.1013/90 dated 21. 9.1994 setting aside the punishment of dismissal and directing the respondents to reinstate the applicant with all consequential benefits is that he must ^{be} ~~have been~~ considered being clearly eligible under Rule 12 of the aforesaid Rules ^{for} ~~in~~ the year 1989 when the respondents considered his other colleagues for the purpose. It is true that since the applicant was under the punishment of dismissal at the relevant time, he was not considered but after the aforesaid orders of the Tribunal, he should have been considered at a later date giving effect to his inclusion in the Promotion List 'A' retrospectively. Both counsel referring to Annexure 'E' which is an order dated 27.11.1995 passed by the Tribunal in OA No.2395/94 in the matter of Constable Kaptan Singh vs. Commissioner of Police and anr. consented that the present OA could be disposed of with similar directions as in that case. In that case, the OA was disposed of with a direction to the respondents to consider the applicant therein for being sent on the next training

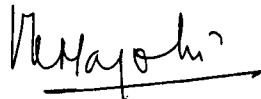
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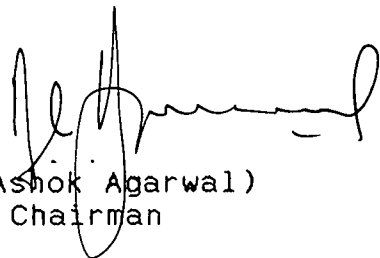
course prior to being brought on to the promotion list and if he was successful in that course, the DPC was to consider him for promotion to the post of Head Constable, in accordance with the rules and the relevant instructions on the subject. (14)

6. In the circumstances, we allow the present OA with a direction to the respondents to ~~send~~^{send} the applicant ~~for being fit~~^{to} to the next training course prior to being brought on to the promotion list, and if the applicant is successful in that course, the DPC should consider him for promotion to the post of Head Constable with effect from the date he became eligible for inclusion in Promotion List 'A' on being found fit.

7. The OA is disposed of accordingly with no order as to costs.



(V.K. Majotra)
Member (A)



(Ashok Agarwal)
Chairman

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