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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2940/97

New Delhi this the 4th Day of February 1999.

Hon'ble Shri T.N. Bhat, Member (J)

Hon'ble Shri R.K. Aahooja, Member (A)

Shri Suresh K. Vachani,
S/o Shri Khub Chand Vachani,
R/o Qr. No. 22, HC Old Type,
Police Station,
Mandir Marg,
New Delhi-110 001.

Applicant

(By Advocate: Shri VSR Krishna)

-Versus-

Union of India, through

1. Commissioner of Police,
Police Headquarters,
MSO Building,
Indraprastha Estate,
New Delhi.

2. Dy. Commissioner of Police
Headquarters (I), I.P. Estate
New Delhi.

Respondents

(By Advocate: Shri Vimal Roy for
Shri H.L. Jad)

O R D E R

Hon'ble Shri R.K. Aahooja, Member (A)

The applicant states that he joined as Key Punch Operator with Delhi police in 1974 and was confirmed on that post w.e.f. 20.1.1977. The next stage of promotion from the post of Key Punch Operator is that of Sub Inspector. The Recruitment Rules to the post were notified on 5.1.1989 stipulating that the post of ~~Sub Inspector~~ Input-Output Assistant will be a non-selection post, if filled by promotion. It was also provided that promotion will be made from amongst confirmed Data Entry Computers with six years regular service in that grade or from Key Punch Operator with 12 years service in the regular grade. The applicant claims that having joined ~~as~~ as Key Punch Operator w.e.f. 1974 and having been

confirmed in 1977, he had put in 15 years of regular service in 1989 and was eligible when the DPC was convened. He was however not approved. The applicant's name was ^{not} ~~or~~ considered by the 1990 DPC on the ground that only one person viz., the applicant was available to be considered. In 1992, the DPC according to the applicant recommended his name but the decision was not implemented. Aggrieved by these actions of the respondents, the applicant filed O.A. No. 588/94 which was disposed of on 23.4.1997 giving a direction to the respondents to hold a review DPC as on 12.11.1990 and to consider the applicant's case for promotion as Sub Inspector along with any other candidates who might have become eligible. The review DPC was held on 10.6.1997 and applicant was informed by the impugned order, Annexure A-1, that he had not come up to the required merit and was therefore not being recommended. It is against this order that the applicant has now again come before the Tribunal with the prayer that the impugned communication dated 19.6.1997 be quashed and he may be promoted w.e.f. 1990 with all consequential benefits.

2. The respondents submit that the applicant cannot at this stage question a DPC held on 15.5.1989 nor he can question the decision of the review DPC since it related to DPC held originally in 1990. They also take the plea of res judicata on the ground that the applicant has already agitated this matter in the earlier O.A. No. 588/94. On merit they say that the applicant had been awarded a major penalty withholding his two increments for a period of two years vide order dated 13.7.1982. The applicant has also got adverse

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ACRs for the years 1980-81, 1981-82, 1982-83 and 1983-84. His case was considered by DPC held on 15.5.1989 for promotion to the post of Assistant Sub Inspector and he was found fit and he was so promoted from that date. He was also confirmed as ASI w.e.f. 18.5.1998. The DPC had also met on 15.5.1989 to consider the names of the KPOs for promotion to the post of Sub Inspector but the applicant had not been found suitable for promotion to the post of Sub Inspector. His appeal was also rejected. Another DPC which met on 12.11.1990 decided not to consider his case as his name was the only one available. Subsequently the DPC met on 23.6.1992 and on the basis of the decision of that DPC the applicant and few others were promoted on ad hoc basis as Sub Inspector. He was also given regular promotion as Sub Inspector w.e.f. 28.12.1995. The respondents submit that as per direction of the Tribunal, a review DPC was duly held but the applicant was not found fit for promotion from 1990.

3. We have heard the counsel on both sides.

The objections raised by the respondents in respect of limitation are not valid ~~so far~~ as the impugned letter A-1 is concerned as proceedings of the review DPC were held in 1997. On merit the learned counsel for the applicant pointed out that the rules provide that promotion is on non selection basis or in other words it is on the basis of seniority subject to fitness. He submitted that the adverse ACRs were only up to the period 1982-83 and in the subsequent ACRs the applicant was considered fit for promotion. Thus, his fitness for promotion has been certified from 1984 onwards. Hence

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he could not be declared as unfit in 1990. It was also pointed out that on respondent's own admission, the applicant was approved for promotion to the rank of ASI by the DPC held on the same date as the one ^{for} Sub Inspector in 1989. The learned counsel pointed out that the basis for promotion i.e. non selection is similar in the case of promotion from KPO to Assistant Sub Inspector as well as KPO to the rank of Sub Inspector and the DPC held on the same day could not grade his ACRs differently while considering him for the two posts.

4. We do not find the above arguments to be based on firm ground. As rightly pointed out by the learned counsel for the respondents, the DPC is entitled to consider ACRs for the same period ^{as} is prescribed as qualifying service for promotion. The period prescribed for promotion from Key Punch Operator to that of Assistant Sub Inspector is five years. Thus, the DPC having been held in 1989, the ACRs for the period 1984 onwards were to be considered for the post of Assistant Sub Inspector. However, for Key Punch Operator the qualifying service for promotion to the post of Sub Inspector is 12 years and therefore for the DPCs held in 1989 and 1990, ACRs from 1978 onward could be taken into account. Admittedly, the applicant earned adverse ACRs for the year 1981 to 1984 and he had also suffered a major penalty during this period. In these circumstances while the adverse ACRs would not fall within the period of consideration for promotion to the post of ASI, those would have to be taken into consideration for promotion to the higher post of Sub Inspector. The A reasoning of

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the learned counsel for the applicant that the adverse ACRs could not be taken into consideration, is therefore liable to be rejected.

5. As regards the contention that the applicant had been considered fit for promotion by the reporting officer for the period after 1984, we can obviously not substitute our judgement for that of the DPC. The applicant had a right to be considered for promotion if he was otherwise eligible. There was material on which the DPC could have reached the conclusion regarding the non-fitness of the applicant. We cannot, therefore, as suggested by the learned counsel explore the possibility as to whether greater emphasis should have been placed by the DPC on the latter rather than ^{The} earlier ACRs.

6. The learned counsel for the applicant cited the case of Dharam Vir Singh Tomar Vs. Administrator, Delhi Administration and Others, (1991) 17 ATC 925. That case related to the role of seniority in the grant of selection grade and the requirement of fitness. The learned counsel laid stress on the following observation made by the Supreme Court.

"..... The expression 'fitness' means that there should not be any adverse entry in the character rolls of the concerned person at least for the last three years and no disciplinary proceedings should be pending against him. So far as the appellant is concerned indisputably there was no adverse entry in his CRs nor was any disciplinary proceeding pending against him at the relevant point of time."

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7. We do not find that the ratio of Dharam Singh Tomar (Supra) can be applied to the present case as the Supreme Court was examining the case of the applicant therein in the context of the grant of selection grade and not promotion to a higher post.

In the light of the above discussion, we find no merit in this O.A. which is accordingly dismissed.

R.K. Ahoja
(R.K. Ahoja)
Member (A)

T.N. Bhat
(T.N. Bhat)
Member (J)

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