

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

D.A. No. 1120/94

New Delhi, This the 31st Day of May 1994

Hon'ble Shri J P Sharma, Member (J)

Hon'ble Shri B K Singh, Member (A)

Jagdish Prasad (D-1776)
Sub Inspector in Delhi Police
Son of Shri Ganpat Ram
Resident of 31/110
Viswas Nagar, Shahadra
Delhi - 110032.

...Applicant

By Shri Shyam Babu, Advocate

Versus

The Commissioner of Police
Delhi
Police Headquarters
IP Estate
New Delhi.

...Respondent

O R D E R (Oral)

Hon'ble Shri J P Sharma, Member (J)

1. Heard the learned counsel for the applicant yesterday and to-day. The learned counsel for the applicant has substantiated his arguments by producing before us the judgement passed in OA 534/94 dated 25.3.94 by the Principal Bench, Delhi in the case of Constable Azad Singh whose confirmation to the post of Head Constable was withheld on account of an entry of censure. The Tribunal in that case relied on the decision of

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the Chandigarh Bench. Siva Shankar Sexana Reported in 1989 (1) CAT Chandigarh SLR page 247 wherein it was held that such an entry of censure should not deprive the confirmation ^{and promotion} of the petitioner in that case.

2. Here it may be pointed out that it was a minor penalty and this was envisaged under Rule 5 of the Delhi Punishment and Appeal Rules 1980.

3. The applicant is a Sub Inspector of Police Rule 5(1) and his services were terminated under CCS(TS, Rules 1965 by the order dated 8.3.82 which was assailed before the Tribunal and the Tribunal by the judgement dated 28 July 88 quashing the order of termination under the provisions of CCS(TS) Rules applicable to the applicant with a liberty to the respondents to initiate departmental disciplinary proceedings for the misconduct which led to the passing of the order of termination dated 8.3.82. Consequent upon this order the applicant was re-instated in Feb 89 and a Departmental Enquiry under Section 21 of Delhi Police Act 1978 read with Delhi Police Punishment Appeal and Rules 1988 were initiated which resulted in imposition of punishment of withholding of three years approved service by the order of the disciplinary authority dated 22-10-90. The applicant preferred an appeal dated 5-12-1990. In the meantime DPC was held some time in June 92 and the case of the

applicant was also in the zone of consideration.

However, the appeal of the applicant was disposed on 25-3-91 by which the applicant's punishment of three years forfeiture of service imposed on the Appellate Authority him was set aside and observed that he is entitled to the benefit of doubt but at the same time he cannot be absolved of the fact for not reporting to his senior officers about her open illicit activities and the SI Shri Jagdish Parashad was issued a written warning to be more careful in future. Naturally this entry before the DPC which met in June 92 to consider the case of the applicant. List of promoted candidates was published in Oct/Nov 93 and the name of the applicant was missing. He filed a representation which was dismissed by an order dated 16.3.94. This order dated 16.3.94 (Annexure A) has been assailed by the petitioner in this Application. This order reads that his name was considered for promotion list 'F' (Ex) w.e.f 11.11.93 and the DPC found him not fit for promotion.

4. The applicant has prayed for the relief that the aforesaid order be quashed and that the name of the applicant be brought in the promotion list dated 12-11-93 and to declare that the applicant be deemed to have been confirmed as Sub Inspector (Executive) after the period of two years probation.

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5. We have heard the learned counsel for the applicant at the admission stage. The question that arises in this case is whether the Tribunal can interfere in cases where the DPC has already considered the applicant and did not recommend him for promotion. The contention of the learned counsel is that there is no adverse entry in the ACRs of the applicant as his services after he joined on 30-6-79 as Sub Inspector was terminated on 8-3-82 and was re-instated only in Feb 89. For these 7 years if there is no entry in the ACRs the performance of the applicant might be deemed to be satisfactory. His contention is that in the Departmental Enquiry initiated in Sep 89 the applicant should be deemed to have been given written warning which is not a authorised punishment as per Section 21 of the Delhi Police Act 1978. Since warning is not considered as punishment the applicant should have been considered for promotion. We could not be oblivious of the fact that the Tribunal by its judgement dated 28-7-88 quashed the termination only on the ground that in a veiled order of disciplinary action, the termination could not be effected under rule 5 of CCS(TS) Rules 1965. However the respondents were given liberty to proceed against the applicant for his mis-conduct in a departmental enquiry. The Departmental Enquiry imposed punishment and

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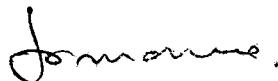
the Appellate Authority observed mostly against the applicant in the order gave him benefit of doubt as the prosecutrix of that case was not of good moral character. The Appellate Authority therefore passed the order that the applicant cannot be absolved of his responsibilities for not reporting about the illicit character of the lady and therefore ordered for issue of written warning to the applicant to be careful in future. This order has not been assailed by the applicant and the argument of the learned counsel that it is not a punishment provided under Section 21 and should not come in the way of promotion of the applicant. Even an illegal order has its sway unless it is set aside or quashed either by superior administrative authorities or in judicial review. Thus the department enquiry ended in the punishment of the applicant by an order passed by the Appellate Authority and the DPC has taken that into account. In view of these, we do not find any fault in the impugned order that the applicant was not found fit by the DPC. We are fortified in our opinion by the recent judgement of the Hon'ble Supreme Court in the case of U O I Vs K V Janakiraman reported in JT 1991(3) SC page 527 wherein the Hon'ble Supreme Court has considered the matter of promotion of ~~probationers~~ ^{petitioners} decided by the Tribunal ~~decided by the Tribunal~~

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in favour of those persons which was assailed before Hon'ble Supreme Court in SLP. The Hon'ble Supreme Court held that persons cannot be rewarded by promotion if there has been punishment or misconduct.

5. In view of this the applicant has not made out a case for admission and the application is therefore dismissed under Section 19(3) of the Administrative Tribunals Act 1985.


(B K Singh)
Member (A)


(J P SHARMA)
Member (J)

LCP 310594