

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1415/2000

New Delhi, this the 24th day of September 2001

HON'BLE MR. JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MR. M.P. SINGH, MEMBER (A)

1. H.K. Yadav
S/o Shri L.S. Yadav,
R/o 213, Police Colony,
Hauz Khas, New Delhi.
2. Shri Suraj Bhan,
S/o Late Shri Shankar Ram,
R/o 8A, MIG DDA Flats,
Rampura, Delhi-110035.
3. Shri Jagdish Rana,
S/o Late Shri Raj Pal Singh Rana,
R/o C-1, Police Colony, Keshav Puram,
New Delhi. ... Applicants

(By Advocate: Shri K.C. Mittal with Shri Harvir Singh)

V E R S U S

1. Union of India,
through its Secretary,
Ministry of Home Affairs,
Government of India,
New Delhi.
2. The Lt. Governor,
Government of NCT of Delhi,
Raj Niwas,
Delhi.
3. Commissioner of Police,
Police HQ, I.P. Estate,
New Delhi.
4. U.P.S.C.
through its Secretary,
Dholpur Housae,
New Delhi. Respondents

(By Advocates: Shri N.S. Mehta for R-1 and
Shri Rajinder Pandita for R-2 and R-3)

ORDER (ORAL)

By Shri M.P. Singh:

MA No.1780/2000 for joining together is allowed.

2. The applicants, three in number, have filed this OA under section 19 of the Administrative Tribunals Act, 1985 seeking direction for holding review DPC for the

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years 1994-95, 1995-96, 1996-97, 1997-98 and DPC for the year 1999-2000 for the post of Assistant Commissioners of Police (in short ACPs) for Delhi and Andaman and Nicobar Islands Police Services (in short 'DANIPS') and also consider the applicants for regularisation in the above mentioned posts with all consequential benefits.

3. Brief facts of the present case are that the applicants were promoted to the post of ACP on ad hoc basis w.e.f. 10.10.1994. The respondents vide their order dated 1.6.1994 have upgraded 110 posts of Inspector to the level of ACP. They had filled up the aforesaid posts by making ad-hoc appointments and did not take action to fill up these posts on regular basis. It was only on 10.5.2000/12.6.2000 that a meeting of DPC was convened by the respondents to fill up these upgraded posts in regular basis by promoting the eligible candidates to the posts of ACP. The applicants were not promoted on regular basis to the post of ACP on the basis of this DPC and its recommendations were kept under sealed cover. It is also stated by the applicants that in the mean-time, an OA No.528/98 was filed by certain persons before this Tribunal claiming directions for not continuing the ad hoc promotion and direct the respondents to hold the regular DPC to fill up the vacancies in DANIPS. Vide order dated 27.5.1999 in OA No.528/98, the Tribunal had directed the respondents to hold regular DPC on year-wise basis and consider all those now working on ad hoc basis as well as other similarly placed officers for regular promotion as ACPs and also to count their seniority from the date their

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juniors were so promoted. The applicants further state that they were not made parties to the aforesaid OA. Thereafter, orders were passed to revert the applicants from the posts of ACP. The reversion of the applicants from the post of ACP has been stayed by the Tribunal vide order dated 28.7.2000 in the present case. The contention of the applicants is that the respondents ought to have held regular DPCs year-wise after 1992. According to them, the cadre strength of the ACP was increased from 168 to 278 in the year 1994. However, no regular DPC was held and the eligible persons were appointed on ad-hoc basis only. The other contention of the applicants is that if the regular DPC had been held in time, there were no disciplinary proceedings or criminal proceedings pending against them at the relevant point of time. Since the DPC has been held after a long delay in the year 2000, the respondents cannot follow the sealed cover procedure as the applicants have to be considered against the vacancies of 1994-95 as at that time no disciplinary proceedings or criminal proceedings were pending against them. The request of the applicants for considering them for the vacancies pertaining to the year 1994-95 was rejected by the respondents. Hence, aggrieved by the action of the respondents, they have preferred the present OA claiming the aforesaid relief.

4. The respondents in their reply have stated that the sanctioned strength of the Service is 355 posts which included 269 duty posts and 86 posts deputation, leave and training reserves. Of these only 255 duty posts and proportionate reserves were sanctioned for the NCT of

Delhi while the remaining duty posts as well as proportionate reserves were meant for other segments of the Service, namely, UTs of Andaman & Nicobar Islands, Lakshadweep, Daman & Diu and Dadra & Nagar Haveli. The applicant No.1 and 3 were considered for promotion against the available vacancies in the Service pertaining to the year 1995 to 1998, but the recommendation of the DPC in their case was kept in sealed cover in accordance with the instructions. It is further submitted by the respondents that the relevant instructions on the subject provided that the recommendation of the DPC in respect of the officers coming under the following categories are required to be kept in sealed cover and that if any penalty is imposed as a result of the disciplinary proceedings instituted or if the officer concerned is found guilty in the criminal prosecution against him, the findings of the DPC kept in sealed cover shall not be acted upon:-

- (i) Government servants under suspension;
- (ii) Government servants in respect of whom a chargesheet has been issued and the disciplinary proceedings are pending; and
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending.

It is also stated by the respondents that the following adverse facts against the applicants reported by the Delhi Police Headquarters/Govt. of NCT of Delhi:

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"1. Shri Hari Krishan Yadav, ACP (Inspector, No.D-I/387)

A case FIR No.248/96 P.S. Hauz Khas, New Delhi is pending against him and a challan in this regard has been filed in the court.

2. Shri Surat Bhan, ACP (Inspector, No.D-I/354)

A case RC No.63(A)/97/DLI, dated 16.7.1997 registered by the CBI, is pending against him.

3. Shri Jagdish Singh Rana, ACP (Inspector, No.D-I/120)

A case FIR No.292/99 P.S. Keshav Puram, Delhi registered against him, is pending in the Court in which challan has been filed."

According to the consolidated instructions issued by the Government regarding promotions, the recommendations of the DPC in respect of officers coming under the categories mentioned in para 4 above are required to be kept in sealed cover and hence, the recommendations kept in sealed cover will be opened and acted upon after completion of the proceedings instituted against them.

5. Heard the learned counsel for the rival contesting parties and perused the records.

6. During the course of the arguments, the learned counsel for the applicants drew our attention to the judgement of the Hon'ble Supreme Court in the case of UOI and K.V. Jankiraman, JT 1991 (3) SC 527, wherein it has been held "It is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover

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procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure." 20

7. It is also stated by the learned counsel for the applicants that in respect of Applicant No.1, only challan has been filed, but no charge-sheet has been issued to him in the criminal case filed against him. On the other hand, learned counsel for the respondents states that the filing of the challan is to be deemed as a charge-sheet and his case is rightly required to be kept in the sealed cover.

8. The learned counsel for the applicants also states that when the posts of ACP were upgraded in the year 1994, the applicants should have been considered for regular promotion from that year only. Moreover, no regular DPC was held from the year 1992 onwards. Only in the year 2000, a regular DPC was held and the recommendations of the DPC with regard to the applicants have been kept in the sealed cover. On the other hand learned counsel for the respondents drew our attention to para 2 (ii) of the instructions dated 14.9.1992 issued by the Ministry of Personnel & Public Grievances and Pensions, Department of Personnel and Training which deals with "Government servants in respect of whom prosecution for a criminal charge is pending."

9. It is submitted by the learned counsel for the applicants that in this case, the promotion was to be

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made from retrospective dates and the crucial date of eligibility in their case being 1.10.1994 as per DPC guide-lines of 1989. As in the year 1994 no criminal proceedings were pending against them, sealed cover should not have been followed in the case of the applicants. 21

10. After perusing all the documents placed before us, we find that Respondent No.1 has increased the cadre strength of the posts of ACP from 168 to 278 by order dated 1.6.1994. As per instructions contained in the DPC guide-lines issued in April 1989, a regular DPC is required to be held for filling the vacancies every year. In this case, the vacancies became available right from the year 1994, but no DPC was held on the ground that the ACRs of the eligible officers were not available. The contention of the learned counsel for the respondents that DPC could not be held on the ground that ACRs were not available is contrary to the DPC guide-lines and is, therefore, not tenable. Even in the DPC held in the year 2000, the panel were to be prepared year-wise as per the instructions contained in the DPC guide-lines (supra).

11. Since the vacancies in the grade of ACP were available from the year 1994 onwards, the respondents ought to have held the first DPC in that very year taking into consideration the date of eligibility of the candidates as on 1.10.1994 and followed the instructions relating to sealed cover procedure with reference to that relevant point of time. In other words, if the applicants were considered for promotion against 1994-95 vacancies and there were criminal

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proceedings/disciplinary proceedings pending against them then the sealed cover procedure was required to be followed. In case no disciplinary proceedings/ criminal proceedings were pending or chargesheet was served on them at relevant time then no sealed cover procedure was required to be followed and the recommendations of the DPC were to be acted upon. In this case, we find that the respondents have held the DPC only in the year 2000 and have prepared year-wise panel, but have not followed the instructions contained in the DPC guide-lines and they have kept the recommendations of the DPC in respect of the applicants in the sealed cover taking into account the disciplinary proceedings/criminal proceedings which were initiated against them only in the year 1996/1997 and thereafter, it is against the instructions contained in the DPC guide-lines. We also find that the Hon'ble Supreme Court in the case of K.V. Jankiraman's case (supra) has held that sealed cover procedure is to be followed by the DPC only after a chargesheet has been served on delinquent officer.


12. In view of the aforesaid position, we agree with the contention of the applicants that the respondents ought to have held DPC every year and considered the eligible persons for promotion only with reference to the relevant period. As regards the procedure for sealed cover is concerned, we find force in the contention of the learned counsel for the applicants.

13. For the reasons stated above, the present OA is allowed and the respondents are directed to convene a meeting of review DPC to review the proceedings of the

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DPC held in the year 2000 to consider the applicants for promotion to the post of ACP^{for} the vacancies pertaining to the year 1994 onwards year-wise and the sealed cover procedure will be followed by the DPC in the case of the applicants only if chargesheet was issued to them or disciplinary proceedings/criminal proceedings were pending against them at that relevant point of time. In case the applicants are found suitable for promotion to the post of ACP by the DPC and if no chargesheet was served on them or disciplinary proceedings/criminal proceedings were pending against them at that relevant point of time, the recommendations of the DPC shall be acted upon. This shall be done by the respondents expeditiously and in any event within a period of four months from the date of receipt of a copy of this order.

14. MA 958/2001 also stands disposed of. No costs.


(M.P. SINGH)
MEMBER(A)


(ASHOK AGARWAL)
CHAIRMAN

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Item-19

M.A. 384/2002 in
OA-1415/2000

14.2.2002

Present: Sh. Harvir Singh, counsel for the applicants.

Sh. N. S. Mehta, counsel for the respondents

By the present MA, a prayer is made for grant of extension of time for complying with the directions issued on 24.9.2001 in OA No. 1415/2000. By the order, following directions have been issued:

"13. For the reasons stated above, the present OA is allowed and the respondents are directed to convene a meeting of review DPC to review the proceedings of the DPC held in the year 2000 to consider the applicants for promotion to the post of ACP for the vacancies pertaining to the year 1994 onwards year wise and the sealed cover procedure will be followed by the DPC in the case of the applicants only if chargesheet was issued to them or disciplinary proceedings/criminal proceedings were pending against them at that relevant point of time. In case the applicants are found suitable for promotion to the post of ACP by the DPC and if no chargesheet was served on them or disciplinary proceedings/criminal proceedings were pending against them at that relevant point of time, the recommendations of the DPC shall be acted upon. This shall be done by the respondents expeditiously and in any event within a period of four months from the date of receipt of a copy of this order."

Present M.A. contains the following prayer:

"That in view of the position stated above, it is prayed that this Hon'ble Tribunal may kindly be pleased to grant extension of time by three months to comply with the directions passed by this Hon'ble Tribunal, vide order dated 24th September, 2001."

Para 3 of the MA contains the following averments:

"That implementation of the directions passed by this Hon'ble Tribunal may have wide repercussions on the laid down policy of the Government with regard to preparation of year-wise panels and the sealed cover procedure, which need to be carefully examined by the answering respondent in

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consultation with the nodal Ministries through inter-departmental consultations on the basis of facts and circumstances of the case, before a decision is taken as to whether a Review Application is to be filed before this Hon'ble Tribunal or whether the order of this Hon'ble Tribunal is to be challenged in the High Court of Delhi through a Writ Petition. This process is likely to take another 3 months time."

Based on the averments contained in para 3 and the prayer made, it is contended by Shri Harvir Singh, the learned Advocate appearing on behalf of the applicants in the OA that respondents in the present application are blowing hot and cold. On the one hand, they are praying for extension of time to comply and on the other hand, they are considering taking steps to impugn the aforesaid order either by filing a review application or by approaching the High Court. Order which is required to be complied with is a judicial order. The same, according to Shri Harvir Singh, has to be complied with and cannot be made a subject matter of careful examination through inter-departmental consultations. Faced with this situation, Shri N.S.Mehta, the learned Advocate appearing on behalf of Union of India makes a statement that respondents will take steps to implement the order without reservations and without inter-departmental consultations as averred in the aforesaid paragraph 3.

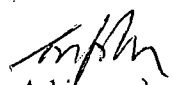
In our view, time prayed for can be granted only on the condition that the averments contained in para 3 are withdrawn and are scored off from the application. Respondents are accordingly granted three months time to comply with the order provided the averments contained in para 3 are obliterated within a period of one week from today. It goes without saying that in case the aforesaid

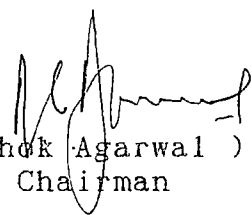
MASTER PLUS PREMIUM

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averments are not scored of within the aforesaid period,
present application for extension of time will stand
rejected. (26)

Present MA-384/2002 is disposed of
accordingly. No order as to costs.


(S.R. Adige)
VC(A)


(Ashok Agarwal)
Chairman