

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA No. 1417/2000
TA No.

26-4-02 Date of Decision

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Sh. Gajraj Singh ...Petitioner (s)

Sh. Harevir Singh ...Advocate for Petitioner (s)

V E R S U S

VOI & Oes ...Respondents

Shri N.S. Mehta through Sh. V.K. Mehta ...Advocate for respondents
for VOI

Sh. Vijay Pandita, for GACTD
Coram :-

Hon'ble Shri Govindan S. Tampi, Member (A)

Hon'ble Shri Shankaraj, MEMBER (T)

1. To be referred to the Reporter or not ? YES
2. Whether it needs to be circulated to other Benches of the Tribunal ? NO

(GOVINDAN S. TAMPI)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1417/2000

New Delhi, this the 26th day of April, 2002

Hon'ble Shri Govindan S. Tampi, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

Gajraj Singh
S/o Shri Anant Ram
R/o N-24,
Naveen Shahdra
Delhi - 110 032.

...Applicant

(By Advocate Shri Harvir Singh)

V E R S U S

UNION OF INDIA : THROUGH

1. Its Secretary
Ministry of Home Affairs
Govt. of India
New Delhi.
2. The Lt. Governor
Govt. of NCT of Delhi
Raj Niwas, Delhi.
3. Commissioner of Police
Police HQ, I.P. Estate
New Delhi.
4. UPSC
through its Secretary
Dholpur House
New Delhi.

...Respondents

(By Advocate Shri V.K. Mehta for UOI
and Shri Vijay Pandita, for GNCTD)

O R D E R (ORAL)

By Hon'ble Shri Govindan S. Tampi,

Reliefs prayed for in this OA are as below :-

(a) to hold DPC/review DPC for the year 1990-91 taking into account cadre strength/vacancies of DANIPS (ACP) sanctioned for Delhi Police and consider the applicant in the DPC for the year 1994 and regularise the applicant in the post of ACP in Delhi Police from 16-11-1990.

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(b) to hold year-wise DPC/review DPC for the year 1995-96, 1996-97, 1997-98 as per the cadre strength/sanctioned vacancies of ACP for DANIPS in the Delhi Police ;

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(c) to hold DPC for the year 1999 and 2000 as per the cadre strength given in order dated 28-6-2000 (Annexure A-5) and consider the applicant for regularisation to the post of ACP.

(d) to grant the applicant all consequential benefits arising out of regularisation of his service as ACP

(e) to quash and set aside the order of DPC proceedings putting the applicant's promotion under sealed cover.

(f) pass any other order/direction that this Hon'ble Tribunal may deem fit and necessary in the present facts and circumstances ; and

(g) to grant the cost of litigation ;

2. Heard Shri Harvir Singh, ld. counsel for the applicant and Shri V.K.Mehta, proxy counsel for Shri N.S.Mehta along with Shri Vijay Pandita, ld. counsel for Union of India and Govt. of NCT of Delhi respectively.

3. The applicant is working as Asstt. Commissioner of Police (ACP), on ad-hoc basis since 16-11-1990, against a regular vacancy. In terms of

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Govt. of India, Ministry of Home Affairs, Order No.14011/11/93-UTP dated 1-6-94, the cadre strength of ACPs in Delhi Police was increased from 168 to 278. Recruitment/promotion to the post of ACP is governed by Delhi and Andman & Nicobar Islands Police Service Rules, 1971 (DANIPS). Though no DPCs were held in 1990 & 91 and the DPC held in 92 did not consider his case for regularisation, the applicant remained an ad-hoc ACP. Even after, vacancies were increased in 1994, no regular annual DPCs were held till 1999. OA 528/98 filed by a few individuals sought directions for conducting regular DPCs hereby and to quash all the ad-hoc promotions made in between, ^{was} disposed of by the Tribunal but those orders cannot effect the rights of the applicant as he was not a party in OA 528/98 decided on 27-5-99. Fresh orders were issued on 10-5-2000 and 12-6-2000, effecting promotions on regular basis, but those did not include his name and as his case is understood to have been kept in [^]sealed cover. Apprehending reversion the applicant approached the Hon'ble High Court and obtained an order staying the reversion. According to the applicant, the respondents had held two DPCs taking the cadre strength of ACPs in Delhi Police as 255, which is not correct, as the same, in terms of Circular issued by the Police Headquarters on 28-6-2000, stood at 280 plus 82 towards deputation, leave reserve, training reserve etc. Further 110 vacancies created on 1-6-94, were to be filled by promotions. As such, it was surprising that regular DPCs were not held from 1994 to 2000 on yearwise basis. This has cost the applicant considerably. Further, there has been no proceedings pending against

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him, either disciplinary or otherwise. No adverse remarks had also been communicated to him for the relevant period. Therefore, keeping the case of the applicant in sealed cover was improper. The Hon'ble Supreme Court had, time and again held that an ad-hoc employee, continuing for a considerable time without break and functioning against existing vacancies would have to be treated as regular employees and on this basis, the applicant should get regularisation from 90, when he has been working as ad-hoc ACP. The delay on account of respondents should not be permitted to come in the way of the advancement in career of the applicant, which was his right. There cannot also be any question of his being reverted, as he has been continuing to hold the post for so many years or keeping his case in sealed cover. The respondents had, vide letter dated 1-3-2000, proposed to take certain action against the applicant, but nothing so far has been done. The said action related to the applicant's seeking to raise a loan from a bank, as far back as in 1992, but the same had not been suppressed from the respondents as is being alleged. Still, the applicant's regular promotion has not come through and he has been the victim of circumstances. Hence this OA.

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4. The grounds raised by the applicant are as below :-

(a) order dated 27-5-99 of the Tribunal in OA 528/98 was non-est against the applicant, as he was not impleaded as a party ;

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(b) the Tribunal could not have passed any order against the applicant without putting him on notice ;

(c) the Tribunal erred in law in hearing OA No.528/98 and deciding it ;

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(d) as the Cadre strength had been increased from 168 to 278 on 1-6-94, DPC should have been held for filling up 278 vacancies and not 255. Infact the vacancies were 281 ;

(e) having worked as ad-hoc ACP for nearly ten years, he ought to have been regularised from 1990 ;

(f) all the applicants in OA 528/98 were his juniors and they could not have challenged his promotion ;

(g) his reversion also was illegal and could not be permitted ;

In view of the above, OA should succeed with full benefits to him, plead the applicant.

5. In the reply filed on behalf of the respondents, it is pointed out that in April & May, 2000, DPCs meetings were held, for promotions to grade II of DANIPS for the vacancies from 1992-98, wherein 138 persons were considered. Applicant in this OA was one among those considered for the vacancies from 1993-98 but the findings thereon were kept in the sealed cover in terms of DOPT's OM

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No.22011/4/91-Estt.A dated 14-9-92, as the applicant was chargesheeted on 1-3-2000. In terms of the above instructions, those under suspension, those against whom chargesheet has been issued for disciplinary proceedings and those against whom prosecution has been launched, sealed cover procedure has to be followed. The applicant was imposed a penalty of Censure on 20-7-2000 and in terms of the above instructions, the findings of the DPC, kept in sealed cover, was not given effect to. Ministry of Home Affairs has taken the above decision by their order No.14016/7/73-UTS-II dated 15-2-2001. DPC meetings were held in September 1991 and January 1992 for the vacancies between 88 and 91, but the applicant was not recommended. However, DPCs held in April & May, 2000, for the vacancies of 92-98 and the applicant was considered against the vacancies of 93-98, but the recommendations were kept in sealed cover because of the chargesheet dated 1-3-2000 and were not given effect to as he was "Censured" on 20-7-2000. The applicant could not be promoted in the above circumstances and, therefore, keeping in mind the decision of the Tribunal dated 27-5-99 in OA No. 529/98, filed by Nem Dutt Bhardwaj & Ors. Vs. UOI & Ors., the applicant would have to be reverted. In the above circumstances, the OA has to fail, plead the respondents.

6. Similar views were expressed by the Delhi Administration besides, that the vacancies were computed correctly on year to year basis.

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7. During the oral submissions, it was stated by Shri Harvir Singh, ld. counsel for the applicant that, as during the period of 1993-98, in the vacancies for which, his case was considered for regular promotion, no chargesheet was issued to him and no penalty was imposed, his case could not have been kept in sealed cover. Decision of the Hon'ble Supreme Court in K.V.Janakiraman's case (AIR 1991 SC 2010) squarely covered his case and he was protected by the instructions of DOPT's OM No.22011/4/91-Estt. (A) dated 14-9-92. Once he has been correctly promoted against the year, when his case was considered by the DPC, Subsequent chargesheet and penalty would not affect him. Therefore, regularisation of his promotion from 1993 was imperative, more so, as he was holding the post on ad-hoc basis from 1991. Shri V.K.Mehta, learned proxy counsel for the respondents states that in terms of para 7 of DOPT's OM, the applicant's case has to wait, a view endorsed by Shri Vijay Pandita, ld. counsel for the Delhi Govt.- respondents No. 2 & 3.

3. We have carefully considered the matter. The point for determination in this OA is whether an individual can be denied promotion, relating to the vacancy of a particular year, on the basis of a chargesheet issued and imposed more than eight years later, merely, because the DPC did not meet on time or as they are expected to do i.e. annually. While the applicant states that law on the point protects his case, the respondents aver that it cannot be. After careful deliberation of the matter, we are convinced that the applicant has a case. Facts are not

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disputed. Applicant has been functioning as ad-hoc Asstt. Commissioner of Police, a Gr.II post in DANIPS since 16-11-90. DPC's meetings were held in September 1991 and January 1992, for filing up the regular vacancies of ACPs from 88-91, but the applicant did not reach the promotion zone. Thereafter, no DPC was held till April - May, 2000. All the vacancies between 92-98 were considered for being filled up then and the applicant's case related to the vacancies of 93-98. It is seen that the applicant's case came up for DPC's consideration and DPC placed its recommendation in sealed cover. This has been on the basis of a chargesheet issued on 1-3-2000. (3A)

9. It is nobody's case that the applicant was under suspension or that disciplinary proceedings were initiated and/or ^{were} pending against him or that any prosecution had been launched against him at any time during 1993-98, for the vacancies of which period he was considered for regular promotion. Therefore, his case did not come within the parameters of para 2 of DOPT's OM No.22011/4/91-Estt.A dated 14-9-1992 and it could not or should not at all have been placed in sealed cover. Still the respondents have chosen to do it on the basis of the chargesheet dated 1-3-2000. We cannot help feeling that the chargesheet was issued on 1-3-2000, for an alleged indiscretion of 1992, just to keep the applicant's regular promotion in abeyance. Respondents, therefore, are bound to have the sealed cover of the DPC from the earliest period when the findings were so placed, opened and take action, in

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terms of the said recommendations. If the findings of the DPC are in his favour, the same has to be given effect.

10. Respondents further submit that irrespective of the findings in the DPC about the applicant, it has been decided not to give effect to it, in terms of Ministry of Home Affairs order No. 14016/7/93-UTS.II dated 15-2-2001 in terms of DOPT's instructions dated 14-9-92 (supra) and "that his case for promotion shall be considered by the DPC in the normal course as per rules, when it meets next for considering eligible Officers for promotion against the vacancies, if any, pertaining to the years 1999 onwards". Evidently the respondents are relying upon para 7 of the DOPT's OM dated 14-9-92 which reads as below :-

"A Government servant, who is recommended for promotion by the Depttl. Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also". We find that para 7 of the OM (supra) does not come to the assistance of the respondents. DPCs generally meet and consider cases of promotion of the individuals in the eligibility zone and make recommendations for future vacancies and this process is, therefore, directed to be undertaken

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on year to year basis before the vacancies arise. In such situations, if any, of the circumstances of para 2 of the DOPT's OM arise after the DPCs recommendations are recorded, but promotions have not taken place, directions of para 7 would operate against the promotions, as if the individual's case is placed in a sealed cover. However, the same would not apply in a case, where the individual's case is considered for promotion for an earlier period, much before any of the proceedings were contemplated and he or she is so recommended for promotion during such earlier period. In the instant case, the applicant's case was considered for promotion during the period 1993-98 and DPC had recorded its recommendation either way and the effect thereon would have followed immediately thereafter i.e. from 1993-98. No proceeding whatsoever was even contemplated against the applicant till 1-3-2000 and therefore the chargesheet issued on 1-3-2000 or the penalty imposed on 20-7-2000, could not have acted retrospectively on the applicant's promotion for ^{any} of the years 1993-98. Averments to the contrary are fallacious and unacceptable.

11. Last point which has to be settled relates to the applicants reversion in view of the decision of the Tribunal dated 27-5-99 in OA No. 528/98 filed by Nemdutt Bhardwaj & Ors. Vs. UOI & Ors. When the said OA was decided, applicant was still an ad-hoc ACP and his reversion was automatic, if he was not adjusted on regular basis. However, if on the basis of the recommendations of DPC relating to vacancies for 1993-98, he has already been

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regularised, he is not liable to be reverted. However, in this connection, we observe that the applicant has made some observations on the Tribunal, for entertaining OA No.528/98 and deciding it, which are as below :-

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"Because the Hon'ble Tribunal erred in law in hearing the original application No.528/98 and pronouncing the order without passing the order for impleadment of the present applicant and without affording the opportunity to the applicant of being heard in the original application. No order could have been passed at the back of the applicant and, therefore, the order of the Hon. Tribunal is in violation of the principles of natural justice, as such this Hon'ble Tribunal is competent to refer the matter to Full Bench".

The above remarks are totally unwarranted, improper and unjustified. Neither the applicant nor the counsel had apparently been alive to their responsibilities and the need to maintain decorum in pleadings. The above was clearly avoidable. We leave it at that.

12. In the above view of the matter, the OA succeeds to a substantial extent and is accordingly disposed of. Respondents are directed to open the sealed cover in which the findings on the applicant, relating to his regular promotion as ACP, against the vacancies of 1993-98, are placed and to give effect to the same. If he is declared fit by the DPC, he would be entitled for regular promotion from the earliest year between 1993 & 98 in respect of which, such positive findings have been recorded, with all

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consequential benefits. This shall be done by the respondents within two months from the date of receipt of a copy of this order. Other reliefs prayed for are dismissed as having no merits. No costs.

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S. Raju

(SHANKER RAJU)
MEMBER (J)

(GOVINDAN S. TAMPI)
MEMBER (A)

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