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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1865/2000

New Delhi, this the 27th day of August, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri Govindan S. Jampi, Member (A)

Asstt. Sub Inspector (Mounted) Nand Ram
No. 2744/D,
S/o Shri Kanhaiya Lal,
R/o Barrack No.11, Old police Lines
Raj Pur Road, Delhi.

...Applicant

(By Advocate Shri Rajeev Kumar
with Shri Sachin Chauhan)

V E R S U S

UNION OF INDIA : THROUGH

1. Secretary
Ministry of Home Affairs
North Block, New Delhi.
2. Commissioner of Police
New Delhi Range
Police Headquarters, I.P.Estate
M.S.O.Building
New Delhi.
3. Addl. Commissioner of Police
Establishment,
Police Head Quarters, I.P.Estate
New Delhi.
4. Sub-Inspector (Mounted) Sardara Ram
No. 3545/D presently posted at
Old Police Lines, service to be affected
through respondent No.2 & 3.

...Respondents

(By Advocate Shri Ram Kavar)

O R D E R (ORAL)

By Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)

This is the second application filed by the applicant, earlier OA being OA 248/97 which has been disposed of by Tribunal's order dated 10-10-1997 in which one of us (Smt. Lakshmi Swaminathan, VC (J) was also a Member). In this application, the applicant has impugned the action and orders issued by the respondents by way of Notification dated 22-12-1999 and orders dated 15-2-2000 and 21-2-2000. By the later two orders, he has stated that the respondents

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have rejected his request for reversion of Respondent 4 and also to promote him to the rank of Sub-Inspector (Mounted) on ad hoc basis..

2. In the earlier OA filed by the applicant (OA 248/97), he had assailed the promotion order dated 9-2-1996 approving the deputation of Respondent No.2 in that OA to the post of Sub-Inspector (Mounted) in the Mounted Cadre in pursuance of the Notification issued by the respondents dated 4-2-1994. In that OA, it was found that the applicant had been promoted to the post of ASI (Mounted) w.e.f. 25-9-1997. It was also found that the applicant did not fulfil the eligibility condition, as provided in the Delhi Police (Promotion & Confirmation) Rules, 1980, for promotion to the rank of SI (Mounted). Reference had also been made to Rule 16 of the Delhi Police (Appointment and Recruitment) Rules, 1980, in which it has been provided, inter alia, that vacancies in other ranks other than the rank of Constables in Mounted Police, shall be filled by promotion from the lower ranks in the Mounted Police according to the Rules governing promotion. At the time when the applicant had filed OA 248/97 impugning the promotion order dated 9-2-1996, it is relevant to note that he had been promoted as ASI itself only w.e.f. 25-9-1997, although he had been promoted on ad hoc basis in that rank w.e.f. 17-10-1995. Even then on the date of the promotion order of 9-2-1996, he could have hardly had four months of ad hoc service as ASI, Mounted Police at that time. That is not the position in the present case. The respondents do not deny the relevant facts which have been noted in paragraph 3 of the aforesaid

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order of the Tribunal dated 10-10-1997 in OA 248/97 that from 17-10-1995 to 24-9-1997, the applicant was working as ASI (Mounted) on ad hoc basis and from 25-9-1997, he has been promoted as ASI (Mounted) on regular basis. From the impugned Notification dated 22-12-1999, it is noted that Respondent No.4 Shri Sardara Ram was taken on deputation from BSF, Takenpur as SI in Delhi Police (Mounted) w.e.f. 4-4-1996 and later on, his deputation period has been extended from time to time upto 21-12-1999 and thereafter absorbed permanently in Delhi Police with immediate effect under Rule 17 of the Delhi Police (General Conditions of Service) Rules, 1980. It is noted that subsequently the representations of the applicant have been rejected by the respondents informing him that he can only represent his case and need not claim reversion of some other person i.e. respondent No.4 and secondly, that as there is no post of SI (Mounted) lying vacant against which his name can be considered, his request for promotion cannot be agreed to.

4. Learned counsel for the respondents has relied on Rule 5 (a) of the Delhi Police (Appointment & Recruitment) Rules, 1980. Rule 5 (a) provides :-

"Recruitment - (a) Save in the case of Ministerial Cadre, Women Police and other specialised appointments, as hereinafter provided in these rules, direct recruitment to subordinate ranks (executive) of Delhi Police shall be made only at two levels viz. Sub-Inspectors and Constables".

Sub-clause (h) of Rule 5 reads as follows :-

"Notwithstanding anything contained in these Rules, where the administrator/Commissioner of Police is of opinion that it is necessary or expedient in the interest of work so to do, he may make appointments to all non-gazetted categories of both executive and ministerial

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cadres of Delhi Police on deputation basis by drawing suitable persons from any other State (s) or Union territory of Central Police Organisation or any other force. Where such appointments are made by the Commissioner of Police, the same shall be reported to the administrator forthwith. Such appointments on deputation basis shall also be subject to orders issued by the Govt. of India/Delhi Administration from time to time governing the deputation of government servants."

In the present application, the question is one of promotion to the rank of Sub-Inspector, whereas the above rules deal with recruitment in certain cadres, including special appointments in direct recruitment to subordinate ranks (Executive) and Ministerial at two levels, namely, Sub-Inspectors and Constables. Apart from that, learned counsel for the respondents has also not been able to satisfactorily explain how clause (h) of Rule 5 would apply to the facts in the present case, as admittedly it is a Technical cadre and does not fall in either 'Executive' or 'Ministerial' cadres of Delhi Police. It appears from the reply filed by the respondents that they have taken respondent No.4 on deputation as SI (Mounted) as they did not have any person qualified for promotion to that post at the relevant time in 1999. They also later absorbed him permanently in Delhi Police as Sub-Inspector (Mounted) under Rule 17 of the Delhi Police (General Conditions of Service) Rules, 1980. No other Rule has been referred to or relied upon by the respondents or their counsel, other than Rule 5 (h) of the Delhi Police (Appointment and Recruitment) Rules, 1980, to substantiate their stand. This Rule cannot assist them because it does not deal with the Technical cadre to which admittedly, the Mounted Police personnel belong.

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5. As mentioned above, ⁻⁵⁻ the respondents have also permanently absorbed Respondent No.4 as SI (Mounted), who was earlier working on deputation basis and was taken from BSF Academy, Takenpur w.e.f. 4-4-1996. The applicant has relied on Rule 19 of the Delhi Police (Promotion and Confirmation) Rules, 1980. According to the respondents, the applicant does not fulfil the eligibility conditions of 6 years regular service as ASI (Mounted) for being considered for promotion as SI (Mounted) and they had only one post. They have also submitted that by the time he fulfills the eligibility conditions from 25-9-1993, the applicant would have retired w.e.f. 31-3-2002. Respondent No.4 has not filed any separate reply. The applicant's claim is that he should have been considered for promotion in the special circumstances against the vacancy of SI (Mounted) for promotion at least on ad hoc basis temporarily. However, it is noticed that right from 4-4-1996, the respondents had already taken Respondent -4 on ad hoc basis as SI (Mounted), when the applicant was working on ad hoc basis as ASI (Mounted) w.e.f. 17-10-1995. Therefore, at that time the applicant could not have claimed for any such ad hoc promotion to the post of SI (Mounted) in terms of the provisions contained in Rule 19 of the Delhi Police (Promotion and Confirmation) Rules, 1980, as he hardly had six months ad hoc service at that time.

6. Learned counsel for the respondents has fairly submitted that at the time when OA 248/97 was disposed of by order dated 10-10-1997, Rule 5 (h) of

the Delhi Police (Appointment and Recruitment) Rules, 1980 had not been brought to the notice of the Tribunal nor we find it applicable to the case of deputation even now. However, we further note that the respondents have brought Respondent No.4 on deputation as far back as 4-4-1996 and thereafter absorbed him in Delhi Police w.e.f. 22-12-1999 in the only post of SI (Mounted). Learned counsel for the applicant has contended that if that post had been lying vacant for want of a person who is eligible under the Rules, he could have been considered under Rule 19 of the Delhi Police (Promotion and Confirmation) Rules, 1980, taking into consideration his two years ad hoc service as ASI (Mounted), which has been prevented by the wrong actions taken by the respondents in the meantime. However, we do not also consider it appropriate to direct the respondents to send Respondent No.4 to his parent Department from where he came on deputation i.e. the BSF Academy, Takenpur at this stage. This claim of the applicant is accordingly rejected.

7. Taking into account the peculiar facts and circumstances of the case, including the aforesaid improper action taken by the respondents themselves with regard to bringing SI Sardara Ram on deputation and thereafter absorbing him in 1999, and considering also the fact that the applicant has been promoted on ad hoc basis as ASI (Mounted) w.e.f. 17-10-1995 and thereafter on regular basis w.e.f. 25-9-1997, the OA is disposed of with the following directions :-

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(i) Respondent No.2 to consider the case of the applicant for promotion to the next higher rank of SI temporarily on any other suitable post, taking into account the aforesaid observations;

(ii) They shall also keep in view the fact that the applicant is to retire w.e.f. 31-3-2002 and he has rendered more than 38 years in the cadre of Mounted Police from the rank of Constable and the only post of SI (Mounted) has been filled by them in the wrong manner as pointed out above;

(iii) the respondents shall consider the case of the applicant for promotion to the next higher rank under Rule 19 of the aforesaid Rules in any suitable post of SI, which is lying vacant or likely to fall vacant within the next two months. This shall be done within two months from the date of receipt of a copy of this order with intimation to the applicant. No order as to costs.

(Govindar S. Tampi)
Member (A)

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(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)