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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1980/2000
with
O.A.No.2040/2000

Hon'ble Shri M.P.Singh, Member(Admn.)
Hon'ble Shri Shanker Raju, Member (Judicial)

New Delhi, this the 19th day of September, 2001

O.A.No.1980/2000:

Jai Singh (D/2588)
s/o Late Shri Jage Ram
V & P.O. Gurgaon (Haryana) ... Applicant

(By Advocate: Shri Shyam Babu)

Vs.

1. Govt. of NCT Delhi
through its Chief Secretary
5, Sham Nath Marg
Delhi.
2. The Commissioner of Police, Delhi
Police Headquarters
I.P.Estate
New Delhi.
3. The Additional Commissioner of Police
(Establishment)
Police Headquarters
I.P.Estate
New Delhi. ... Respondents

(By Advocate: Shri Ajesh Luthra)

with

O.A.No.2040/2000:

Pyar Singh (D-2598)
s/o Sh. Jabar Singh
r/o B-37 Police Colony
R.K.Puram, Sector-12
New Delhi. ... Applicant

(By Advocate: Shri Shyam Babu)

Vs.

1. Govt. of NCT Delhi
through its Chief Secretary
5, Sham Nath Marg
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2. The Commissioner of Police, Delhi
Police Headquarters
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3. The Additional Commissioner of Police
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(By Advocate: Shri Ajesh Luthra)

ORDER

By Shanker Raju, Member (J):

As the common question of law involved in both these OAs, these are disposed of by this order.

2. In both these OAs the applicants have come on deputation to Delhi Police. In pursuance of the decision dated 14.12.1999 of the Apex Court in Civil Appeal No.5363-64/97 - Roop Lal & Others Vs. Union of India & Others, the seniority of the applicants have been fixed as per their regular appointments in their parent departments which necessitated review of their promotion to the higher rank of Inspector (Executive) and as such the DPC was held to that effect by the respondents. The applicants have found unfit by the review DPC.

3. In OA 1980/2000 a departmental enquiry was initiated against the applicant on 13.8.1992 for manipulating the facts in MLC and not taking proper action in respect of one Sh. Allaudeen, the name of the applicant was brought in the secret list of officers having doubtful integrity and ultimately a major punishment of withholding of increments for a period of two years was imposed upon the applicant on 10.10.1994.

4. In OA 2040/2000 the applicant was awarded seven censures from 6.3.1993 to 20.6.1994 which is a minor penalty for his dereliction and gross negligence for not writing the case diaries, for not preparing dossiers of accused person and for keeping a complaint pending for more than 9 months. A review DPC had met on 16.3.2000 and 4.4.2000 and following the criteria as followed by the regular DPC which had met in August, 1994 declared the applicants unfit as per the criteria the applicants have not been found fit for accord of promotion to the higher rank of Inspector. Above stated orders passed by the respondents on 24.4.2000 have been assailed by the applicants praying interalia for their promotion in list 'F' (Executive) w.e.f. 12.8.1994 with all consequential benefits.

5. The relevant provision of the rules involved in the controversy to be resolved are Rules 5, 6, 8, 17(i) and 21 of the Delhi Police (Promotion and Confirmation) Rules, 1980 which are reproduced as under:

"Rule 5: GENERAL PRINCIPLES OF PROMOTION -
 (i) "Promotions from one rank to another and from lower grade to the higher grade in the same rank shall be made by selection tempered by seniority. Efficiency and honesty shall be the main factors governing selection (Amended vide Notification No.F.5/60/83-H(P)/Estt., dated April 7, 1984). Zone of consideration will be determined in accordance with the rules/instructions issued by the Government from time to time.

[(ii) All promotions from one rank tot another against temporary or permanent vacancies, except in the case of ad hoc arrangements shall be on officiating basis. The competent authority on completion of probation period of two years may assess the work and conduct of the officer himself and in case tthe conclusion is that the officer is fit to hold the higher grade, he will pass an order declaring that the person concerned has successfully completed the period of probation. If the competentt authority considers that the work of the officer has not been

satisfactory or needs to be watched for some more time, he may recruit him to the post or grade from which he was promoted, or extend the period of probation, as the case may be.]

[(iii) In the case of officers who are under suspension or facing departmental enquiry, criminal proceedings, their suitability for promotion list should be assessed at the relevant time by the Departmental Promotion Committee and finding reached whether, the officer had not been suspended or his conduct had not come under investigation, he would have been recommended for selection. At the time of preparing the promotion list by selection, the Departmental Promotion Committee should also take a view as to what the officer's position in the list, would have been but for his suspension etc. The findings should be recorded separately and attached to the proceedings in a sealed envelop superscribed findings regarding merit and suitability for promotion list (name of promotion list) in respect of Shri (Name and rank of the officer) and not to be opened till after the termination of the departmental enquiry/criminal proceedings against (Name and rank of the officer)."

A departmental enquiry shall be deemed to have been initiated after the summary of allegations has been served.

[List A for selection of confirmed Constable for training in lower school course.

"One Addl. Commissioner of Police and two DCP to be nominated by the C.P.

List B (i) (Executive) for Pso (confirmed constable Lower School Course Trained) to the rank of H.C.

Names shall be brought on this list in order of seniority as on list 'A' in terms of Rule 13 (1) after obtaining report of DE/PB/Criminal casee etc. etc. from concerned Distt./Unit. etc. instead of holding any regular DPC.

(ii)(Technical for promotion of Constable professionally qualified in Technical Trades to the rank of A.C.

One Additional Commissioner of Police and two DCP to be nominated by the C.P.

Rule 6 PROMOTION TO BE EARNED ONLY IN CONCERNED CADRES:- Unless otherwise provide in these or any other rules framed under the Delhi Police Act, 1978, each member of subordinate rank shall earn promotion in his/her cadre in accordance with the Rules applicable to the cadre.

Rule 7

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Rule 8 CONSTITUTION OF DEPARTMENTAL PROMOTION COMMITTEE:- Fitness of personnel for promotion to various ranks in different grades/cadres shall be judged by departmental promotion committees, which shall be constituted by the Commissioner of Police as under:-

[List-A for selection of confirmed Constables for training in Lower School Course

One Addl. Commissioner of Police and two Deputy Commissioners of Police to be nominated by the Commissioner of Police.

List-B (i) (Executive) for confirmed Constables (Lower School Course Trained) to the ranks of Head Constables.

Names shall be brought on this list in order of seniority as on list 'A' in terms of rule 13(i) after obtaining report of D.E./P.E. criminal case, etc. etc. from concerned Distts./Units etc. instead of holding any regular D.P.C.

List -B (ii)(Technical) - for promotion of Constables professionally qualified in technical trades to the rank of Head Constables.

One Addl. Commissioner of Police and two Deputy Commissioners of Police to be nominated by the Commissioner of Police.

List C

For promotion of confirmed Constables (Overage and unqualified) to the rank of Head Constable.

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List D

For promotion of confirmed Head Constables to the rank of Sub-Inspector.

One Addl. C.P. & two DCP to be nominated by Commissioner of Police

List E

- Do -

List F

For promotion of confirmed Sub-Inspectors to the rank of Inspector.

C.P. & two Addl. Cs.P. to be nominated by C.P.

Rule 17. List 'F'(i) List-F (Executive)

Confirmed Sub-Inspector (Executive), who have put in a minimum of 6 years service in the rank of Sub-Inspector, shall be eligible. The selection shall

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be made on the recommendations of the Departmental Promotion Committee. The names of selected Sub-Inspector shall be admitted to List-F (Executive) on the basis of their respective seniority, keeping in view the number of vacancies likely to occur in the following one year, and promotion made to the rank of Inspector from this list as and when vacancies become available.

Rule 21 MISCELLANEOUS:- Standing Orders laying down details of the evaluation system for holding various departmental tests and the procedure to be followed by departmental promotion committees for interview etc. shall be issued by the Commissioner of Police.

6. As regards the DPC guidelines of DoPT for holding of DPC as contained in DoPT's OM dated 10.4.1989 as amended on 27.3.1997 relevant for the present case are

"Guidelines for DPCs:

6.1.2.

6.1.3.

6.1.4 Government also desires to clear the misconception about "Average" performance. While "Average" may not be taken as adverse remark in respect of an officer, at the same time, it cannot be regarded as complimentary to the officer, as "Average" performance should be regarded as routine and undistinguished. It is only performance that is above average and performance that is really noteworthy which should entitle an officer to recognition and suitable rewards in the matter of promotion."

"6.4.4 Promotions only prospective:- While promotions will be made in the order of the consolidated select list, such promotions will have only prospective effect even in cases where the vacancies relate to earlier year(s).

Non-Selection Method:

7. Where the promotions are to be made on 'non-selection' basis according to Recruitment Rules, the DPC need not make a comparative assessment of the records of officers and it should categorize the officers as 'fit' or 'not yet fit' for promotion on the basis of assessment of their record of service. While considering an officer 'fit', guidelines in Para 6.1.4. should be borne in mind. The officers categorized as 'fit' should be placed in the panel in the order of their seniority in the grade from which promotions are to be made."

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7. The learned counsel for the applicant has adduced two fold arguments. According to him a DPC cannot lay its own criteria and the same is to be governed by statutory rules. By referring to the circular of Delhi Police, dated 23.9.1992, it is stated that the same has not been issued by the Lt. Governor under Section 147 (2) of the Delhi Police Act, 1978 and as per Article 162 the same cannot be treated as Executive instructions and in absence of any statutory rules to that affect the only criteria to be adopted is what has been contained in Rule 5, i.e., the selection tampered the seniority and for selection the paramount consideration is with regard to the efficiency and honesty and in the event a person is found fit he is to be accorded promotion in accordance with the seniority. Placing reliance on a decision of Apex Court in Dr. Krushan Chandra Sahu & Others Vs. State of Orissa & Others, (1995) 6 SCC 1, it is contended that selection criteria cannot be laid down by the selection committee unless specially authorised as the powers to make rules regulating the service of condition are to be framed under Article 309 and as guidelines of 23.9.1992 are nether framed under Article 309, nor the same have been issued, by the Lt. Governor under Section 147(2) ibid the same would not be treated as statutory guidelines or executive instructions supplementing the rules and rather supplanting the rules and are contrary to Rule 5 ibid. By further placing reliance on a decision of Apex Court in Shri Durgacharan Mishra Vs. State of Orissa & Others, AIR 1987 SC 2267, it is contended that Rules which are framed under Article 309 cannot be superseded by an executive order which has been

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issued by an incompetent authority. Again referring to guidelines of 1992 of Delhi Police, it is stated that the same are not executive instructions and in absence of any statutory rules regarding the criteria to be followed by the DPC, the statutory rules contained under Rule 5 and 17 of the Delhi Police Rules *ibid* have to hold the field and as the applicant in OA 2040/2000 has been awarded only minor penalty of censures on administrative grounds, the respondents declared him unfit for promotion, which is not legally tenable. It is also stated that laying down the criteria three good ACRs shall not be followed as the same has been issued against the law and without any competence. It is also stated that by treating the ACR as 'Average' the performance of the applicants have been down graded without communicating and without according a reasonable opportunity which offends the ratio laid down in *U.P. Jal Niagam & Others Vs. Prabhat Chandra Jain & Others*, 1996(33) ATC 217. By referring to Rule 6 of the *ibid*, it is stated that one has to get promotion in its own cadre and the fitness of personality under Rule 8 is to be judged by the DPC and further placing reliance on Rule 17(1) it is stated that the post is not selection post for which the criteria for selection post has to be adopted. What has been stated in the rules that after an officer is found fit has to be accorded promotion in order of his seniority. The learned counsel for the applicant by placing reliance on a decision of *Dev Parkash Vs. Lt. Governor, Delhi & Others* (OA 799/96), it is stated therein that the use of word 'selection' in the said rules cannot be construed to mean that the promotion is to be on the basis of

selection and not on the basis of seniority cum fitness. It is also stated that as per the notification of DoPT order of 10.4.1989 is concerned the same would not have any application in the Delhi Police Act and Rules and to the promotions of Delhi Police personnel, as while adopting the Central Acts, the LG vide his notification dated 17.12.1980 has not adopted the DPC guidelines and nowhere in the rules any provision is available to adopt such guideline to be acted upon by the DPC. Alternatively, it is stated without admitting that the Circular of DPC was to be applied in the case of applicant in OA No.2040/2000 had been rejected arbitrarily against the guidelines. It is stated that as per the guidelines contained in the Para 3 and 5 of the Circular which was followed by the DPC in 1994 provides that in case the officers having only censures during the last six months with no other punishments they are allowed to be brought on the promotion list and the only fact of censure is to debar an officer for promotion by six months. In this conspectus, it is stated that as the applicant has only seven censures to his record, and that to on administrative grounds would not effect his promotion.

8. As regards OA 1980/2000 it is stated that applicant therein had one censure awarded on 24.7.1995 which cannot affect his promotion and as regards the major punishment the same has been awarded to the applicant on administrative grounds. It is further stated that punishment of withholding of increments for a period of two years was inflicted on 10.10.1994 as such the same was not in existence on the date of DPC, i.e., 12.8.1994. The applicant has a right of

consideration of his case as per the seniority assigned by the respondents. Further placing reliance on the Circular dated 23.9.1992 it is stated that officers who have been awarded major punishment on administrative grounds beyond two years from the date of DPC are to be empanelled. It is stated that the applicant has been punished later on and as such the punishments would not have any effect on his promotion.

9. Strongly rebutting the contentions of the applicant, the learned counsel of the respondents stated that in view of the revision of seniority, in pursuance of the decision of the Apex Court a review DPC had met on 16.3.2000 and 4.4.2000 and where the same criteria was followed by the regular DPC which had met in 1994. It is stated that Rule 5 ibid envisaged that the promotion from one rank to another shall be made selection tampered by seniority and efficiency and honesty shall be the main factor of selection. It is also stated that under Rule 8 ibid fitness of a police officer is to be judged by DPC. Circular dated 23.9.1992 also provides guide-lines for the DPC. Placing reliance on the guide-lines of the DPC issued by the Government of India, it is stated that the DPC is legally competent to evolve its own method and criteria for selection. The learned counsel for the respondents further contended that the applicant has not exhausted the remedy by filing an appeal. The learned counsel for the respondents has placed reliance on a decision of this Court (Principal Bench) in OA 2213/99 dated 25.1.2001 in Rashpal Singh Vs. Govt. of NCT of Delhi, wherein the contention

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taken by the applicant on the basis of the decision in Dev Parkash case supra as well as the decision of the Apex Court in Dr. Krushna Chandra Sahu's case supra as well as in Durgacharan Misra's case supra was taken note of. The respondents contended that therein it has been held that as the matters pertaining to police have been retained by the Union and have not been assigned to Government of Delhi, Central Government instructions issued by the DoPT which is a nodal agency shall be fully applicable, despite that the same does not find mention in the notification dated 17.12.1980. The cases are referred to by the applicant have been distinguished by the Court. The learned counsel for the applicant further placed reliance in the decision of this Court in OA 1415/96 in Umakant Tiwari Vs. Commissioner of Police & Others, decided on 25.5.2000 wherein the contentions of the applicant have been note of and review of Rule 5, 17 of the Rules ibid no interference has been made. The learned counsel for the respondents has also placed reliance on the decision of this Court in OA 610/96 dated 1.2.2001 in Sukhbir Singh Vs. Commissioner of Police wherein the contentions of the applicant therein was rejected. The respondents have also stated that as per Rule 21 of the Rules ibid the Commissioner of Police have been empowered to lay down the procedure to be followed by the DPC for interview, etc. which also includes the guide-lines to be followed by the DPC. Placing reliance on the DoPT instructions of 1989 as amended in 1997 and more particularly to para 6.1.4 it is stated that 'Average' performance should not be considered as noteworthy to entitled an officer for suitable rewards in the matter

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of promotion and by placing reliance on para 6.1.2 it is stated that DPC enjoins full discretion to device the method etc. for objective assessment of the suitable candidates. The criteria as adopted by the respondents has neither been arbitrary nor malafide.

10. As regards the individual facts of the case in OA 2040/2000, it is stated that the applicant therein had been awarded 7 censures as which tends to negate that the applicant was fit to be promoted. Apart from it, it is further stated that the applicant has failed to attain the 'Bench Mark' as contained in the guide-lines of the DPC, apart from 7 censures and was accordingly declared unfit legally as per the criteria.

11. As regards the case in OA 1980/2000, it is stated that the applicant was facing departmental enquiry on the date of review DPC w.e.f. regular DPC, i.e., August, 1994 an enquiry was held on 13.8.1992 and a major punishment of withholding of an increment for a period of three years has been imposed upon the applicant on the allegations of beating and threatening a public person. As such in view of the ratio in Union of India Vs. K.V. Janaki Raman's case 1991(4) SCC 109 on the basis of sealed cover procedure the applicant was found unfit. As such he has been rightly not accorded the promotion.

12. We have carefully considered the rival contentions of the parties and perused the pleadings and also perused the departmental record, etc. As regards the contention of the applicant that the

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Circular issued by the respondents on 23.9.1992 has no locostandi as it is not issued by the Lt. Governor who is the constitutional head of Delhi Police under Rule 147 of the Delhi Police Act, 1978 is not legally tenable. The Circular issued by the Commissioner of Police is within his competence as under Rule 21 of the Rules ibid, the Commissioner of Police has been authorised by the Lt. Governor to lay down the procedure to be followed by the Departmental Promotion Committee and thus to our considered view includes the procedure assessing the suitability of the incumbents. The contentions of the applicant that this only devolves upon the Commissioner of Police, the procedure to be followed by the DPC for interview, etc., is not correct.

13. The next contention of the applicant that the DPC cannot lay down its own criteria and the same is to be laid down by Recruitment Rules and as the Circular is not an administrative instructions the statutory rules contained in Rule 5 and 17 would hold the field and as Lt. Governor has not issued the criteria followed by the DPC the same cannot be followed to judge the suitability of the applicant by the DPC for promotion. The aforesaid issue has been dealt with in great length by this Court in Rashpal Singh's case while negating the contention of the applicant herein and distinguishing the case law cited by him it has been held that as per Article 329(A) of Constitution of India as the Police has not been retained with the Government of Delhi and has been under the Union, the instructions issued by the DoPT which is a nodal agency would be applicable. From the

perusal of the notification issued by the Lt. Governor dated 17.12.1980 what has been adopted is the Central Rules which interalia do not contain the guidelines for DPC as envisaged under DoPT instructions but it has been provided that in case of any conflict between the Rules and the Act of the Central Government adopted in case there is any conflict Rules under the Delhi Police shall prevail. We find that the instructions of DoPT of 1989 have not been in any way conflict with the statutory rules. The rules of Delhi Police provides for promotion on the basis of selection tampered seniority where the integrity and honesty are the paramount consideration. Rule 17 also talks of selection and admission on the basis of respective seniority. This shows that the non selection method is applicable as contained in DoPT instructions. As per the guidelines of 6.1.4 where the 'Average' performance is not treated as incentive for consideration of promotion would be applicable to the Police officials in Delhi Police and by no stretch of imagination the same is contrary to the statutory rules. Apart from it, the Commissioner of Police is empowered to frame guidelines to be followed by the DPC. DPC under 6.1.2 of the guide-lines are empowered to evolve their own methods. The DPC in the instant case had evolved their own criteria to consider the incumbents in regular DPC held in 1994 and the same has been adopted in the review DPC held in 2000. The applicant has not impugned the aforesaid criteria in both the OAs, as such having not challenged this criteria, the applicant is estopped from challenging the same without any justification or grounds to that effect.

The ratio laid down in Uma Kant Tiwari's case supra as well as Raspal Singh's case supra mutatis mutandis apply to this case also and we do not take a contrary view to that effect.

14. As regard the individual cases of the applicants assuming without admitting that the circular is applicable to the applicant, what has been contained in the circular is that a person who had censures to his credit shall be empanelled in case of if no major punishment and in such an event the promotion shall be delayed for six months. But in view of the subsequent decision of Sajjan Kumar Vs. Union of India & Others (OA No.7/96) which has been upheld by the Apex Court of which a reference has been made to that effect by the respondents in the reply. Having 7 censures to the service record, the applicant in OA 2040/2000 is not to be considered as fit. The continuance of censure still indicates towards his non-efficiency, which is the criteria laid down in the Rules ibid Apart from it from the perusal of the DPC records the applicant has also failed to achieve the criteria of 3 good reports.

15. In OA 1980/2000 the applicant was figuring in the secret list and was awarded both a minor punishment of censure and also a major penalty on the basis of enquiry ordered in 1992. Keeping in view of the ratio of Shri K.V.Janakiraman's case supra, the case of the applicant would have been placed under sealed covered on account of pending enquiry at the time of regular DPC as the applicant has been awarded major punishment later the sealed

cover was opened and the applicant was not found fit. Apart from he has also failed to achieve the Bench Mark as fixed by the DPC.

16. In view of the above discussion, we are of the view that the criteria adopted by the DPC in review, after revision of the seniority of the applicant, is legally correct and the DPC is within its competence to follow its own method and criteria and even the Circular dated 23.9.1992 is issued in accordance with the statutory rules. The cases cited by the applicants are distinguishable and would not apply to the facts and circumstances of the present case. We find no illegality in the orders passed by the respondents.

17. Having regard to the reasons recorded^h and discussion made above, both the OAs are bereft of merit and are accordingly dismissed. No costs.

A photo copy of this order be placed in OA No.2040 of 2000.

Registry is directed to return the record file to the respondents.

S. Raju
(SHANKER RAJU)
MEMBER(J)

M.P. Singh
(M.P. SINGH)
MEMBER(A)

/RAO/