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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 2293/2000

New Delhi this the 8th day of August, 2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

Const. Nooruddin No. 2406/SD
R/O 261-C, Sahpur Jatt,
Near Hauz Khas,
New Delhi.

... Applicant

(By Shri Rajeev Kumar, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of
Home Affairs, North Block,
New Delhi.
2. Commissioner of Police, Delhi,
Police Headquarters, I.P.Estate,
M.S.O. Building,
New Delhi.
3. Dy. Commisioner of Police,
Headquarters & Licensing,
Police Hqrs., I.P.Estate,
New Delhi.

... Respondents

(By Ms. Jasmine Ahmed, Advocate)

O R D E R (ORAL)

Shri S.A.T.Rizvi, Member (A) :

The applicant was enlisted as a Constable (Executive) in Delhi Police on 4.3.1974. In view of a criminal case under Section 363/364 IPC registered against him, he was placed under suspension w.e.f. 3.8.1985. On being acquitted in the aforesaid case, the period of his suspension from 3.8.1985 to 16.11.1990 was treated as spent on duty for all intents and purposes vide respondents order dated 10.3.1997 at Annexure A-9. However, on account of the aforesaid criminal case pending against him, his name was brought on the secret list of persons of doubtful integrity w.e.f. 22.5.1993 and remained on that list

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up to 23.12.1995. The removal of his name from the secret list came in the wake of his acquittal and by the respondents' order dated 3.7.1997 at Annexure A-2. He is no longer on the secret list w.e.f. 23.12.1995. The learned counsel appearing on behalf of the applicant submits that there being nothing else against the applicant, he is entitled to be considered for promotion to the rank of Head Constable. The applicant is aggrieved by the respondents not considering his case at all at the meeting of the DPC held on 28.2.2000. The only other DPC meeting at which his name had come up for consideration was held in 1994, but on that occasion the recommendations of the DPC in respect of the applicant were kept in the sealed cover in accordance with the prescribed procedure.

2. In the background of the above position, the applicant prays that the respondents' memo dated 8.4.1997 at Annexure A-1 which conveys their decision that the applicant was found unfit due to unsatisfactory service record after opening of the sealed cover, be quashed and set aside. He also prays that the respondents' order dated 3.4.1997 by which his name has been removed from the secret list w.e.f. 23.12.1995 and not from ~~the~~ inception be also quashed. The applicant further prays for the annulment of the respondents' memos dated 24.9.1997 and 7.9.1999 placed at Annexures A-3 and A-4. The former conveys the respondents' decision to consider the applicant's case for promotion in the next DPC. The latter seeks to reiterate the decision already conveyed on 24.9.1997 that the applicant could not be promoted.

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3. We have heard the learned counsel on either side and have also perused the departmental record consisting of file No.30(17)/94(P-IV) and the chart contained in various pieces of information about the Constables, including the applicant, placed before the DPC. The aforesaid file contains the decision of the respondents taken by them after opening the sealed cover following the applicant's acquittal in the aforesaid criminal case. The latter document which is a chart shows that there was nothing adverse against the applicant in his ACRs and further that the only thing against him was the criminal case then pending against him and also the fact that his name figured in the secret list.

4. Rule 12 of the Delhi Police (Promotion & Confirmation) Rules, 1980 which deals with the promotion of Constables to the rank of Head Constables inter alia provides that the age of the Constable should not exceed 40 years at the time of consideration. The learned counsel appearing on behalf of the respondents has placed before us a departmental circular of 16.7.1999 which seeks to extend the aforesaid age to the limit of 45 years. Thus, Constables not exceeding 45 years of age are eligible to be considered for promotion to the rank of Head Constable. The other considerations which are supposed to weigh with the DPC are service record, seniority, ACRs and acquittance in professional test covering subjects such as physical training and parade, elementary law and police practical work, general knowledge, and professional work done. In other words, the DPC is expected to take into account

not only the factor of age but also the seniority and performance of Constables.

5. Having regard to the aforesaid provision made in Rule 12 ibid, we find that in the circumstances of this case, the applicant has become eligible to be considered for promotion to the rank of Head Constable subject to he being found fit by the DPC in accordance with the criteria summarised in the previous paragraph. *The exclusion of his name from consideration by the DPC in Feb. 2000 on the ground of age was entirely irregular as he was then yet to attain 55 years of age.*

6. The consideration of the applicant's case for promotion will be facilitated, according to the learned counsel for the applicant, by backdating the date of removal of his name from the secret list in keeping with the view taken by this Tribunal in OA No. 827/1998 decided on 18.8.1998. In that OA, in a situation similar to the one obtaining in the present case, the Tribunal had ordered expunction of the name of the applicant therein from the secret list from ~~the~~ ² inception. Following the aforesaid order, we find no difficulty in holding that in the present case also, the applicant's name needs to be deleted from the secret list from 22.5.1993, which is the date on which his name was brought on the secret list. We decide accordingly.

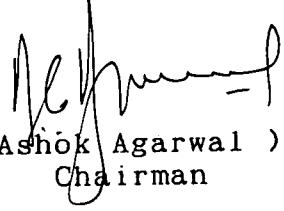
7. In the facts and circumstances outlined in the preceding paragraphs, we find it just and proper to dispose of this OA with a direction to the respondents to hold a review DPC to consider the claim of the applicant for promotion in accordance with Rule 12 of the Delhi Police (Promotion & Confirmation)

Rules and keeping in mind the fact that we have, as above, ordered removal of his name from the secret list w.e.f. 22.5.1993. In the event of the applicant being found fit for promotion, the DPC will further consider granting notional seniority to the applicant ^{with all the consequential benefits} with effect from the date of the 1994 DPC. The respondents are further directed to complete the aforesaid exercise within a period of three months from the date of receipt of a copy of this order.

8. Present OA stands disposed of in the aforesated terms. There shall be no order as to costs.


(S.A.T. Rizvi)

Member (A)


(Ashok Agarwal)
Chairman

/as/