

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2366/2000

New Delhi this the 9th day of March, 2001.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Raj Singh

-Applicants

(By Advocate Shri Shyam Babu)

-Versus-

Govt. of NCT Delhi & Others

...Respondents

(By Advocates Shri Rajinder Pandita and Sh. Yogesh Sharma)

1. To be referred to the Reporters or not? YES/NO ✓

2. To be circulated to other Benches of the Tribunal? No

S. Raju
(Shanker Raju)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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New Delhi, this the 9th day of March, 2001

HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Raj Singh (D/595)
S/o Shri Nathu Ram
R/o H.No.1695, Para Mamurpur,
Narela, Delhi-110040.

.....Applicant.

(By Advocate: Shri Shyam Babu)

VERSUS

1. The Govt. of NCT Delhi
through its,
Chief Secretary,
5, Sham Nath Marg,
Delhi.
2. Commissioner of Police
Delhi.
Police Headquarters,
I.P.Estate,
New Delhi.
3. Dy. Commissioner of Police
Speical Br.
Police Headquarters, I.P.Estate,
New Delhi.
4. Shri Shiv Kumar (1421/D)
ASI (SHR)
C/o Dy. Commkissioner of Police
Special Br. PHQ, I.P.Estate,
New Delhi.

...Respondents.

(By Advocates: Shri Rajinder Pandita for R-1 to R-3
Shri Yogesh Sharma for R-4)

O R D E R

HON'BLE SHRI SHANKER RAJU, MEMBER (J):

In this OA the applicant has assailed the order dated 7.11.2000 passed by the Government of National Capital Territory of Delhi, whereby on a Review DPC, respondent No.4 ASI (Shorthand Reporter) (for short SHR) Shri Shiv Kumar Tyagi has been promoted to the post of SI (SHR) with effect from 10.1.1996 and simultaneously the applicant stands reverted from the

post of SI(SHR) to ASI (SHR). The compliance report was also asked to be submitted to the Government.

2. The applicant, who was a Constable in Delhi Police, was directly recruited as ASI (SHR) on 6.6.1989 and was later on confirmed on 6.6.1991. The name of the applicant was brought out in the Promotion List 'E' (Technical) for the post of SI (SHR) with effect from 10.1.1996 in terms of rule 16(ii) of Delhi Police (Promotion & Confirmation) Rules 1980. The case of respondent No.4 was not recommended as he failed to make the grade as per the guide-lines laid down for Departmental Promotion Committees (hereinafter called DPCs). Further, the pay of the applicant was fixed and he was, after successfully completing the probation period, confirmed as SI(SHR) on 9.1.1998 as per Rule 18(iii) of the Promotion Rules ibid.

3. According to the applicant, he was shocked to know that vide letter dated 7.11.2000 written to the Commissioner of Police, he has been ordered to be reverted to the post of ASI(SHR) and respondent No.4 Shri Shiv Kumar Tyagi has been ordered to be promoted to the post of SI (SHR). According to him, the decision had already been taken and the Commissioner of Police had to only comply with the orders. The applicant in this emergent situation sought immediate interference of this Tribunal by seeking a stay of the operation of the impugned order dated 7.11.2000, which

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was granted to him on 15.11.2000 and is still continuing. The applicant assailed the order on the ground that he is a confirmed SI (SHR) and cannot be reduced to a lower rank without affording a reasonable opportunity to show cause as provided under Article 311(2) of the Constitution of India. The applicant further contends that the order of reversion is only an empty formality as the decision had already been taken and was only to be implemented by the Commissioner of Police.

4. It is further contended on behalf of the applicant that Rule 16 (ii) of the Promotion Rules ibid governs the promotion to the post of SI (SHR) in Technical Cadre and as the applicant had an excellent service record, the seniority would not be a determining factor as the post is a selection post. On the other hand, the official respondents refuted the contention of the applicant by putting preliminary objection with regard to maintainability of the OA by stating that the impugned order dated 7.11.2000 is only an inter-departmental communication which was not even communicated to the applicant. According to them, the OA is premature as the order is yet only an interlocutory order and the final decision is to be taken by the Commissioner of Police on the basis of recommendation made by the Government. According to them, in such a situation no show cause notice is required.

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5. It has been further stated that though in the DPC held on 10.1.1996 the applicant was found fit for promotion to the post of SI (SHR), but on a representation made by the respondent No.4 a review DPC was held on 29.2.2000 and which found respondent No.4 fit for promotion. As such his name was brought on Promotion List 'E' (Technical) with effect from 10.1.1996. According to them, as no post was available against which the ASI (SHR) could be promoted, a proposal was sent to the Govt. of NCT of Delhi for creation of one more post of SI (SHR) with effect from 10.1.1996, but that proposal was, after being examined by the Lt. Governor in consultation with the MHA, not acceded to and it is decided to promote respondent No.4 w.e.f. 10.1.1996 and ordered reversion of the applicant vide order dated 7.11.2000. The applicant stands reverted from the post of SI (SHR). According to the respondents, the reversion was not by way of punishment, but with a view to correct administrative mistake committed by the DPC on 10.1.1996. As far as giving a reasonable opportunity to show cause is concerned, it has been left to be carried out by the respondents Nos. 2 and 3 i.e. the Delhi Police. In one of the contentions, it is stated that the respondent No.4 was admittedly senior to the applicant, his promotion order had been rightly issued by the concerned authorities.

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6. On the other hand, the private respondent No.4 in his reply contended that he is senior to the applicant by 8 years and in the OA there is no challenge to the promotion order passed with regard to respondent No. 4. According to them, there is no challenge to the review DPC held on 29.2.2000 by the applicant in his OA. It is further contended that the reversion of the applicant has taken place due to rectification of error on the part of the respondents, which is permissible under FR 31-A. The applicant in his rejoinder reiterated the contentions made by him in his OA. We have carefully considered the rival contentions of the parties and as directed, the official respondents had also produced the relevant records pertaining to the controversy, which has been carefully gone through by us.

7. The preliminary objection of the respondents is that the impugned order dated 7.11.2000 challenged in the present OA is an internal communication sent to the Commissioner of Police by the Govt. of NCT of Delhi on the basis of a decision taken by the Ministry of Home Affairs. As such the same cannot be treated as a final order as defined under Section 19 of the Administrative Tribunal Act. Since no official order is passed by the Commissioner of Police, the application is not maintainable in the present form. To substantiate his plea the respondents' counsel relied upon the Constitutional Bench judgement of Hon'ble Supreme Court

in case S.S. Rathore v. State of Madhya Pradesh, reported in AIR 1990 SC 11 where it has been held that the Tribunal shall not ordinarily admit an application unless the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of his grievances. In this context it has been further held that the limitation prescribed under Section 21 of the CAT Act is to start not from the date of original order but on the date when the order of higher authority where statutory remedies provided is made. The respondents' counsel also relied upon the Full Bench Judgement of B. Parmeshwar Rao Vs. The Divisional Engineer Telecommunications, Eluru and anothers, CAT FULL BENCH Vol.II (Hyd.) (1989-1991) 250 to further contend that the applicant should approach the Tribunal against an order to which he is aggrieved with. On the other hand the learned counsel for the applicant contends that the impugned order dated 7.11.2000 is, in fact, the final decision of the authorities to revert the applicant and a mere compliance is sought from the Commissioner of Police. In this regard he further refers to the contention of the respondents taken in the brief facts of the case where it is contended that on 7.11.2000 vide order No.F-3/44/97-Home (Police)Establishment-6518, the reversion of the applicant has been ordered. We have given careful thought to the rival contentions on the preliminary objections. In order to resolve this controversy, it is necessary to mention Rule under Section 19 of the Central Administrative Tribunal Act 1985, which is reproduced as below:

"19. Application to Tribunals. - (1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

(2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee (if any, not exceeding one hundred rupees) 2[in respect of the filing of such application and by such other fee for the service or execution of processes, as may be prescribed by the Central Government).

2[(3) On receipt of an application under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application; but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons.)

(4) Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules."

8. In our view, it is not necessary for a Government servant to be aggrieved by a specific order to come to the Tribunal for redressal of his grievance. For example, in some cases, the services are terminated on oral orders as well as threatened action of reversion and repatriations are challenged. In our view the ratio of S.S. Rathore V. State of M.P. (supra) would be more appropriate to be applied in cases where there is an issue of limitation. Apart from it even if we go by the ratio laid down supra, the cause of action arises from the order of reversion if

there is no statutory remedy provided under the relevant rules. We have seen the Delhi Police Act and Subordinates Rules and find that except Section 23 of the Delhi Police Act 1978 where an apparent reason is given regarding an appeal against the order of punishment, there is no provision under statutory rules providing a remedy against an order of reversion. As such the cause of action arises to a police officer in case of reversion from the date of the issuance of the order. As regards the order dated 7.11.2000, in our view, is the start of the cause of action to the applicant and is an order within the parameters of Section 19 ibid to be assailed by the applicant for redressal of his grievance. In this order the decision has already been taken on the recommendations by the MHA to revert back the applicant from the post of SI (SHR) and a mere compliance is required from the Commissioner of Police. This view of ours is fortified by the statement of the respondents in the counter affidavit where on the basis of this order on the same date i.e. 7.11.2000 interlocutory order has been passed to comply with the order passed by the Govt. As such we are of the confirmed view that the preliminary objection of the respondents is not legally tenable and the order dated 7.11.2000 has to be treated as an order impugned as per provision of Rule 19 (ii).

9. It is contended by the applicant's counsel Shri Shyam Babu that before passing the order of reversion against the applicant he being a confirmed employee has not been afforded a reasonable opportunity to show

cause, which is mandatory under Section 311 (2) of the Constitution of India. According to the applicant, a Government servant cannot be reduced to a lower rank except following the procedure of departmental enquiry and as no such procedure had been adopted by the respondents while reverting the applicant to a lower rank, the order is bad in law. We do not agree with the contention of the learned counsel of the applicant as regards holding the departmental enquiry before reducing him in rank. In fact, reversion on account of a review DPC would not come within the ambit of a departmental punishment of reduction in rank provided under section 22 of the Delhi Police Act 1978. Apart from it, under Rule 7 of the Delhi Police Punishment and Appeal Rules, 1980 (hereinafter called Rules) so far as reversion to a lower rank would not amount to penalty such as the reversion is not to be equated with the reduction in rank, the resort to departmental proceedings without any mis-conduct alleged against the applicant would not be practicable. Nevertheless, the applicant is a confirmed SI(SHR) w.e.f. 9.1.1998, the reversion has led to civil consequences. Before resorting to such a reversion on whatsoever ground, it was incumbent upon the respondents to have at least afforded him a reasonable opportunity to show cause. On our asking from the respondents' counsel as to whether on the basis of the decision of the Govt. of India a reasonable opportunity to show cause is to be provided to the applicant or not. It was contended by the respondents in view of their reply in their counter affidavit that as far as the opportunity is concerned,

it is for the PHQ to deal under the law. We find from this counter that on the same day of receiving the decision of the Govt. of India, the Commissioner of Police complied with the same without affording a reasonable opportunity to show cause to the applicant. In our considered view, the applicant being a confirmed employee, by his reversion he has been put to civil consequences and according to us without an opportunity to show cause the said reversion would not be legally sustainable. In this view of ours we are fortified by the decision of the Hon'ble Apex Court in cases Bhagwan Sukhla vs. UOI reported as (1995) Vol.II SLJ SC 30 and D.K. Yadav Vs. JMA Industries reported as AIR (1993) SC 2444 as well as Vol. 3 SCC page 445. In our considered view the action of the respondents reverting the applicant without affording reasonable opportunity is against the principle of natural justice and fair play.

10. We have been furnished with the departmental records on our query by the respondents. This has been done with a view to see whether the action of the respondents with regard to holding the review DPC and further promoting the respondent No.4 to the post of SI (SHR) is legally sustainable or not. We may further mention that the applicant in the OA has not at all assailed or challenged the promotion of respondent No.4 nor had challenged the findings of the review DPC held on 29.2.2000. The challenge in this case is only to the reversion of the applicant to the post of ASI(SHR). In the relief claimed by the applicant, the impugned

order dated 7.11.2000 is prayed to be quashed and set aside with all consequential benefits. In this regard we agree with the contention raised by Shri Yogesh Sharma, learned counsel of the respondent No.4 as no prayer is made for quashing the promotion order of respondent No.4 by the applicant, it is beyond our jurisdiction to grant the same relief to the applicant. From the perusal of the relevant records we find that the respondent No.4 is admittedly senior to the applicant in the rank of ASI (SHR) as the applicant was confirmed as ASI (SHR) on 6.6.1991, whereas respondent No.4 was confirmed on 11.6.1983. From a perusal of records we also find that respondent No.4 has prayed in his representation for holding a review DPC as his ACRs where the gradings given was "Average" were not found unfit for his being empanelled to Promotion List 'E' (Technical). The applicant therein by referring to a Judgement of this Tribunal in Vijender Singh V. Commissioner of Police contended that as there was no grading of good in the ACR format as such in the absence of not having the column 'good' in the ACR Forms for the relevant years from 1992 to 1995 he was given 'Average' grading. As per the Circular of Delhi Police dated 23.9.1992 where the bench mark for empanelment is 'Good' or above, the case of the respondent No.4 was rejected. The review DPC considered this aspect and treated the ACRs of the respondent No.4 from 1989 to 1990 as Good as well as ACRs from 1991 to 1993 also as Good on the basis of individual columns and over all performance as good and the applicant and as he had attained the benchmark of

three good ACRs empanelled him for the post of SI(SHR) in Promotion List 'E' (Technical) in order of his seniority. According to the respondents the total strength of SI (SHR) was four and 50% of the post to be filled by promotion and 50% by direct recruitment. As no post of SI(SHR) was available under promotion quota, one vacant post of direct recruitment quota is proposed to be adjusted temporarily to accommodate the respondent No.4 and thereafter on availability of promotional post the respondents could be adjusted therein. For creation of a supernumerary post of SI (SHR), a proposal had gone to the Ministry of Home Affairs through Govt. of NCT of Delhi as MHA is the Nodal Ministry for the Delhi Police and vide their decision the respondent No.4 was promoted as SI (SHR) w.e.f. 10.1.1996 with anti-dating his promotion as proforma promotion and the actual promotion is to take effect from the date of promotion and accordingly the proposal of creation of a supernumerary post was rejected and it has been decided to revert the applicant from the post of SI (SHR). It is further contended by the applicant's counsel that as per rule 16 (ii) of Delhi Police Promotion and Confirmation Rules 1980, which is reproduced as under -

"(ii) List-E (Technical)

Confirmed Assistant Sub-Inspectors (Specialised/Technical), who have put in a minimum of 6 years service in their respective trades, shall be eligible. For Sub-Inspector (Armourer), Confirmed Head-Constable (Armourer) with a minimum of 12 years service will also be eligible. The selection shall be made on the basis of recommendations of the Departmental Promotion Committee. The names of selected Assistant Sub-Inspector

(Specialised/Technical) shall be brought on List-E (Technical) in order of their respective seniority, keeping in view the number of vacancies likely to occur in the rank of Sub-Inspector, in the following one year, and they shall be promoted to the rank of Sub-Inspector, in their respective cadres as and when vacancies occur in the cadre."

the mode of promotion is on selection basis and as such the seniority would have no role to play. According to him, the applicant had superior service record than respondent No.4 and he was rightly promoted as SI (SHR). We have carefully gone through the record. Although the mode of selection is described in the rule, but the names of selected candidates are to be put in order of their respective seniority. In selection post, the seniority is not to be given a go by up and what is stressed according to the DPC guide-lines issued in the year 1989 as well as 1997, benchmark should be formulated and if the officer is qualified to have that benchmark then the empanelment would be in accordance with the seniority in feeder cadre. Accordingly, in the instant case the DPC guide-lines issued on 23.9.1992 to judge the suitability of the candidates inter-alia contains a clause that an officer having at least three or more good reports should be empanelled. As the DPC held on 10.1.1996 had not applied the ratio of Vijender Singh's case and declared the respondent No.4 unfit simply on the basis of gradings given in his ACRs. The aforesaid illegality has been rectified in a review DPC on 29.2.2000. In our considered view from the records it

is apparent that the respondents had rightly held a review DPC and their findings are justified and the same are not to be interfered with.

11. As regards the civil consequences visit upon the applicant the fact remains uncontroverted. No reasonable opportunity has been afforded to the applicant prior to his reversion. In the interest of justice and fair play and having regard to the discussions made above, we partly allow this OA and set aside the impugned order dated 7.11.2000 only in respect to the reversion of the applicant and further direct the respondents to accord reasonable opportunity to the applicant to show cause before giving effect to the order of reversion. The respondents are further directed to pass a well reasoned order on the representation of the applicant. As far as respondent No.4 is concerned, his promotion will not be effected by quashing of the impugned order dated 7.11.2000. The aforesaid directions shall be complied with by the respondents within a period of one month from the date of receipt of a copy of this order.

No costs.

S. Raju
(SHANKAR RAJU)
MEMBER (J)

/pkr/

V.K. Majotra
(V.K. MAJOTRA)
MEMBER (A)