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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2539/2000

New Delhi this the 11th day of July, 2001.

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

Shri Om Singh,
S/o Sh. Bhagwan Singh,
R/o Paschim Vihar,
New Delhi.

...Applicant

(By Advocate Shri Sant Lal)

-Versus-

1. The Union of India through the Secretary, Ministry of Home Affairs, North Block, New Delhi.
2. The Commissioner of Police, Police Headquarters, I.P. Estate, New Delhi.
3. The Addl. Commissioner of Police (Estt.), Police Headquarters, I.P. Estate, New Delhi-110 002.
4. The Deputy Commissioner of Police, West Distt., Rajauri Garden, New Delhi.

-Respondents

(By Advocate Sh. Ashwani Bhardwaj, proxy for
Shri Rajan Sharma, Advocate)

O R D E R

By Mr. Shanker Raju, Member (J):

The applicant, working as an Assistant Sub Inspector (ASI) in the Delhi Police, has assailed an order passed by the respondents on 27.6.2000, whereby on review DPC he has been graded unfit for admitting his name to promotion list E (Ministerial), which further entitles him to be promoted as Sub Inspector(SI) (Ministerial). The applicant has been found unfit on three occasions i.e., 4.8.85, 1.10.85 and 12.1.88 adopting the laid down criteria by the DPC. The applicant in this OA has sought a direction to treat the grading 'B' given in his ACR as 'Very Good' and to grant him promotion to the rank of SI

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from the date his juniors have been accorded the same with all consequential benefits.

2. The brief relevant facts of the case are that the applicant was promoted as ASI (Ministerial) on 17.2.86 and was confirmed thereafter. The applicant was communicated adverse ACR for the year 1993-94 and also a punishment of censure awarded to him on 23.11.93. On appeal the punishment of censure was set aside on 16.9.94. The adverse remarks pertaining to the punishment of censure have not been expunged from the ACR of the applicant and as such he was not included in the promotion list 'E' on 8.9.95. On filing OA NO.252/96 for expunction of the adverse remarks the OA was partly allowed on 17.11.99 issuing directions to the respondents to re-consider the overall assessment of the work and conduct of the applicant and if there is any change in the overall assessment the case of the applicant is to be reviewed for the purposes of admission to promotion list E from the date his juniors were accorded the same. Consequently, a review of the ACR of the applicant pertaining to the year 1993-94 and in compliance of the directions of this Court (supra) the grading of the applicant has been changed from 'C' to 'B'. A review DPC was also held for considering the claim of the applicant for promotion in list 'E' w.e.f. 4.8.85, 1.10.85 and 12.1.98 wherein applying the criteria laid down regarding bench mark of three Good ACRs the applicant was graded unfit as he could not make the bench mark of three Good ACR. The applicant has also filed a contempt against the respondents' action and vide an order dated 6.11.2000

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in CP No.414/2000 the Court rejected the same as it was found that the applicant did not succeed in earning three Good ACRs. Hence the present OA.

3. The applicant in this OA by referring to the Circular of Delhi Police dated 23.9.92 in force at the time when claim of the applicant was re-considered in a review DPC for the year 1995 stated that despite cancellation of censure and changing the grade of ACR from 'C' to 'B' the action of the respondents declaring him unfit for promotion as he could not earn the bench mark of three Good ACRs is absolutely arbitrary. Placing reliance on the decision of this Court in OA-1333/99 and OA-1109/95 it is stated that therein it has been held that grading 'B' in the ACR is on the basis of the overall assessment and as per the circular of Delhi Police which is mandatory the same is to be treated as Very Good and in that event as the case of the applicant has been rejected by the review DPC only on the ground that he could not make the bench mark of three Good ACRs the same is not legally tenable. Apart from this impediment of three Good ACRs there is nothing adverse within the parameters of guidelines adopted by the DPC by which it can be stated that the applicant is not otherwise eligible for being considered and promoted as SI. It is also brought to our notice that the decision in OA-1333/98 in Head Constable Randhir Singh v. Union of India had already been confirmed by the High Court of Delhi.

4. The respondents rebutted the contentions of the applicant and also submitted the relevant record of DPC as well as ACR dossiers of the applicant. In their reply the respondents have taken a preliminary objection that as

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the decision of the review DPC was in compliance of the directions of the Tribunal in OA No.252/96 and in the contempt petition it has been observed that the applicant has not succeeded in earning three Good ACRs, the present OA is not maintainable. It is also contended that the case of the applicant is also barred by res judicata as the applicant had come before this Court on an identical relief and the cause of action which he assailed in OA-252/96. The respondents have taken another objection of limitation by stating that the initial cause of action had arisen in the year 1995 and the OA has been filed only in the year 2000, which is hopelessly barred by the provisions of Section 21 of the Administrative Tribunals Act, 1985. On merits it is contended that the DPC had adjudged the suitability of the applicant in accordance with the guidelines and after due consideration the applicant was found unfit. It is also contended that in compliance of the order of the Court the review DPC had after toning down the grading of the ACR pertaining to the year 1993-94 has considered the case of the applicant afresh but as he could not earn the bench mark of three Good ACRs his case has been rightly rejected and he has been declared unfit for promotion. Placing reliance on OM of Government of India dated 10.4.89 it is contended that the DPC enjoys full discretion to devise its own method and procedure for objective assessment of the suitability of the individual and after due process the applicant has been graded unfit which cannot be assailed as the court would not assume the role of a DPC or an appellate authority in the matter of promotion. It is further stated that the modification of grading 'C' to 'B' in the ACR cannot be a criterion to adjudge the performance of the applicant as Good. As

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regards the applicability of the case of Randhir Singh (supra) it is contended that the DPC had not graded the applicant merely on the basis of the ACR but on their own method and procedure for promotion to list E (Ministerial) taking into account the overall general assessment and other qualities mentioned in the ACR and as such the case of Randhir Singh is distinguishable and would not apply in the present OA. It is also contended that ACR format of ASI of Executive Cadre has been revised by inserting the grading Outstanding/Very Good/Good/Average/Below Average instead of 'A', 'B' and 'C' and at that time the format for ACR of Ministerial cadre was not changed and it is still under consideration.

5. The applicant has also filed a rejoinder, re-iterating his pleas taken in his OA and also placed reliance on a decision of this Court in OA-2145/98 dated 21.9.2000 to contend that the question of grading 'B' was also raised therein and placing reliance on the decision of the Randhir Singh's case (supra) the same has been allowed.

6. We have carefully considered the rival contentions of the parties and perused the record produced by the respondents. As regards the issue of res judicata is concerned, the same would have application only if it is established that the identical issue raised by the applicant has been conclusively decided between the parties in the previous proceedings. In the previous case the applicant has approached this Tribunal for expunction of the adverse remarks recorded in his ACR for the period 1993-94 and also as a consequential relief prayed for consideration of promotion. The Court while disposing of

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the OA directed the respondents to reconsider the overall assessment and to review the case for promotion. In CP also it has been observed that the applicant has not succeeded in earning three Good ACR required for the purpose of promotion but by way of present OA the applicant is assailing the action of the respondents whereby in review DPC against their own guidelines they have not treated the grading 'B' as Very Good. The aforesaid grievance has not at all been raised by the applicant neither in the previous OA nor in the CP. The present OA has been founded on non-application of mind by the DPC to their own guidelines regarding the bench mark and grading 'B', which admittedly has been held by the Tribunal in various orders to be Very Good. As such, we are of the considered view that the present OA being filed on a separate cause of action ^{ke} raising the issue of grading 'B' has not at all been concluded finally in the previous OA would not be barred by res judicata.

7. As regards the objection regarding limitation is concerned, we find that the applicant's case has been, after toning down the remarks, considered by the review DPC and vide an order dated 27.6.2000 the same was decided by grading the applicant as 'unfit' the applicant has filed the present OA on 30.11.2000 and to our confirmed view the same is within the limitation period stipulated under Section 21 of the Administrative Tribunals Act of 1985.

8. As regards the objection of the respondents regarding non-exhausting of the remedies against the order passed by the respondents in pursuance of review DPC is concerned, we find that under Section 20 of the

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Administrative Tribunals Act, 1985 the remedy would be as such as are available under the statutory rules applicable to the applicant. The learned counsel of the respondents has failed to indicate any such remedy available to the applicant in case his request for promotion is rejected provided to him under any of the statutory rules framed under Delhi Police Act, of 1978. As such, if there is no availability of statutory remedy the applicant can straightway approach this Tribunal and this would not be contrary to Section 20 of the Administrative Tribunals Act, 1985 ibid as such this contention of the respondents does not hold any water.

9. We have perused the DPC record as well as the record of the review DPC in the year 1995 as well as in the year 2000 when the review DPC had taken place the criteria followed by them was the requirement of bench mark of three Good ACRs as per their guidelines framed by the Commissioner of Police. From the perusal of the DPC record of 1995 we find that the case of the applicant was considered and rejected as unfit for promotion as there was an adverse ACR pertaining to the year 1993-94. The record which had been considered pertains to the year 1989-94 and the criteria adopted is which had been laid down under the circular issued in 1992. In the review DPC also the service record of the applicant of five years pertaining to the year 1989-94 was taken into consideration and as the applicant has been given 'B' grading which has been considered by the DPC as satisfactory the applicant was adjudged unfit for promotion. No doubt the ACR pertaining to the year 1993-94 has been toned down from 'C' to 'B' and was observed as satisfactory. From the perusal of the ACRs

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of the applicant w.e.f. 1989 to 1994 we find that the ACR pertaining to the period from 1.4.89 to 18.12.89 has been graded as 'B' and the applicant has been graded as 'B'. The ACR for the period from 19.12.89 to 31.3.90 is graded 'A' and the applicant has been found fit for promotion on his turn. The ACR for the period 26.6.90 to 30.2.91 containing Very Good remarks has been graded 'B' and the applicant has been found fit for next promotion on his turn. The ACR pertaining to the period 1.4.91 to 31.3.92 is graded 'B' and he is found fit for promotion when due. The ACR pertaining to the period 1.4.92 to 23.11.92 is also graded 'B' and promotion is on turn. The ACR for the period 24.11.92 to 31.3.93 is also graded 'B' and lastly the ACR for the period 1993-94 has been graded as 'B' and he has been found fit for promotion on his turn. From the perusal of these ACRs one thing is apparent that the applicant has been graded 'A' in one of the ACRs which amounts to Excellent and also graded 'B' which according to the decision of the Lieutenant Governor and Home Department's letter dated 9.6.96 is treated as equivalent to Very Good. It does not make difference as to whether the applicant belongs to Executive Cadre or Ministerial cadre because the guidelines which have been followed by the DPC are common to both the cadres. In the review DPC the guidelines pertaining the gradings are as follows:

"Officers having at least three Good or above reports and without any below average or adverse report during the last five years were empanelled."

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10. The only question which falls for our consideration is whether the DPC met in the year 1995 as well as the review DPC in 2000 in compliance with the orders of this Court has followed the instructions/guidelines and procedure and the promotions were made in accordance with the rules. It is not in dispute that the guidelines for the DPC for the year 1995 and 2000 in review DPC pertaining to three Good report has remained unchanged. It is also admitted that the applicant was graded during the last 5 years upto 1993-94 as 'B' which has been made equivalent by the Home Department as Very Good and yet the DPC has found him unfit and observed that he could not achieve the bench mark of three Good ACRs. From the perusal of the ACRs we find that there are no adverse remarks in those ACRs and the ACRs have been signed by the reviewing authority. It is also not the case of the respondents that the applicant's ACR for the relevant period were not upto the mark treating the ACR as satisfactory would amount to going contrary to what has been held as a mandate by the Home Department in their decision dated 9.6.96 by making equivalent the grading of 'B' to Very Good. It has not been brought to our notice that the aforesaid orders have been rescinded or modified. The contention of the respondents that the DPC is entitled to assess the officers on the basis of their overall performance and the gradation in ACR is not the sole criteria for selection and the DPC is competent to give their own grading. The aforesaid contentions are borne out from the facts and records. The only ground to declare the applicant unfit is that he has failed to achieve the bench mark of three Good ACRs otherwise it is not shown that the applicant was not conforming to the other criteria laid

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down in the DPC guidelines. The guidelines clearly lay down that an officer should have at least three Good ACRs and no adverse or average record during the last five years. As the grading 'B' has been made equivalent to Very Good which has been given on overall assessment of the officers' efficiency, good conduct and work the DPC was not right by ignoring the same and to treat the same as satisfactory or average contrary to the decision of the Home Department. The DPC has also not within its right to ignore the same and to re-assess the officer to come to a different conclusion. The guidelines having been mandatory have to be followed by the DPC. In this view of ours we are fortified by the decision of this Tribunal which in OA-1333/99 in Randhir Singh's case (supra) has already been affirmed by the Hon'ble High Court of Delhi. Treating the ACR of the applicant as average or satisfactory despite grading 'B' by the DPC runs contrary to the decision of the Home Department and the order of the Tribunal affirmed by the Hon'ble High Court. In our considered view the review DPC met in 2000 has not acted in accordance with the letter dated 9.7.96 of Home Department and has not treated the grading 'B' as Very Good and has wrongly arrived at a conclusion that the applicant has failed to achieve three Good ACRs.

11. In the result, we set aside the impugned orders of the respondents dated 27.6.2000 at Annexure A-2. The matter is sent back to the respondents to re-consider the case of the applicant afresh for placing his name in the promotion list E, in the light of the views we have taken and in view of the decision of the High Court affirming the ratio in Randhir Singh's case (supra). The

respondents are directed to pass appropriate orders to place the applicant in promotion list 'E' (Ministerial) w.e.f. 4.8.95 and in that event the applicant shall also be entitled to all consequential benefits. The aforesaid directions shall be complied with by the respondents within a period of two months from the date of receipt of this order. The O.A. is allowed in the above terms, but without any order as to costs.

S. Raju

(Shanker Raju)
Member(J)

'San.'

V.K. Majotra

(V.K. Majotra)
Member(A)