

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A No. 716/2000
T.A No.

Date of Decision 9-3-2001

Head Cobstable Kapoor Chand ..Petitioner

Shri Sachin Chauhan ..Advocate for the petitioner(s)

Versus

UOI & Ors ..Respondent

Mrs.Meera Chhibber ..Advocate for the Respondents

Coram:-

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

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal ?. No

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

Central Administrative Tribunal
Principal Bench

O.A. 716/2000

New Delhi this the 9 th day of March, 2001

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

Head Constable (Ex) Kapoor Chand,
No.651/S.D,
S/o Shri Dharam Chand,
R/o Vill & PO - Rawta,
Delhi-73.

... Applicant.

(By Advocate Shri Sachin Chauhan)

Versus

1. Union of India through
its Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
 2. Addl. Commissioner of Police,
Establishment,
Police Headquarters, I.P. Estate,
MSO Building, New Delhi.
 3. Dy. Commissioner of Police,
Licensing,
Police Headquarters, I.P. Estate,
MSO Building, New Delhi.
- ... Respondents.

(By Advocate Mrs. Meera Chhibber)

O R D E R

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

The applicant has impugned the validity of the orders dated 12.5.1999 and 3.1.2000 in denying him promotion list D-I (Ex.) w.e.f. 12.5.1999. In the impugned order dated 3.1.2000, the respondents have stated that the name of the applicant was considered by the DPC for admission to promotion list D-I (Ex.) but after evaluation of his service record and the ACRs for the preceding five years, the DPC had graded him unfit as he could not achieve the benchmark of three good ACRs which was the norms fixed by the DPC.

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2. Shri Sachin Chauhan, learned counsel for the applicant, relies on the Tribunal's orders in Dharmender Kumar Vs. Union of India & Ors. (O.A. 1657/94) and Randhir Singh Vs. Union of India & Ors. (OA 1333/99) (Annexure A-5). He has contended that in the ACRs, the applicant has been graded as "B" and the individual remarks in the columns also show that he had good remarks. Therefore, he has submitted that the grading "B" amounts to "Very Good" and as such the applicant has the minimum of three good ACRs and above for inclusion in the promotion list. He has also submitted that in the circumstances, the DPC has acted arbitrarily because this is against their own norms. He has, therefore, prayed that the reasoning of the respondents rejecting his representation that he had not achieved the benchmark of three good ACRs is illegal as, according to him, the applicant has been graded "B" for all the years under consideration which in turn should be treated as "Very Good". He also relies on the order passed by the High Court dated 31.7.2000 in the appeal filed by them against the Tribunal's order in Dharmender Kumar's case (supra) rejecting the appeal in limine.

3. The respondents in their reply have disputed the above submissions. They have submitted that the service particulars of eligible Head Constables (Ex.) who had completed the requisite years of service and who were in the zone of consideration were prepared for holding the DPC to bring them on the promotion list D-1(Ex.). The DPC met on 12.5.1999 and, according to them, considered the eligible candidates based on their ACRs for the preceding five years and record of service like punishments etc. and

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the relevant guidelines to consider them 'Fit' or 'Unit' for promotion. They have submitted that the officers having three 'Good or above' reports and without any 'below average or adverse' reports during the last five years were recommended. The relevant ACRs of the applicant and the other concerned persons were produced for our perusal by learned counsel for the respondents which we have seen. Learned counsel has relied on the order of the Tribunal dated 25.1.2001 in **Rashpal Singh Vs. Government of NCT & Ors.** (OA 2213/99) and the order dated 1.2.2000 in **Sukhvir Singh Vs. Commissioner of Police, Delhi and others** (OA 610/96) (copies placed on record). She has also relied on the judgement of the Supreme Court in **Mrs. Anil Katiyar Vs. Union of India & Ors.** (JT 1996 (10) SC 768). Learned counsel has submitted that looking into the relevant ACRs of the applicant, as he did not achieve the benchmark of three good ACRs which was the norms fixed by the DPC for promotion, he was not recommended for inclusion in the list 'D-I' (Ex.). She has also submitted that the representation of the applicant for non-inclusion of his name in the promotion list has also been considered by the competent authority and rejected after giving him a personal hearing. In **Randhir Singh's case** (OA 1339/99), they have submitted that his case was reconsidered by the review DPC, as ordered by the Tribunal but the review DPC had also graded him 'unfit' as he could not achieve the benchmark of three good ACRs because his individual columns were not 'good' or above. Mrs. Meera Chhibber, learned counsel has submitted that in the case of **Dharamender Kumar** (supra), the Tribunal had taken a decision based on the facts and circumstances, including the respondents' letter dated 9.7.1996 in which Grade 'B' has been declared as 'Very

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Good" which, according to her, does not apply in the present case. She has also submitted that in any case, the Court or the Tribunal should not substitute its decision or reappraise the ACRs of the eligible candidates as if it is sitting as a DPC or substitute its decision for that of the duly constituted DPC. She has emphasised that the DPC has applied the same yard-stick in the case of the eligible candidates who were considered by them and had not recommended the applicant as he had not achieved the benchmark of three good ACRs.

4. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties and also the relevant ACR records of the applicant submitted by the respondents. During the five relevant years in question, the applicant has been graded as follows:

- "1993-94 - Good (for half the period)
- Excellent (some portion)
- 1994-95 - Satisfactory
- 1995-96 - Satisfactory
- 1996-97 - Grade 'B'
- 1997-98 - Grade 'B''

5. There is no doubt that the DPC had considered the applicant's case for promotion but rejected the same on the ground that he had not achieved the benchmark of three good ACRs in the relevant five years. The challenge raised in the present case is that the action of the DPC to lay down the benchmark of three good ACRs for the selection is illegal and in any case the grading 'B' should be treated as 'Very Good' in the case of the applicant. We are in respectful agreement that the reasons given in paragraphs

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15-17 of the Tribunal's order in Rashpal Singh's case (supra) that the applicant can only claim a right to be considered but cannot claim promotion itself. In the present case, the applicant has been considered by the DPC and found unfit and it will, therefore, not be open for us to review the ACRs and arrive at a different conclusion in substitution of the recommendations made by the DPC. The judgement of the Tribunal in Dharmender Kumar's case which has been relied upon by the applicant has relied on the fact that the respondents themselves have issued a letter dated 9.7.1996. It was in those circumstances that the case was remanded to the respondents for reconsideration of his case and that case will not, therefore, assist the applicant in the present case. In Randhir Singh's case (supra), the Tribunal has noted that the applicant has been graded in the last five years as "B" and, therefore, he should be treated as equivalent to "Very Good". That is not the position in the present case because the applicant has obtained satisfactory for two years, grade "B" for ^{only 1 1/2} two years and for 1993-94 only good for part of the year and for some portion excellent. We are, therefore, unable to agree with the contentions of the learned counsel for the applicant that in the circumstances, the applicant should be treated as having got "Very Good" for three out of the five years, which requires review DPC to be held in the present case.

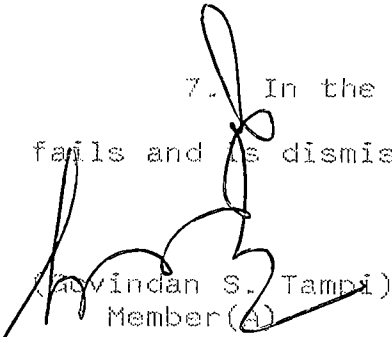
6. We have also seen the judgements of the Tribunal dated 25.1.2001 and 1.2.2001 in Rashpal Singh's case and Sukhbir Singh's case (supra). We are in respectful agreement given by the Tribunal in paragraphs 15-17 of Rashpal Singh's case (supra) which are fully applicable to the facts in the present case and paragraphs

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11-13 of Sukhbir Singh's case (supra). The DPC has considered the applicant's case in accordance with the norms laid down by them and have not considered it fit to recommend his case. We have also perused the relevant DPC proceedings held on 12.5.1999. The norms laid down by the DPC is not arbitrary and has been applied by them in ^{the} ~~the~~ case of all the eligible candidates. This is a matter which is within the jurisdiction of the DPC to consider and it is settled law that the Court or the Tribunal is not to substitute its decision or act as an appellate authority over the decision of the DPC, which has been held in accordance with the relevant Rules and instructions. In the facts and circumstances of the case, we, therefore, find no good grounds to interfere in the matter as the DPC has duly considered the applicant's ACRs for the relevant five years and had not found him fit. The decision of the DPC being neither illegal or unjustified, there appears to be no good grounds to direct the respondents to hold a review DPC to reconsider the applicant's case in the manner claimed by him.

7. In the result, for the reason given above, O.A. fails and is dismissed. No order as to costs.


(Arvindan S. Tampi)
Member(A)


(Smt. Lakshmi Swaminathan)
Vice Chairman(A)

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