

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.728/2000

Hon'ble Shri V.K.Majotra, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

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New Delhi, this the 22nd day of May, 2001

Shri Gurdeep Singh
No.11-D
Assistant Sub Inspector (Ex.)
Police Station
Tilak Nagar
New Delhi. ... Applicant

(By Advocate: Shri B.S.Mainee)

Vs.

Union of India through

1. The Commissioner of Police
Delhi Police
Police Headquarter
New Delhi.
2. The Additional Commissioner of Police
Estt. Delhi Police
Police Headquarter
New Delhi. ... Respondents

(By Advocate: Mrs. Meera Chhibber)

ORDER

By Mr. Shanker Raju, Member (J):

The applicant, who was promoted to the rank of Head Constable and was confirmed in that post on 1.3.1987, has been promoted as Assistant Sub-Inspector (Executive) on out of turn basis having shown exceptional gallantry and devotion to duty. He challenges an order passed by the respondents on 9.2.2000 whereby his request, of assigning seniority to him from the date he had been working continuously as ASI on ad hoc basis with all consequential benefits, has been rejected. The applicant in this OA has sought to assign seniority w.e.f. 20.12.1989 on the date when the applicant was promoted on out of turn basis as ASI with all consequential benefits.

The applicant, on 1.3.1987 on account of showing exceptional performance by saving the life of few persons from the fire, was promoted to the next higher rank of ASI on ad hoc basis under Rule 19(2) of the Delhi Police (Promotion & Confirmation) Rules, 1980 (hereinafter called as "Rules") vide order dated 20.12.1989. The applicant, in the year 1991, when DPC was held was found suitable and put at the bottom of the list and was deputed to undergo Intermediate School Course training and had qualified in September, 1992 and was placed in promotion list D-II and was ultimately regularised as ASI w.e.f. 4.4.1994 and his seniority has been placed at the bottom of the promotion list drawn for the year 1991. The applicant made a representation for accord of seniority from the date of his continuous officiation on ad hoc basis but the same was rejected. The contention of the applicant is that, due to non-holding of DPC without any fault of him, his regularisation for the post of ASI has been issued only in the year 1994 and has been discriminated against similarly situated out of turn promotees who were given promotion with retrospective effect i.e., Inspector Gurbachan Singh and SI Joginder Singh. The applicant contended that in view of the ratio laid down in Maharashtra Engineering Direct Recruit ClassII Engineering Officers Association Vs. State of Maharashtra reported as JT 1990 (2) SC 264, he is entitled for counting of his uninterrupted continuous ad hoc officiation towards seniority in the cadre of ASI (Executive). According to him, when the DPC was held in the year 1991 and the applicant was also found suitable his seniority is to relate back to

that year. The learned counsel for the applicant has also contended that the question of limitation does not arise in his case as the Hon'ble Apex Court in Civil Appeal No.354/93 decided on 25.1.1993 has laid down that the claim of a petitioner should have been considered and decided on merits and should not have been rejected on limitation. By referring to Rule 19(2) of the Rules ibid it is contended that the Rules do not envisage any eventuality where no DPC has been held and no promotion list has been drawn in the year when the out of turn promotion has been accorded to a Police Officer and in that event there is no criteria for assigning of seniority to such incumbent. It is also contended that the applicant is entitled for the same treatment which has been accorded to his similarly situated out of turn promotees. The respondents in their reply by referring to Rule 19(2) ibid, contended that an out of turn promotee is regularised, only when he successfully complete his training course and is to be placed at the bottom of the promotion list drawn for that year and as per rank of the applicant he is rightly put at the bottom of the promotion list and as provided under Rule 15(1) of the Delhi Police Rules ibid. As the applicant after being put in promotion list D-I has undergone the training course w.e.f. 3.6.1991, and passed in September, 1992, the applicant was promoted to the rank of ASI w.e.f. 4.4.1994 as such the services of the applicant has also been regularised w.e.f. the same date.

2. The learned counsel for the respondents also took exception by taking an objection regarding limitation by contending that as the representation of the applicant made earlier was rejected and he was communicated the same on 19.9.1996, the OA is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985 and repeated representations would not extend the limitation. For this, reliance has been placed on the case of S.S.Rathore Vs. State of M.P., AIR 1990 SC 10. As regards the discrimination, it is contended that in case of Inspector, Gurbachan Singh, the promotion list was drawn in 1989 and in the case of SI Joginder Singh the promotion list was also drawn in 1989 and as such they had been promoted and placed at bottom to the promotion list. But in the case of the applicant as no DPC was held for consideration as ASI for promotion, this could not have been done and immediately on first DPC held in 1991 he was placed at the bottom of the promotion list and after being deputed to the training and after qualifying training course he was accorded regularisation and seniority by putting him at the bottom of the promotion list w.e.f. 4.4.1994. As the cases of other officers were different, no parity can be drawn by the applicant to allege discrimination. It is further contended that the applicant being promoted as Head Constable in the year 1985 would not have earned his regular promotion to the rank of ASI but for his out of turn promotion on ad hoc basis accorded under special provision of Rule 19(2) ibid.

3. The applicant in his rejoinder reiterated his pleas taken in the OA.

4. We have carefully considered the rival contentions of the parties and perused the material on record. Before dealing with the issues it is necessary to reproduce the relevant provisions involved in solving the present controversy.

Rule 19. Ad-hoc promotions- (i) In special circumstances when there are no approved names on promotion lists, and vacancies exist the Commissioner of Police, may promote suitable officers in order of seniority to next higher rank temporarily. Such promotions shall not entitle the officers concerned to claim and right for regular appointment or seniority or for appointment to such or any other equivalent post and shall be liable to reversion without notice as soon as qualified men become available.

(ii) To encourage outstanding sportsmen, marksmen, officers who have shown exceptional gallantry and devotion to duty, the Commissioner of Police may, with prior approval of Administrator, promote such officers to the next higher rank provided vacancies exist. Such promotions shall exceed 5 per cent of the vacancies likely to fall vacant in the given year not in the rank. Such promotions shall be treated as ad-hoc and will be regularised when the persons so promoted have successfully completed the training course prescribed like (Lower School Course), if any. For purposes of seniority such promotees shall be placed at the bottom of the promotion list drawn up for that year.

Rule 15. List 'D' - List 'D' shall be a list of confirmed Head Constables considered suitable for promotion to the rank of Assistant Sub-Inspector.

(i) List-D (Executive)

Confirmed Head-Constables, who have put in minimum of 5 years service in the rank, shall be eligible. The selection shall be made on the recommendations of the Departmental Promotion Committee.

The Head-Constable, so selected, shall be brought on list D-1, keeping in view the number of vacancies likely to occur in the rank of Assistant Sub-Inspector in the following one year, in order of their respective seniority in the rank of Head Constable subject to the medical fitness by the Civil Surgeon. They shall be detailed for training in the Intermediate School Course. Those, who successfully qualify the Intermediate School Course, shall be brought on List D-II, as per their respective seniority on the List D-I. Promotions shall be ordered from amongst the Head-Constable on List D-II as and when vacancies occur."

5. This OA is liable to be dismissed as barred by limitation. The applicant was accorded regularisation and assigned seniority w.e.f. 4.4.1994. Being aggrieved, the applicant made a representation to the competent authority on 1.8.1996 and on 19.9.1996 he was appraised of the decision that the benefit of ad hoc service cannot be accorded to him but yet he had not challenged the issues and subsequently by filing another representation after a gap of about three years, and on the basis of the order passed on 9.2.2000 he has approached this Tribunal. As provided Section 21 of the Administrative Tribunals Act, 1985 the cause of action arises to a person on rejection of his representation and thereafter for a period of one year. The applicant despite being informed on 19.9.1996 has not approached this Tribunal upto 19.9.1997 and as such filing the present application on the basis of an order passed on his representation subsequently will not add to his limitation. As repeated representations would not enhance the limitation for the purpose of Section 21 ibid. In this view of ours we are fortified by the ratio laid down by the Constitutional Bench of Hon'ble Supreme Court in S.S.Rathore's supra. The contention of the applicant by resorting to the decision of

Hon'ble Apex Court in Civil Appeal No.354/93, Rameshwar Prasad Sinha Vs. Union of India & Ors., wherein it has been directed to the Tribunal to rehear the matter on merits which would not apply in the facts and circumstances of the present case and would be restricted to the facts and circumstances of that case. As ratio of Constitutional Bench prevails over the ratio of Division Bench, we are bound by the former. Apart from the fact that the OA is barred by limitation yet we proceed to consider the case on merits in the interest of justice. As we are fortified, in our view, of the principle laid down by the Principal Bench in OA 415 of 1998 in HC Jasbir Singh Vs. Union of India & Others, decided on 22.11.2000 on the interpretation given to Rule 19(ii) ibid, the following observation have been made in that order:

"12. What will apply to the applicant is Rule 19 which, in our view, contains a distinct provision for adhoc promotions. The same provides that such promotions will be regularised when the persons so promoted have successfully completed the training course prescribed like the Lower School Course. The said provision further provides that for purposes of seniority such promotees (adhoc) shall be placed at the bottom of the promotion list drawn up for that year.

13. The placement of police personnel on promotion lists 'A' & 'B', relevant in this case, are governed by Rules 12 & 13 of the Delhi Police (Promotion & Confirmation) rules, 1980 and these have to be read with Rule 7 thereof.

14. As far as the applicant is concerned, he was promoted on adhoc basis under Rule 19(ii) and is, therefore, entitled to be regularised after successfully completing the lower school course. That course, as already mentioned, he has already successfully completed. The aforesaid 19(ii) though it provides for regularisation on successful completion of the lower school course, does not provide as to when

exactly he would become entitled for regularisation. The right answer to this question is available in Rules 12 & 13 of the Rules. The applicant was, consequent upon his adhoc promotion, placed at the bottom of promotion list 'A' and from this list, he has to move into promotion list 'B'. It is only after getting enlisted in the aforesaid list 'B' that the applicant will become entitled for regular/officiating promotion to the rank of HC. This would mean that his adhoc status would then end and he will become a regular/officiating HC. According to us, this is what is meant by regularisation referred to in Rule 19(ii)."

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6. From the perusal of Rule 19 which is a subject provision we are of the confirmed view that ad hoc promotions given on out of turn basis against 5% of the vacancies shall have to be regularised when the person concerned so promoted have passed successfully the aforesaid training course. While according seniority he has to be placed at the bottom of the promotion list drawn of that year. Applying this interpretation to the facts of the present case, we find that the applicant was accorded out of turn promotion on 20.12.1989 and as no DPC held in the year 1989 and 1990 he could not have been sent for training to Intermediate School Course. Subsequently the DPC had met on 18.1.1991, and the name of the applicant was put at the bottom under Rule 15(i) ibid which interalia includes the confirmed Head Constable be deputed in order of their seniority for Intermediate School Course Training. The applicant figures in this list at Sl. No.535. The applicant thereafter deputed to undergone Intermediate School Course Training which he ultimately passed in September, 1992. On drawl of promotion list D-II the applicant was regularised w.e.f. 4.4.1994 and has been accorded seniority by putting his name in the said batch. We are also of

the view that as no DPC was held for the year 1989 and 1990 there was no occasion for the respondents to have placed the applicant's name at the bottom of the promotion list and on the first availability i.e., in the year 1991 the applicant on holding of DPC has been included in the promotion list and sent to training and further regularised. Rule 19(ii) cannot be read in isolation with the rules of regular promotion and in the present case as contended in promotion Rule 15 ibid. According to this, the list of confirmed Head Constables is to be brought in respect of seniority to list D-I and after qualifying the said training they are brought on the promotion list D-II and, therefore promoted as and when the vacancies occurs. The respondents have rightly accorded the regularisation to the applicant and placed him at the bottom of the promotion list drawn in the year 1994. As such the applicant is rightly been accorded his seniority list w.e.f. the date of regularisation.

7. That as far as the discrimination alleged by the applicant is concerned, two examples which have been cited by the learned counsel for the applicant would be of no help to the present case. In the first case Inspector Gurbachan Singh was regularised w.e.f 13.9.1990 as the DPC was held in that year and in case of SI Joginder Singh, as the DPC held in 13.7.1989 he was regularised w.e.f 3.5.1990 from the list of candidates from the promotion list he was promoted. It is not the case of the applicant that a person promoted after he cleared the training course had been placed above him nor applicant has challenged the list issued or rules referred to above. It is settled

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principle of law that parity cannot be claimed with unequals. Unequals cannot be treated equally as the applicant was not at par with the Inspector Gurbachan Singh and SI Joginder Singh, he cannot claim the same benefit which was accorded to them and there would not be any violation of Articles 14 and 16 of the Constitution of India. (24)

8. As regards the plea of the applicant that he had worked continuously on out of turn basis as ASI he is entitled for accord of seniority from the date of his regular officiation in the post concerned the same would not be legally tenable. In the present case seniority is to be accorded and Rules operated in accordance with the provisions of Rule 19 and out of turn promotee is to be accorded seniority by putting him at the bottom of the promotion list. The present case is not the case where promotion is sought on regular basis and the special provision governs the out of turn promotion and seniority and hence there Rules are applicable. The continuous officiation could not be accorded to the applicant as even in the case of Maharashtra Direct Engineering Recruits supra, in absence of any rules the continuous officiation was reckoned for the purpose of seniority. As there is statutory provision framed under Article 309 of the Constitution i.e. Rule 19 would hold the field and the applicant has been correctly accorded his seniority and regularisation under these provisions.

9. We also find from the Rules that the applicant by showing exceptional gallantry service to the duty, has been accorded out of turn promotion other wise under Rule 15 ibid he would have been considered for the said promotion only after putting minimum of 5 years service in the rank and after confirmation. By this corollary he would have become eligible for promotion as ASI only in the year 1992. We have also been told by the learned counsel for the respondents that the colleagues of the applicant are yet to be brought in promotion list D-I and as such the promotion accorded to the applicant on out of turn basis has accelerated his promotional avenues.

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10. Having regard to the above discussion and reasons recorded, we find no infirmity in the order passed by the respondents and the applicant is not entitled for his regularisation and accord of seniority w.e.f. 20.12.1989 as prayed for in this OA. Accordingly, the OA is bereft of any merit and is accordingly dismissed but without any order as to costs.

S. Raju
(SHANKER RAJU)
MEMBER(J)

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

/RAO/