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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O. A. No. 1169 of 1989

New Delhi, this the 16th day of December, 1994.

HON'BLE MR JUSTICE S.K.DHARON, VICE CHAIRMAN
HON'BLE MR B.N.DHOJNDIYAL, MEMBER (A)

A. S. I. Ram Nam Ram,
R/O Quarter No. F-1/1, Police Station,
Defence Colony,
New Delhi. Applicant.

(through Ms Avnish Ahalawat, Advocate).

vs.

1. Delhi Administration,
through
Commissioner of Police,
P.H.Q., Indraprastha Estate,
New Delhi.
2. Addl. Commissioner of Police
(Operations)
through: Police Headquarters,
Indraprastha Estate,
New Delhi.
3. Dy. Commissioner of Police,
(PCR)
Through: Police Head Quarter,
Indraprastha Estate,
New Delhi. Respondents.

(through: Mr O.N.Trishal, Advocate).

ORDER (Oral)

PER JUSTICE S.K.DHARON (Oral)

In disciplinary proceedings, the applicant, a Head Constable in Delhi Police, was given a punishment of forfeiture of one year approved service entailing proportionate deduction in his pay. This order was passed by the Deputy Commissioner of Police on 4.4.1989. The Addl. Commissioner of Police, acting as an Appellate Authority, on 3.8.1989, dismissed the appeal preferred by the applicant.

The aforesaid two orders are being challenged in

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the present application.

2. On 13.11.1962, the applicant was recruited as a Constable as a "Hindu-Koeri", a general candidate. At the relevant time, he was posted in ASIP Branch, New Delhi District. He was brought on List A-1, List B, List-C on 31.12.1968, 27.2.1970 and 16.9.1971, respectively. He was also sent to the lower school course. On 16.9.1970, he was promoted as Head Constable. On 26.4.1979, he was promoted as A.S.I. He was even confirmed on that post. Sometime in 1986, he was reverted to the post of Head Constable on the ground that he had been erroneously promoted on the footing that he was a Schedule Caste. In 1988, departmental proceedings were initiated against him.

3. A summary of allegation was given to the applicant on 28.7.1988. After recording the depositions of the prosecution witnesses, the Inquiry Officer, in accordance with the Delhi Police Rules, framed charges against the applicant. The gravamen of the charge was that in the matter of promotion, the applicant got undue benefit as a Schedule Caste/Schedule Tribe Candidate although he was fully aware of the fact that he was a general category candidate and was not entitled to the benefit of any reservation. The charge further was that the applicant failed to inform the department of the unauthorised benefit given to him.

4. In order to bring home the charge to the applicant, the crucial question of fact to be determined was whether the applicant acquired knowledge of the fact that he had been treated as a S.C. candidate for the purpose of promotion before the order of reversion was passed.

5. Paragraph 4 of the order of the Disciplinary Authority is relevant, and the

contents thereof are being extracted:

"I have carefully gone through the enquiry report and evidence on record in the light of facts and circumstances of the case. The simple fact that the A.S.I. has been getting promotion against the reserved quota and whereas all other batchmates were left behind, it is not possible to believe that the officer was not aware of the vital changes in his personal file."

4. It will be evident from a perusal of the afore-quoted order that the only reason given for imputing knowledge of the fact to the applicant that he had been given the benefit in the matter of promotion as Schedule Caste/Schedule Tribe is that he had left behind his batch mates. It is to be remembered that the promotion was not automatic but was subject to a test.

5. We may now read the appellate order. It will be profitable to extract paragraph 4 of the same as the contents thereof constitute the gist of the same:

" After careful examination of the enquiry report and evidence on record in the list of facts and circumstances of the case, the simple fact that the ASI has been getting promotion against reserved quota and whereas all other batchmates were left behind. It is beyond comprehension that the officer was not aware of the vital charges in his personal file. The name of ASI has already been relegated to his normal position by the PHQ but he does not deserve any sympathy for engineering the fraud. Therefore, one year's approved service was forfeited permanently of ASI Ram Ram No. 1998/D, 5337/PCR entailing proportionate reduction in his pay. Hence this appeal."

Even the appellate authority has based its order on the inference that merely because the batchmates of the applicant were left behind, it will be presumed that the applicant had knowledge of the fact that he had been promoted on the solitary consideration of his belonging to SC/ST community. We have already referred to the charges framed against the applicant. In the charge, there is not even a

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whisper that knowledge to the applicant will be attributed on the ground that he had stolen a march over his batch-mates. The Inquiry Officer has analysed the testimonies of the witnesses produced by the applicant. None of the witnesses have pin-pointed any particular officer over whom, the applicant had been promoted. It is nobody's case that the applicant had, at any stage, given out at the time of recruitment that he was either SC/ST. On the contrary, it appears to be an admitted case of the parties that the applicant had merely stated that he was "Hindu Koeri". As already stated, the gist of the charge against the applicant is that he had knowledge of the entries of lists A, B and C, wherein it was stated that he was a ST. Again, it is not the department's case that the applicant had any hand in the preparation of the said list. The only circumstance, relied upon, is that when List B was prepared at the ASI P Branch, New Delhi District, the applicant was posted there. That is why we find that both the Disciplinary Authority and the Appellate Authority have based their finding on the inference that the applicant ought to have acquired the knowledge of the said fact when he left behind his batch-mates on being promoted. There was no evidence, whatsoever, before the two authorities to enable them to draw the inference, which they have drawn.

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5. There is yet another important point in favour of the applicant. In his memorandum of appeal, the applicant specifically pointed out that A.S.I. Ram Avadh, who stood on the same footing as the applicant and who too having been promoted under the misconception that he was a SC/ST candidate and who too had been reverted was not subjected to any disciplinary proceedings. The Appellate Authority, while passing the impugned order glossed over this specific case of the applicant. In ground H to this O.A., the afore-mentioned specific plea had been raised. Luckily for the applicant, the respondents have given a reply even to the grounds. In the reply to ground H, there is not even a whisper of Ram Avadh. In fact, the issue raised in ground H has been side-tracked. In the absence of denial, either express or implied, there is no option but to accept the averment made in ground H. It, therefore, follows that the respondents have acted arbitrarily in keeping Ram Avadh at a ^{pedestal} distance higher than the applicant. There is, thus, sufficient ground for vitiating the above orders.

6. The application succeeds and is allowed. The impugned orders are quashed.

7. There will be no order as to costs.

/sds/

B. N. Dhoundiyal
(B. N. Dhoundiyal)
Member (A)

S.K. Dhaon
(S.K. Dhaon)
Vice Chairman.