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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A. No. 1315 of 1989

New Delhi this 22nd April, 1994

CORAM:

Hon'ble Mr. J. P. Sharma, Member (J)
Hon'ble Mr. S. R. Adige, Member (A)

Shiv Narain s/o Shri Shiv La,
at present working as Sub-Inspector of Police,
Special Branch, Police Headquarters,
MSO Building,
New Delhi.
R/o C-396, New Usmanpur,
P.S. Seelampur,
Delhi
By Advocate Shri B.S. Charya,Applicant.

Versus

1. The Commissioner of Police,
Police Headquarters,
MSO Building,
New Delhi -110002.
2. Union of India,
Ministry of Home Affairs,
Government of India,
North Block,
New Delhi
(through its Secretary)

By Advocate Shri Vinay Agarwal,Respondents.

JUDGMENT

By Hon'ble Mr. S. R. Adige, Member (A)

In this application Shri Shiv Narain,
Sub-Inspector of Police, Special Branch, Police
Headquarters, Delhi has prayed for promotion as
(Ministerial)
Sub-Inspector of Police from 1979 against the reserve
quota as per 40 points rooster.

2. The undisputed facts are that the applicant
was enlisted as a Constable w.e.f. 20.2.61 and was
promoted as Head Constable w.e.f. 1.5.69, and was
confirmed as such w.e.f. 20.4.73. His name was
included in the list for promotion to the rank of

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ASI in June, 1974 and was promoted as ASI (Ministerial) w.e.f. 22.7.76. The applicant was confirmed as ASI w.e.f. 10.8.78 vide order dated 11.2.81. Meanwhile, a DPC was held to consider the promotion of eligible ASIs to the rank of SIs on 16th and 17th July, 1979. Those who obtained 55% marks in the general category were declared to have qualified and for reserved category candidates, a slightly lower standard of 49% was fixed. The DPC recommended the cases of the 43 ASIs of general category and one available candidate belonging to the scheduled caste for promotion as SI w.e.f. 20.7.79. It appears that as the applicant was not confirmed when the DPC met on 16/17.7.79, his case for promotion was not considered. Subsequently, upon confirming the applicant as ASI w.e.f. 9.10.78 vide order dated 11.2.81, the applicant became eligible for consideration for promotion as SI w.e.f. 20.7.79 and accordingly a DPC was constituted on 6.7.81 in which the applicant's name was considered but he could not attend the minimum prescribed standard and hence his name was not recommended for promotion as SI. His representations addressed to the Commissioner of Police as well as to the Lt. Governor, Delhi were rejected, as a result of which the applicant has now filed this O.A. Eventually upon the recommendation of the DPC held on 14.10.85, the applicant was admitted to the promotion list w.e.f. 4.10.85 and was promoted to the rank of SI w.e.f. 9.12.87.

3. Admittedly, the applicant is a member of the scheduled caste community.

4. We have heard Shri B.S.Charya, learned counsel for the applicant and Shri Vinay Sabharwal, learned counsel for the respondents.

5. The applicant could not rightly be considered for promotion to the rank of SI when the DPC met on 16/17-7-79 as he was not confirmed as ASI on that date. Shri Charya has failed to establish that any irregularity was committed by the respondents in issuing the confirmation order on 11.2.81, confirming the applicant retrospectively w.e.f. 9.10.78. The applicant's case for promotion could, therefore, be taken up only when the DPC met next i.e. on 6.7.81, when his case for promotion was considered with effect from the date his counterparts were also considered i.e. 20.7.79. The DPC rightly adopted the same method/procedure as adopted when it met earlier on 16.7.79 but the applicant secured only 41% marks against the standard of 49% fixed for reserved category candidates and 55% for general category candidates. The post of SI is a selection post and the respondents were fully within their right to lay down the minimum qualifying marks which a candidate had to obtain before being selected. A candidate has a right to be considered for selection, if he is fully qualified as per extant rules and comes within the zone of consideration but he has no ^{an} enforceable right to be selected. In the present case, the applicant was considered, but failed to obtain the minimum qualifying marks prescribed for reserved category candidates. During arguments, Shri Charya suggested that the DPC proceedings were fit to be set aside as vitiated because no representative of

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scheduled caste/scheduled tribe category was a member.⁴ It is true that the Govt. instructions require that as far as possible a representative from SC/ST category should a DPC member, but any DPC proceedings cannot be set aside as vitiated, merely because no representative of the SC/ST category was a member.⁴

6. Shri Charya has also alleged that in 1979, there were 45 vacancies for the posts of SI (Ministerial) which required to be filled up and on that basis at least six vacancies fell to the SC/ST category.⁴ It is claimed that the applicant fell within the zone of consideration if the respondents had allocated the vacancies on the basis of 40 Point roster, the applicant would have been selected. On the other hand, the respondents in their counter affidavit state that on 16/17.7.79 there only 43 vacant posts of SIs (Ministerial) and only three (1 plus 2 were confirmed on 11.2.81) SC candidates were available/eligible for consideration.⁴ In this connection, our attention has been drawn to the order of the Hon'ble Supreme Court dated 15.1.91 in SLP No. 4914/90 Lt. Governor, Delhi Vs. S.S. Mann & others⁴ arising out of the judgment of the CAT dated 8.6.88 in T.A. No. 775/85.⁴ In that order, the vacancies position as averred by the respondents had been held as correct and the same cannot be challenged by the applicant at this stage.⁴

7. It appears that no DPC was held in the year 1982-84,⁴ and when DPC was held on 14.10.85, the applicant was approved for being brought on the promotion list,⁴ and he was promoted strictly in order of seniority w.e.f. 9.12.87.⁴

8. In the rejoinder filed by the applicant,⁴ an

additional plea was taken that the records of the DPC proceedings held on 10.5.89 be called for which had been convened pursuant to the decision in S.S.Mann's case(Supra), wherein the applicant's name figured in the 28 candidates' names for promotion w.e.f. 1979. We have examined the relevant DPC records and note that the proceedings of the DPC held on 11.5.89 were subsequently cancelled, because 13 out of 20 person who had filed T.A. No.775/85 were not considered by the DPC at all. Hence, those proceedings were rightly cancelled and fresh review DPC proceedings were held on 14.6.89, in which the applicant did not come within the zone of consideration for promotion.

9. Viewed at from any angle, this application lacks merit and it is, accordingly dismissed.

10. No costs.

R. Adige
(S.R. ADIGE
MEMBER(A)

J. P. Sharma
(J.P. SHARMA
MEMBER(J)

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