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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.OA 1542/89

Date of decision: 16.03.1990.

Shri Jai Kishan

.....Applicant

Vs.

Union of India & Others

.....Respondents

For the Applicant

.....Shri Mukul Talwar,
Counsel

For the Respondents

.....Shri B.R. Parashar,
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? *yes*
2. To be referred to the Reporters or not? *No*

(The judgment of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

The applicant, who is working as an Assistant Sub-Inspector in the Delhi Police filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying that the respondents be directed to consider his name for inclusion in List 'E' with effect from 31.5.1988 without taking into account the pending departmental enquiry or the fact of inclusion of his name in the Agreed List/Secret List and promote him as Sub-Inspector from 3.6.1988 when persons junior to him were promoted.

2. The facts of the case in brief are as follows.

The applicant joined Delhi Police as Constable in 1960. He was promoted as Head Constable in 1967 and as Assistant Sub-Inspector in 1974. He was confirmed as Assistant Sub-Inspector along with his batchmates in 1978. He has

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worked as Assistant Sub-Inspector for the last 14 years. He has not been awarded any punishment so far. He has earned 77 commendation certificates for doing excellent work.

3. Recruitment of some Constables in the Delhi Police was initiated in September, 1981. In this connection, a recruitment cell was organised consisting of one DCP, one ACP, one ASI, three ^{Head} Constables and eight Constables. The applicant was directed to assist the ACP from 1.11.1981 to 20.1.1982. Thereafter, he was transferred from the recruitment cell. After holding the physical measurement test, written test and interview, the result was announced on 28.1.1982.

4. Thereafter, an anonymous complaint was received in the office of the Commissioner of Police on 31.1.1982 making allegations against the recruitment team. An inquiry was made by the Additional Commissioner of Police, who submitted his report on 12.2.1982 to the Commissioner of Police in which there was no finding against the applicant. However, there were some cases of suspected over writing in the records. It was, therefore, decided to inquire into this further.

5. Thereafter, another inquiry was conducted by the DCP(Vigilance), who submitted his report on 19.8.1982. On 11.1.1988, the Additional Commissioner of Police served an order on the applicant alleging that the applicant had indulged in forgery in several cases to favour some candidates for recruitment in Delhi Police and directing

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the holding of an inquiry against him under Rule 15(2) of the Delhi Police(Punishment & Appeal) Rules. The inquiry thus ordered was annulled by the Additional Commissioner of Police vide his order dated 8.8.1988.

6. The applicant has not thereafter received any order for holding departmental inquiry against him.

7. The Departmental Promotion Committee met in May, 1988 to consider the names of eligible ASIs so as to bring their names on List 'E'(Ministerial). The applicant's name was at S.No.18 of eligible ASIs list to be considered. The applicant has alleged that the DPC declared him unfit for promotion on the ground that his name figured in the Agreed List and that his name was being brought on the Secret List ^{of persons} of doubtful integrity. He has stated that his name has been brought on the Secret List with effect from 1st June, 1988.

8. The above facts have not been denied in the counter-affidavit filed by the respondents.

9. The question whether a Police Officer can be denied promotion on the ground that his name figures in a Secret List of names of persons of doubtful integrity has been considered by us in our judgment dated 24.5.1989 in OA 2208/88 (Jagdish Chand Vs. U.O.I. & Others). In that case also the applicant, who was working as a Sub-Inspector in the Delhi Police, had been denied promotion on this ground. We had held that denial of promotion on this ground was not legally sustainable. In this context, reliance was placed on

the decisions of the Supreme Court in Gurdial Singh Fijji Vs. State of Punjab, 1977 SCC(L&S) 197 at 203 and in State of Haryana Vs. P.C. Wadhwa & Others, 1987(2) SLJ 162 at 169.

10. In Fijji's case, the Supreme Court has observed that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. If this is not done, non-issuance of integrity certificate cannot be justified.

11. In Wadhwa's case, the Supreme Court disapproved of the inordinate delay in communicating adverse remarks to an IPS Officer.

12. The above mentioned decisions of the Supreme Court are relevant in the present context to the extent that any adverse remark or material against an officer cannot be acted upon without giving him an opportunity to make a representation against such remark or material. No adverse remark has been communicated to the applicant. He has been declared unfit by the DPC on the sole ground that his name exists in the Secret List of officers having doubtful integrity. In our opinion

denial of promotion on this ground is not legally sustainable.

13. In view of the above discussion, we order and direct that the respondents shall constitute a review DPC to consider the suitability of the applicant to be brought on Promotion List 'E' (^{Ministerial} ~~Executive~~) with effect from 31.5.1988 ignoring the fact that his name exists in the Agreed List/Secret List of officers having doubtful integrity and if he is found suitable, promote him as Sub-Inspector at his ^{due} place of seniority.

14. The respondents shall comply with the above directions within 3 months from the date of communication of a copy of this order.

The parties will bear their own costs.

D.K. Chakravorty
(D.K. CHAKRAVORTY)
MEMBER (A) 16/8/1990

P.K. Kaitha
(P.K. KAITHA) 16/3/90
VICE CHAIRMAN (J)

Correction in Para 13 line 4 made pursuant to the order dated 6-4-90.
D.K. Chakravorty
6/4/1990

P.K. Kaitha