

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.2312/89

DATE OF DECISION:15.05.1992.

SATYA PAL SINGH

...APPLICANT

VERSUS

COMMISSIONER OF POLICE & ANOTHER

...RESPONDENTS

CORAM:-

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

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI SHANKAR RAJU, COUNSEL..

FOR THE RESPONDENTS

SHRI M.C. GARG, COUNSEL.

1. Whether Reporters of Local Papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

P.K. Kartha
(P.K. KARTHA)
VICE-CHAIRMAN

May 15, 1992.

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(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

Constable Satya Pal Singh of Delhi Police has filed this Original Application, under Section 19 of the Administrative Tribunals Act, 1985, challenging the order No.F.XIX/VI/87-88(P.III)/12824-28/P.Br.(HPQ)(D-IV) dated 25.5.1989, issued by the Additional Commissioner of Police (A) (ACP for short) Delhi, removing his name from the promotion list 'A' notified on 13.11.1987 wherein he had figured at srl. No.335, thereby denying him the opportunity to undergo training in the Lower School Course, scheduled from 20.12.1989.

2. The short issue raised in this Original Application is whether the name of the applicant from list 'A' prepared in accordance with Delhi Police (Promotion & Confirmation) Rules, 1980 can be removed in accordance with the provisions made in Standing Order No.91/85/^{on}promotions of the Constables to the rank of Head Constables issued on 10.7.1985.

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3. The necessary facts of the case are that the applicant was enrolled in Delhi Police as Constable on 30.6.1974. He was included in promotion list 'A' w.e.f. 13.11.1987 and placed at srl. No.335 vide order No.26357-425/SLP/PHQ dated 13.11.1987. While the batchmates of the applicant were sent to undergo Lower School Training on 1.8.1988, the applicant was not detailed for the said training course. He was issued a summary of allegations on 30.8.1988 and a departmental enquiry was initiated against him for misconduct and dereliction of duty on the ground of "misplacing a challan." On completion of the departmental enquiry he was awarded punishment of "forfeiture of one years' approved service" temporarily for a period of two years entailing reduction in his pay vide order dated 20.12.1988 (Annexure A-1). The applicant did not prefer any appeal against the punishment order to the next higher authority although the order imposing the punishment clearly stated that "he can file an appeal against this order to the Additional C.P. (R) Delhi if he so desires within 30 days from the date of its receipt..." He was issued a notice to show cause as to why his name should not be removed from the list 'A' test held in 1987 within 15 days from the date of receipt of the notice vide order dated 20.3.1989, as per provisions contained in paragraph-4 of Standing Order No.91/85. He submitted his explanation on 7.4.1989 inter alia taking the ground that there is no provision in Delhi Police (Promotion & Confirmation) Rules, 1980 regarding removal of his name from the promotion list 'A' and that the provision in the Standing Order empowering removal of name from list 'A' was inconsistent with the rules and, therefore, non-operative and illegal. The said explanation, however, was rejected by ACP stating that:-

"...His explanation is not found satisfactory.

I, therefore, confirm the notice and hereby removed the name of Constable Satya Pal Singh, 540/N from

promotion list 'A' which was given to him w.e.f. 13.11.87 vide Sl. no.335 of this Hdqrs.order No. 26357-425/SIL/PHQ dated 13.11.87."

4. By way of relief the applicant has prayed that the impugned order dated 25.5.1989 at Annexure A-4 viz. rejection of his explanation in response to show cause notice be set aside and respondents be directed to restore his position in list 'A' and that he be sent for training in Lower School Course w.e.f. 20.12.1989 and to consider him for promotion on successful completion of the training. He has further prayed that Clause 4 of the Standing Order No.91/85 (Annexure A-6) be declared as ultra vires, as being inconsistent with the Delhi Police (Promotion & Confirmation) Rules, 1980.

5. Shri Shankar Raju, learned counsel for the applicant in support of the case of the applicant traversed the grounds generally covered above and submitted that the Standing Order cannot supersede the statutory rules. The learned counsel added that Rules 12 and 13 of the Delhi Police (Promotion & Confirmation) Rules, 1980 (the Rules for short) clearly show that the Lower School Course for the Constables placed in list 'A' is one of the qualifications which make them eligible for being considered for promotion to the next higher post of Head Constable. They have to be considered for promotion by the DPC in accordance with Clause 6 of Standing Order No.91/85 after they have successfully completed the Lower School Course. The learned counsel conceded that infliction of a major punishment can act as a bar to promotion to the next higher grade but it cannot be an impediment for undergoing Lower School Training Course, which is one of the qualifications for promotion to the rank of Head Constables. He stressed that the removal of the name of the applicant from list 'A' does not have the sanction of the Delhi Police (Promotion & Confirmation) Rules, 1980, as Rule

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12 of the said Rules does not prescribe removal of the name from List 'A'. He, therefore, urged that Clause-4 of the Standing Order No.91/85 being inconsistent with the Rules be declared ultra vires of the Rules.

6. The respondents represented by Shri M.C. Garg referred us to the counter-affidavit filed by them and submitted that there was no inconsistency in the Rules. As a matter of fact, Rule 7 of the Rules has since been amended vide amendment dated 12.8.1987 and assuming but not conceding that there was any inconsistency, the same stands removed with the said amendment. Rule 7 of the Rules with the amendment dated 12.8.1987 reads as under:-

"7. Promotion of enrolled police personnel--For regulating promotion of all subordinate ranks, there shall be six promotion lists; namely lists A, B, C, D, E and F. These lists shall be nominal rolls of police personnel considered suitable for further advancement in the concerned rank as provided in these Rules and shall be maintained separately for (i) executive (ii) technical and (iii) ministerial cadres wherever necessary."

Amendment

"PUBLISHED IN DELHI GAZETTE PART-IV
(EXTRA-ORDINARY)

Sl. No.143

DELHI ADMINISTRATION: DELHI:

HOME(POLICE ESTT.DEPTT.

NO.F.5/7/15 Home (P) Estt., Delhi dated 12th August, 1987.

In exercise of the powers conferred by sub-section (1) & (2) of section 147 of the Delhi Police Act, 1978 (Act No.34 of 1972), the Administrator of the Union territory of Delhi hereby makes the following rules further to amend the Delhi Police (Promotion & Confirmation) Rules, 1980, namely:-

1. Short title and Commencement.--(1) These rules shall be called the Delhi Police (Promotion and Confirmation Amendment) Rules, 1987.

(2) They shall come into force with effect from the date of their publication in the Delhi Gazette.

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2. Addition in rule 7- After the existing rule 7, the following sub-rule (33) shall be added:-

'The conduct and efficiency of men on promotion list shall be, at all times, watched with special care. Any officer whose name exists on the promotion list, if found guilty of a misconduct of natural reflecting upon his character or fitness for responsibility or who shows either by specific acts or by his record as a whole that he is unfit for promotion to the higher rank shall be reported to the Deputy Commissioner of Police, Head Quarters (I), Delhi in respect of persons on lists 'A' to 'E' and to Additional Commissioner of Police (Administration) Delhi in respect of officers on list 'F'. However, final decision regarding removal of name(s) from a promotion list shall be taken by the Appointing Authority only after giving show cause notice to the individual'."

The learned counsel emphasized that Delhi Police is a uniformed and disciplined force and it is essential that any dereliction of duty is viewed seriously. The applicant has been punished after following due procedure sanctioned by the law and his name has been removed from list 'A' in accordance with the Standing Order No.91/95 framed in pursuance of Rule 21 of the Rules.

7. We have heard the learned counsel for both parties and considered the matter carefully. We are of the opinion that in view of the amendment dated 12.8.1987 made in Rule 7, the action taken by the respondents to remove the name of the applicant from list 'A' is in accordance with the law and does not merit judicial interference. The O.A. is accordingly dismissed. The interim order passed on 21.8.1991 and continued thereafter is hereby vacated.

There will be no order as to costs.


(I.K. RASGOTRA)
MEMBER(A) 15/5/92


(P.K. KARTHA)
VICE-CHAIRMAN 15/5/92

May 15, 1992.