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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 2574/89.

New Delhi, this the 17th day of May, 1994.

SHRI J.P. SHARMA, MEMBER(J).

SHRI B.K. SINGH, MEMBER(A).

Shri Inderjit Sharma,
Sub-Inspector No.19-D,
at present posted at P.S. Palam Airport, New Delhi,
R/o: N-11, New Police Line, Kingsway Camp,
Delhi. ...Applicant

By advocate : Shri S.K. Bisaria.

VERSUS

1. Lt. Governor, through
Chief Secretary, Delhi Administration,
Delhi.
2. The Commissioner of Police,
Police Head Quarters,
M.S.O. Building,
New Delhi. ...Respondents

By advocate : Ms. Rashmi Chhabra, proxy for Mrs. Avnish Ahlawat.

O R D E R (ORAL)

SHRI J.P. SHARMA :

The applicant entered Delhi Police as Constable in the year 1959 and in due course of his service he was promoted as A.S.I. in the year 1976. The further promotion to the post is to S.I. The applicant was considered by the D.P.C. and his name was entered first in List E-I and after he has successfully completed the upper school course at PPS, his name was entered in List E-II (Executive) as provided under rule 16 of the Delhi Police (Promotion and Confirmation) Rules, 1980. The grievance of the applicant is that he was due for promotion w.e.f. 26-9-86 but his name was deleted from list E-II and was not given promotion in his turn

thereby his seniority was disturbed and the juniors have taken a march over him.

2. The applicant filed the present application in December, 89, and he prayed for the grant of the reliefs that the respondents be directed to promote him w.e.f. 29-6-86 and the impugned order dated 22-12-88 be quashed.

3. The respondents contested this application and opposed the grant of the relief on the ground that the applicant for the year 1985-86 (1.4.85 to 31.3.86) was given adverse remarks in the ACR of the relevant year. He was also imposed a punishment of censure on 4.12.86. In view of these facts, the name of the applicant was dropped from the list E-II (Executive) of S.I. but on his representation, it was sympathetically considered by the Commissioner of Police and after giving him personal hearing in orderly room he was given promotion wef 1-4-87. The applicant, therefore, should not have any grudge as he himself is at fault. The application is devoid of merit.

4. The applicant has also filed rejoinder reiterating the same facts.

5. We heard the learned counsel for the parties at length and perused the records. We find that the rule 7 of the Delhi Police (Promotion and Confirmation) Rules, 1980 which have been amended by memo dated 12-8-87 in exercise of the power conferred on the administrator under section 147 of the Delhi Police Act, 1978, authorises the authorities that if an officer whose name exists on the promotion list, then in certain events, if he is found unfit for promotion, his name can be removed from that list. However, these

rules came into force w.e.f. the date of publication in the Gazette. The grievance of the applicant relates to the period from September, 86 while these rules must have been published sometimes in the second half of the year 1987. When the date of enforcement of the rules is specifically mentioned in the circular or notification, the rules cannot be deemed to have ^{ret}prospective effect and as such rule 7 as amended, as said above, does not come into play.

6. The contention of the learned counsel for the applicant has some force that once the name has entered in list 16 E-II, then there was no other option before the authorities except to give promotion as and when vacancy occurs of the post of Sub Inspector. Basically, the statutory rules have to be interpreted in the language which has been used therein. But the precedents regarding interpretation cannot be ignored. In the case where the name of the person entered in the list earlier and during the course when the vacancy is yet to occur, there happens such certain events which, in the knowledge of the said promotee, could result in debarring him ~~rather~~ ^{for promotion} than following the adverse act or omission of the concerned promotee, would be against ~~the principles enunciated in so many cases.~~ The case of UNION OF INDIA v. K.V. JANKIRAMAN reported in 1991 VOL.2 SCALE page 423 is not specifically on this point but refers to a case where a person is considered for further promotion but is harbouring under a shadow under a departmental inquiry for alleged misconduct before the DPC considered his matter and the case was kept in a sealed cover. In the aforesaid decision, the Hon'ble Supreme Court has considered a bunch of cases decided by Central Administrative Tribunal at various

Benches and in some of them even the chargesheet was not served by the time the DPC considered the eligible alleged delinquent for promotion. The Hon'ble Supreme Court held that a person is not to be rewarded in such a case and it depends on a cases to a case. Coming to the case in hand and following the principles as enunciated in the case of K.V.JANKIRAMAN (supra), the applicant was given adverse remarks for the year 1985-86. It was a crucial year to effect his promotion to the post of S.I. as his name had already taken place in list E-II in December, 1985. Had this adverse remarks not been, he would likewise have been given promotion when junior was promoted, i.e., in September, 86. This adverse report ^{/(ACR)} against the applicant is final and the representation against the same was rejected by the competent authority. The applicant has also suffered an ~~ia~~ordinary censure during that period. In such an event, the case of the applicant, therefore, was considered by the respondents in the light of the aforesaid adverse remarks given to him.

7. The contention of the learned counsel is that when the applicant dropped from the list E-II, he was not given any show cause notice. In fact, the issue before us is of a much later date. Had the applicant been aggrieved by dropping of his name from the list E-II, he was free, if so advised to assail the same at the appropriate point of time. By virtue of giving him promotion wef April, 87, the name already must be in the list which is a pre-requisite for giving promotion to the post of S.I.

8. The scope of the Tribunal to interfere in

effecting a retrospective promotion ignoring the adverse report for that year would be much beyond its jurisdiction and authority. In view of the above facts and circumstances, we find that the present order does not call for any interference in the circumstances of the case. The application, therefore, is disposed of, accordingly, with no order as to costs.

(B.K.SINGH)
MEMBER(A)

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

'KALRA'