

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * * *

O.A. NO.24/1989

DATE OF DECISION 9.8.1991

SHRI BHARAT SINGH

.....APPLICANT

VS.

DELHI ADMINISTRATION & ORS.

.....RESPONDENTS

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SHRI J.P. SHARMA, HON'BLE MEMBER (J)

SHRI B.B. MAHAJAN, HON'BLE MEMBER (A)

FOR THE APPLICANT

.....SHRI SHANKAR RAJU

FOR THE RESPONDENTS

.....MS. ASHOKA JAIN

1. Whether Reporters of local papers may be allowed to see the Judgement? *YK*
2. To be referred to the Reporter or not? *YJS*

J U D G E M E N T

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant since retired on 30.9.1990 was posted as Constable/Crime in the Crime Branch, Police Head Quarter, New Delhi. The applicant filed an application under Section 19 of the Administrative Tribunals Act, 1985 on 23.12.1988, but subsequently he filed an amended application with the permission of the Court on 6.1.1989. In this amended application, the applicant has assailed the order dt. 11.4.1988 passed by Deputy Commissioner of Police and the order dt. 6.9.1988 passed by the same officer (Annexures A-1 and A-2) by which the name of the applicant was not included in the list 'C' for promotion to

the rank of officiating Head Constable and the representation dt. 5.8.1988 against delayed grant of quasi-permanency as well as delayed confirmation and non-promotion in list 'C' was rejected.


2. The applicant has claimed the following reliefs :-

- (i) To quash the order of confirmation of the applicant on the post of Constable made by the Commissioner of Police in the year 1966.
- (ii) To direct the respondent Nos. 1 and 2 to grant deemed/ante-date confirmation to the applicant at the post of Constable from the date when the applicant had completed the maximum period of probation as a temporary Constable in Delhi Police Force.
- (iii) To quash the impugned order at Annexure-A 3.
- (iv) To direct the respondent No.1 and 2 to grant Notional Promotion to the applicant at the post of Head Constable and his name be included in List G.II the promotion is to be made in accordance with the date of confirmation. This relief is consequential to relief no.1.
- (v) To direct respondents no.1 and 2 to pay all the consequential benefits, in form of difference of pay, arrears, allowances, increments etc. etc.
- (vi) To direct respondent Nos. 1 and 2 to grant seniority to the applicant in the post of Head Constable and his case be considered for the promotion at the post of A.S.I. and his name be included in List.'D'.
- (vii) Any other relief which this Hon'ble Court deems fit and proper in the circumstances of the application be also awarded to the applicant.
- (viii) To direct the respondents to place the name of the applicant above his juniors in the Seniority List of Head Constables.

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3. By the order dated 18.1.1989, the petition was admitted for reliefs Nos. (iii) and (iv).

4. The brief facts of the case are that the applicant was enrolled as a Constable in Delhi Police in April, 1954. He was appointed on a probation of three years' period. However, he was confirmed on 5.3.1966. The next promotional post in Delhi Police for unqualified, over-aged Constables also is the post of Head Constable for which a list is prepared. In March, 1988 such Delhi Police Constables were called for an interview for the purpose of promotion to the post of Head Constable and the persons who joined subsequent to the applicant were called for the said interview and the applicant was passed over. The applicant made a representation in writing to the respondents on 7.3.1988 (Annexures- A 3. and A 4).

 The reply on dt. 7.3.1988 the said representation is endorsed at the bottom of the same reading that the Constable Bharat Singh is not eligible for the promotion list 'C' as he has been confirmed after 1964. Thereafter the applicant has made another representation dated 6.6.1988 (Annexure-A-5). By the letter dated 6.9.1988 (Annexure-A 2), the applicant was informed by the respondents that after a period of 25 years,

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the request for ante-dating confirmation cannot be accepted. Actually this is the order dated 7.9.1988 which has been assailed alongwith the order dated 11.4.1988 (Annexure-A 1) which is the list 'C' for promotion to the rank of officiating Head Constable of the Constables and the name of the applicant does not appear in this list.

5. The main grievance of the applicant is that since he had joined earlier and completed probation period successfully and not only this, but his name is included in the list of those Constables who have been recommended for award of the Police medal in October, 1987 (Annexure-A 6), then in that case, the delay in confirmation which is sole act of the respondents, should not come in the way of defeating the claim of the applicant for inclusion in the list 'C'. The applicant has stated that one Mela Ram junior to the applicant as he joined in 1957 and was even awarded a major punishment of forfeiture of five years' approved services, has been promoted in list 'C' (Executive) at the rank of Head Constable (Annexure-A 1). The applicant ^{had} already completed 34 years' of service and since retired on 30.9.1990, but was promoted before his retirement.

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on ad-hoc basis as Head Constable w.e.f. 27.1.1989.

Thus the only grievance of the applicant is that though the persons who joined subsequently as Constable with the respondents have been enlisted in List 'C' (Executive) and have been given promotion to the next higher rank of Head Constable and the applicant has been passed over, though he served to the satisfaction of the respondents earning good remarks to the extent of being recommended for the award of Police medal.

6. The respondents have contested the application and the only point raised by them is that the applicant was confirmed in March, 1966 and only those Constables who stood confirmed by December, 1964, were called for selection for the post of Head Constable and enlisted in List 'C' which was done in April, 1988. It is not said in the whole of the counter that the applicant was in any way not upto the mark or earned adverse remarks so as not to be considered for promotion to the rank of Head Constable.

7. It is, however, in the subsequent affidavit sworn by the Deputy Commissioner of Police, Headquarter, Shri U.N.B. Rao that Mr. Mohinder Singh,

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A.S.I. has been senior to the applicant.

8. We have heard the learned counsel of the parties at length and have gone through the record of the case. In spite of our asking the personal file of the applicant, the affidavit has been filed by the learned counsel for the respondents on 8.8.1991. In this affidavit, it is stated in para-6 that there is no relevancy of his service records as the petitioner was not passed over for promotion due to his indifferent service record. Thus when this position is admitted by the respondents, now it is to be seen whether the applicant could have been confirmed much earlier so as to come within the zone of consideration for enlistment in List 'C' preparatory to promotion to the rank of Head Constable. The only argument advanced by the learned counsel for the respondents is that the application has not been admitted on the point of confirmation. However, since the next promotion to the post of Head Constable from the rank of Constable is linked with confirmation, so indirectly the confirmation comes into issue. A person needs to be confirmed in his own turn unless and until he is passed over. The normal period prescribed for probation is 3 years. The applicant joined

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as Constable in 1954. Thus there is a deemed confirmation after a period of 3 years, though the order of confirmation might not have been passed or was passed in March, 1966. In the present case, it is admitted by the respondents that there was nothing adverse in the service records of the applicant, so his non-confirmation alongwith his juniors caste a serious reflection on not considering him for confirmation in his due turn. It was all the more necessary when the seniority depends for next promotion on the basis of confirmation. It is necessary that a person should pass the period of probation successfully and after doing successful completion of that period, his record of service is to be scrutinised for his confirmation. If the respondents did not do that, then none is to blame, at least not the applicant. In whole of the reply filed by the respondents as well as in the affidavit of D.C.P., Mr. Rao filed on 8.8.1991, there is not a word regarding the incapability of the applicant. In S.P. Police, Ludhiana Vs. Dwarka Dass-1979 (1) SLR SC p-299 where there is a maximum period of probation as in the case of Constable is three years, the person has to be confirmed in his due turn. In Senior Regional Manager, F.C.I. Vs. Labh Singh-1987 (1) SLJ Punjab High Court p-109, the Division Bench held that if no confirmation order was passed, then there shall be

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deemed confirmation if there is no order extending the period of probation. It has been held in a number of authorities* that late confirmation is pre-judicial to the service career of a person.

9. In view of the above discussion, we find that the applicant should have been deemed to have been confirmed in his due turn and should have been considered alongwith his juniors who were confirmed earlier, i.e., before 1964. His non consideration on the ground of late confirmation in the selection of April, 1988 is arbitrary and discriminatory. The respondents have to give reasons to ignore him if they chose to select in List 'C' a similarly situated over-age, unqualified Constable for promotion to the post of Head Constable for enlistment in List 'C' and if no reasons are given or there is no criteria or objective consideration for considering the juniors, then such an act of respondents cannot be upheld.

10. The applicant has, immediately after the selection process started in April, 1988, made representation to the

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1. Sant Ram Vs. State of Rajasthan
AIR 1967 S.C. 1910
 2. State of Punjab Vs. Dharam Singh
AIR 1968 S.C. 1210
 3. State of Haryana Vs. Shamsheer Jung
AIR 1972 S.C. 1546
 4. Kundan Lal Vs. Delhi Administration
1976 (1) SLR 133
 5. Dr. Benoy Kumar Dass Vs. State of Orissa
1974 SLR 222

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authorities that he should also be called for selection as juniors to him have been called. A reply was sent to the applicant that since he was confirmed in 1966, then the matter cannot be allowed to be agitated ^{twenty} /five years after. This reply of the respondents does not speak well of them. The learned counsel for the respondents was asked three queries by the order dated 28.9.1990 which are as follows :-

- (a) Whether any seniority list of Constables was published before 1988 and if so, when?
- (b) How the year of confirmation as 1964 was fixed for screening candidates for List 'C' in 1988?
- (c) Whether the fixing 1964 as the zone of candidates had any nexus with the number of vacancies available for the List 'C' Head Constables.

The learned counsel for the applicant admitted that no seniority list of Constables was published before 1988. Thus the applicant cannot be said to be at fault, if he had not made any representation against his non-confirmation in due course, at least at the time when his juniors were confirmed. The publication of the seniority list would have been sufficient to give information to the applicant regarding his late confirmation in April, 1966. But when the matter was not published in the form of seniority list, then the applicant cannot be expected to know what is in the files of the respondents. The applicant, therefore, at the first opportunity when selection was

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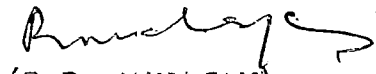
held for enlistment of Constables for promotion to Head Constables made a representation. Thus the applicant should have been considered alongwith other Constables junior to him in the selection of April, 1988 itself and the respondents, therefore, have discriminated^{against} him in not considering alongwith his juniors. The late confirmation of the applicant cannot come in the way when there is nothing on the record to show that the applicant could not have been confirmed in his due turn on the basis of his service records.

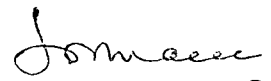
11. In view of the above discussion, the application is allowed and the respondents are directed to give promotion to the applicant from the date his immediate junior was given, i.e., from 11.4.1988 or on any subsequent date when any such junior to the applicant as Head Constable. joined. The date of joining as Constable shall determine as to who is junior to the applicant, i.e., those who have joined later than 11.4.1984, shall be treated as juniors to the applicant for this purpose. The applicant shall be entitled to all the benefits of wages etc. from that date minus those which have already been granted to him by promotion on 27.1.1989 as Head Constable on ad-hoc basis. The respondents are further directed to give retirement benefits to the applicant such as pension, gratuity etc. on the basis of the revised pay which shall

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be fixed as said above in para-^{this}~~r~~. In the circumstances
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the parties shall bear their own costs.

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(B.B. MAHAJAN)
MEMBER (A)


9, 8, '91
(J.P. SHARMA)
MEMBER (J)