

(S)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

D.A. NO.1551/88

New Delhi this the 20th day of December, 1993

CORAM :

THE HON'BLE MR. JUSTICE B. C. SAKSENA, VICE CHAIRMAN
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

Virender Singh,
Assistant Sub Inspector,
No. 1008/D Min,
Special Branch,
Office of the Deputy Commissioner
of Police (Special Branch),
Police Hqrs., I.P. Estate,
New Delhi - 110002.

Applicant

By Advocate Shri J. P. Verghese

Versus

1. Delhi Administration
through its Chief Secretary,
Old Secretariat, Delhi.
2. Commissioner of Police,
Delhi Police, I.P. Estate,
Police Hqrs.,
New Delhi - 110002.

Respondents

By Advocate Mrs. Avnish Ahlawat

O R D E R

Hon'ble Mr. Justice B. C. Saksena —

By means of this application, the applicant
seeks quashing of Promotion List 'E' dated 1.11.1985
and 1.6.1988. He further seeks a direction to be
issued to the respondents to promote him to the
post of Sub Inspector w.e.f. 1.11.1985 and
consequential reliefs.

2. The applicant was enlisted as a Constable in
the Delhi Police on 19.9.1955 and was promoted as
Head Constable on 9.1.1967. He was promoted
thereafter as Assistant Sub Inspector on 12.1.1971
and was confirmed on the said post on 1.11.1976.

B.C.

He was chargesheeted and was given a punishment of forfeiture of four years' ^{approved} service which was subsequently reduced to two years by an order passed on 18.4.1981. The forfeiture resulted in reduction of pay from Rs.400/- to Rs.380/- per month. The applicant's candidature was considered for promotion to the post of Sub Inspector by the DPC held in the year 1985. His name was not included in the promotion list 'E'. He preferred a representation which was rejected on 7.4.1986.

3. Again, the applicant's candidature was considered by the DPC in 1988. The promotion order of others is dated 1.6.1988 and the applicant's name does not figure in that list. He preferred a representation which was rejected.

4. A reply to the O.A. was filed by the opposite parties and the applicant has also filed a rejoinder thereto. The necessary pleadings and the reply of the respondents and the rejoinder will be noted while considering the submissions made by the learned counsel for the parties.

5. The learned counsel for the applicant urged that non-inclusion of the applicant's name in the promotion lists dated 1.11.1985 and 1.6.1988 was arbitrary and based on extraneous considerations. He submitted that by the order of punishment dated 18.4.1981, three censure entries awarded to the applicant in the year 1980 were taken into consideration while modifying the initial order of punishment and forfeiture of only two years'

\
Bar

approved service with permanent effect reducing his pay from Rs.400/- to Rs.380/- had been passed. The opposite parties in their reply have not indicated the reasons found by the DPC for finding the applicant unfit for promotion at the selection held in the year 1985. Mrs. Ahlawat, learned counsel appearing for the opposite parties, has placed the proceedings of the DPC as also the personal file of the applicant for our perusal. The said proceedings for the year 1985 disclose that the three censure entries awarded to the applicant in the year 1980 as also the order of forfeiture of his approved service were considered besides his service record.

6. The proceedings of the DPC for the year 1988 also indicate the same position. In paragraph 2 of their reply, the factors considered by the DPC have been indicated. The learned counsel for the applicant urged that the three censures awarded in the year 1980 and the punishment order dated 18.4.1981 cannot be made the basis for considering the applicant unfit for promotion throughout his career. The learned counsel for the opposite parties submitted that promotions to the post of Sub Inspector are made on the basis of selection tempered with seniority. The selection committee considers the entire service record of all the eligible candidates and on that basis judges the suitability for promotion. It was also urged by the learned counsel for the opposite parties that the number of posts likely to be filled up by promotion are worked out

for

for the general category as also the reserved categories and those found fit to the extent of availability of posts are placed on promotion list 'E'. In this context, the learned counsel for the opposite parties invited our attention to Rule 5 of the Delhi Police (Promotion & Confirmation) Rules, 1980. The relevant provision of Rule 5(i) reads as under :-

"5. General Principles of promotion --
(i) Promotions from one rank to another and from lower grade to the higher grade in the same rank shall be made by selection tempered by seniority, efficiency and honesty shall be the main factors governing selection. Efficiency shall be judged by service record, professional attainments and merit in departmental tests. When the qualifications of two officers are otherwise equal the senior shall be promoted."

On the basis of the said provision, it was urged that the promotion has to be made by selection tempered by seniority, efficiency and honesty as the main factors governing the selection. Efficiency is required to be judged by service record, professional attainments and merit in departmental tests.

7. We may now consider the submission of the learned counsel for the applicant that at both the selections the three censure entries awarded in the year 1980 to the applicant and the order of punishment have been shown as the adverse material considered against the applicant. The submission of the learned counsel for the applicant as noted hereinabove was that in the years 1985 and 1988, the

|
for

9

said material should not have been considered as it would amount to double jeopardy and being punished over and over again. Non-selection, in the first place, is not a punishment in the strict sense. If the selection was to be tempered with seniority and it was open to the DPC to look into the entire record of the candidate in question, we are of the opinion that merely by reason of the fact that three censure entries awarded to the applicant in the year 1980 and the order of punishment of forfeiture of approved service of two years having been considered also will not render the decision of the DPC finding the applicant unfit for promotion illegal. Further, since there is no allegation of mala fides against any of the members of the DPC, we see no justification to interfere with the ~~assumption~~^{assessment for} made by the DPC with regard to the suitability or otherwise for promotion of the applicant. From the proceedings of the DPC which have been placed for our consideration by the learned counsel for the opposite parties, we find that the DPC had proceeded to classify the annual entries on merits and on the basis of the said classification coupled with the punishments imposed on any particular candidate have been considered. On a over all assessment of these and other factors, the suitability had been adjudged. The ~~assumption~~^{assessment for} of suitability is entirely in the discretion of the DPC and in the absence of any material or pleadings before us we are in no position to adjudge for ourselves the suitability of the applicant for promotion.

1
Bab

W

8. The learned counsel for the applicant cited a few decisions which may be noted. The first decision is reported in 1988 (Supp) SCC 669 - Shiv Kumar Sharma vs. Haryana State Electricity Board, Chandigarh & Others. In the said case the appellant was on probation. The Board found that the appellant had satisfactorily completed the period of probation but still without any explanation his confirmation was deferred till 1.12.1969, whereas the persons junior to him were confirmed w.e.f. 1.4.1969. A minor penalty of stoppage of one increment without any future effect was imposed on the appellant after disciplinary proceedings had been held. The Apex Court, in the facts of that case, found that there was no material to show as to why the appellant was confirmed w.e.f. 1.12.1969 when he had completed his probationary period of two years satisfactorily. The plea advanced on behalf of the Board that because of the minor penalty imposed on the appellant he was confirmed later than his juniors, did not find favour with the Apex Court. It also, in the circumstances, held that for the same act of misconduct the appellant had been punished twice. On a deeper analysis of the said judgment, it appears to us that the Apex Court in the first place held that the question of seniority has nothing to do with the penalty that was imposed on the appellant. Secondly, it held that the archaic rule of confirmation which is still in force gives a scope to the executive authority to act arbitrarily or mala fide giving rise to unnecessary litigation. On the basis of

Bar

its earlier decision in S. B. Patwardhan vs. State of Maharashtra, (1977) 3 SCC 399, the view with regard to seniority being based on confirmation being illegal was propounded. The said decision, ^(Shiv Kumar Sharma, Supra) to our mind, would not be applicable. In the case before the Apex Court, the Board had found that the appellant had satisfactorily completed two years and thus could have been confirmed along with his juniors. His confirmation from a later date was found to be without any explanation.

9. In the instant case, the suitability of the applicant for promotion has been judged by the DPC in accordance with the promotion rules. It has not confined itself to the punishments imposed upon the applicant. That being so, we are not impressed with the submission that the punishment of forfeiture of approved service for two years in spite of earlier three censure entries awarded in the year 1980 has the effect of wiping out the censure entries. An over all view of the applicant's record of service, his seniority etc., was kept in view by the DPC. In the absence of any allegations of mala fides and it not being within our jurisdiction to supplant the decision of the DPC with regard to suitability, we find no justification for any interference.

10. The learned counsel for the applicant next cited a decision of the Supreme Court reported in AIR 1974 SC 555 - E. P. Royappa vs. State of Tamil Nadu & Anr. The learned counsel placed reliance on paragraph 85 of the said judgment. It was observed by the Apex Court that "Articles 14 and 16 strike at arbitrariness

Bar

in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality." In the facts of the instant case, the same guidelines have uniformly been applied to all eligible candidates for promotion to the post of Sub Inspector. The learned counsel for the applicant, however, laid great stress that the action was guided by extraneous and irrelevant considerations. In our opinion, the three censure entries and the punishment constituted valid factors for judging the suitability of the applicant. Besides other factors, it cannot be said that the DPC had based its decision on extraneous factors. Theoretically speaking, the argument advanced by the learned counsel appears to be not without force. The punishments once imposed should not be considered over and again. In this context, the learned counsel for the applicant also urged that the applicant had earned 22 commendations. In the proceedings of the DPC, the same had been mentioned, and thus, there is no reason for us to believe that the said commendations have been overlooked by the DPC. Besides the three censure entries and the punishment, the classification of the applicant's annual character roll had also been made by the DPC. Evidently, it was not better than the other candidates found fit.

1
Bch

11. The learned counsel for the applicant cited another decision reported in ATR 1986 (2) CAT 651 - P. C. Sharma vs. Signal Inspector & two others. In the said case, punishment of stoppage of one set of passes for the year 1981 had been imposed. Thereafter, the punishment was enhanced by stopping increments for six months from 6.3.1982. The Allahabad Bench of the Tribunal held that the enhancement was uncalled for because a person cannot be punished for the same offence twice. The facts in the said case are not comparable with the facts of the instant case. Accordingly, we are of the opinion that the said decision in no manner advances the applicant's case before us.

12. At the hearing, we were informed that the applicant has since retired. In the year 1991 he was granted promotion to the rank of Sub Inspector of Police.

13. In view of the foregoing, the application lacks merit and is accordingly dismissed. There shall be no orders as to costs.

Adige
(S. R. Adige)
Member (A)

Saksena
(B. C. Saksena)
Vice-Chairman (J)

/as/