

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

MP.No.2233/1989 IN - O.A. No. 1665/1988
T.A. No.

199

DATE OF DECISION 21-05-1991

<u>SHRI BHIM SINGH</u>	Petitioner
<u>SHRI SHYAM BABU</u>	Advocate for the Petitioner(s)
Versus	
<u>UNION OF INDIA</u>	Respondent
<u>SHRI JAGDISH VATS</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. I.K. RASGOTRA, MEMBER (A)

The Hon'ble Mr. J.P. SHARMA, MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *y.c.*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *X*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *X*

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

MP No.2233/89 IN O.A. No.1665/88

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DATE OF DECISION 21-05-1991

SHRI BHIM SINGH

.....APPLICANT

VS.

UNION OF INDIA

.....RESPONDENTS

CORAM

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

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

FOR THE APPLICANT

.....SHRI SHYAM BABU

FOR THE RESPONDENTS

.....SHRI JAGDISH VATS

J U D G E M E N T

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

The applicant, Head Constable (Driver) in 10th Battalion of Delhi Armed Police, Delhi filed this application under Section 19 of Administrative Tribunal's Act, 1985 aggrieved by the order dated 12.1.1988 passed by Deputy Commissioner of Police, Delhi. By this order, the representation of the applicant regarding his promotion to the post of Assistant Sub Inspector (A.S.I.(MT) was rejected.

2. The applicant has claimed following substantive reliefs :-

(a) To direct the respondents to bring the name

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of the applicant on list 'D' for the post of Assistant Sub Inspector (MT) and to promote him as such with effect from October, 1977 or from September, 1982 or in any case from the date when his juniors were so promoted;

- (b) Quash/set aside order dated 12-1-1988 (Annexure 'L') and order dated 17-3-1988 (Annexure 'N').

The prayer in the M.P. 2233/89 moved in the O.A. in September, 1989 is for a

- (i) direction to the respondents to promote the applicant as S.I./M.T.(Operational) w.e.f. 7-8-1989.
- (ii) Alternatively to cancel the appointment of of persons made by order dated 8-8-1989.
- (iii) In any case the promotions of Shri Gurdev Singh and Shri Gurmeet Singh shall be subject to the result of the above O.A.

3. The applicant joined Delhi Police as Constable on 21-3-1959 and was confirmed as such in service on 1-6-1965. He was promoted to the rank of Head Constable by the order dated 26-10-1972. He was confirmed as Head Constable (Driver) with effect from 30th September, 1977. The next promotional post is Assistant Sub

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Inspector (MT). Before 31st July, 1986 the promotions were governed by Punjab Police Rules, (P.P.R.) 12.3(C) which stipulated the following conditions/qualifications for eligibility:-

- a) Matriculation.
- b) 5 years service in the rank of Head Constable.
- c) Should be capable of dealing with correspondence documents connected with General administration and operational control of vehicles.
- d) Current driving licence for heavy vehicles.

4. The administrator of Delhi promulgated the Delhi Police (Appointment and Recruitment) Rules, 1986 with effect from 31st July, 1986 (hereinafter referred to new rules). Clause 17A (8) details recruitment rules for the post of MT/Assistant Sub Inspectors (Operational). Clause 12 of the Rules provides qualification for eligibility for promotion as under:-

"Confirmed Head Constable (MT) Operational with
5 years service in the grade;

or

Confirmed Head Constable (Driver) with 5 years in
the Grade having:

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i) Current Driving Licence for heavy vehicles;

ii) Matriculate."

5. The grievance of the applicant is that by an order dated 14th August, 1978 the Head Constable John Peter was promoted to officiate as Assistant Sub Inspector (MT) with effect from 8th August, 1978 on purely temporary and ad-hoc basis, and it was in total contravention and violation of Punjab Police Rule, 12.3 (C) as the said John Peter was not a matriculate. Similarly, in January, 1986 Head Constable Puran Singh was also promoted to officiate as Assistant Sub Inspector (MT) on purely temporary and ad-hoc basis with effect from 16-1-1986. He was also not matriculate. Similarly, Mr. Md. Hanif, Mr. Har Dayal Singh, Mr. Rampath and Mr. Munshi Ram were also promoted as Assistant Sub Inspector (MT) although they were not matriculate as provided in the rules. As regards the position under the new Rules, it is stated by the applicant that though he was confirmed Head Constable (Driver) on 30-9-1977 and he became eligible for promotion as A.S.I.(MT) five years thereafter i.e. from September, 1982 as Assistant Sub Inspector (MT) but he was not promoted. The applicant has cited the instances of Gurdev Singh who was confirmed as Head Constable (Driver) with effect from 1-6-1982 and Gurmeet Singh who was confirmed as Head Constable with effect from 1-8-1983 and their names were ordered to be included in promotion List 'D'

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for the post of A.S.I. (MT) with effect from 23-11-1987. Similarly by another order dated 26-11-1987 four Head Constables were promoted to officiate as A.S.I. (MT) Operational with effect from 26-11-1987 including Gurdev Singh and Gurmeet Singh. The contention of the applicant is that the applicant has been subjected to discrimination and the action of the respondents in not including the name of the applicant in the promotion list 'D' for the post of Assistant Sub Inspector (MT) (Operational) is arbitrary and unreasonable. It is further said that the applicant is senior to Gurdev Singh and Gurmeet Singh yet he has not been given promotion taking into consideration his ineligibility under Sec.12.3(C) PPR or new recruitment rules. The applicant made representation but to no effect. Hence the present application.

6. The respondents in their counter affidavit have stated that to make the selection fair a standing order No.236 was issued for the promotion of M.T.Staff, but on a Civil Writ Petition No.137/73 filed by a constable (driver) Makhan Singh the same was quashed vide judgment dated 5-8-1974. As such due to the complexity of the rules no regular promotions were made and it was decided that till such time rules are modified/amended the promotions in the rank of A.S.I.(MT) be made on adhoc basis. The relevant rules remained in examination with the Delhi Administration till the Delhi Police(Promotion confirmation) Rules,1980

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were notified by the Delhi Administration. During the period from 29.12.1980 to 30.7.1986, there were no Recruitment Rules for M.T. staff and all the promotions in the M.T. Cadre were made on ad-hoc basis under Rule 19(i) of the Delhi Police (Promotion and Confirmation) Rules, 1980. The applicant was not eligible under the rules and being under-matric, the applicant's name was not considered by D.P.C. and the four other with five years' service were considered. It is further admitted that the applicant was senior to Head Constable Drivers Gurdev Singh and Gurmeet Singh in the rank of Head Constable (Driver), but since both these Head Constables (Drivers) fulfilled the job requirements for regular promotion as Assistant Sub-Inspector (MT) Operational, they were promoted as Assistant Sub-Inspector (MT) Operational on regular basis whereas the applicant was not eligible being non-matriculate for promotion to the said post. Even, according to the respondents, the applicant was considered by D.P.C., but since he was not matriculate, he was not promoted as Assistant Sub-Inspector (MT) and was not enlisted in list 'D', promotion list for Technical staff.

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7. Subsequently as given in MP 2233/89, Gurdev Singh and Gurmeet Singh have been promoted w.e.f. 8.11.1989 as S.I.(MT) ignoring the claim of the applicant. The applicant has been promoted as A.S.I. (Driver) w.e.f. 1.1.1984 by the order dt. 8.3.1989 in compliance with the orders issued in C.W.P. by the Hon'ble Supreme Court. It is stated in M.P. that the eligibility condition of five years' service as A.S.I. has been completed by the applicant on 1.1.1989, yet he has not been promoted, though Gurdev Singh and Gurmeet Singh had not completed 5 years as A.S.I./M.T. (have been promoted on 26.11.1987) have been promoted by the order dt. 8.8.1989. The applicant, therefore, also claimed promotion as S.I./M.T. (Operational) w.e.f. 8.8.1989.

8. We have heard the learned counsel for the parties and have gone through the record of the case. Though recruitment rules provide, matriculation as an essential qualification, but there has been constant breach of this rule and non-matriculate Head Constables (DRIVER) have been promoted as Assistant Sub Inspectors (MT). Puran Singh, Mohd. Hanif, Hardayal Singh and Munsiri Ram were all non-matriculate. The respondents, thus, have flouted the rules rather than abiding by them.

Both the Punjab Police Rule 12.3 (Annexure-I) and the new Rules, 1986 for A.S.I. (M.T.) provide more or less similar conditions.

PUNJAB POLICE RULES

1986 RULES

Confirmed ^H S.C. Drivers with five years service in the grade having :-

- | | |
|--|-----------------------------|
| a) Matriculation; | a) Current Driver |
| b) Having five years' service in the rank of Head Constable; | Licence for heavy vehicles; |
| c) Should be capable of dealing with correspondence/documents connected with general administration of MT Drivers and occasionally control vehicles; | b) Matriculate. |
| d) Current Driving Licence for heavy vehicles. | |

On the face of it, the applicant is non-matriculate, but the order of confirmation of Head Constable (Driver) which has been filed by the applicant as Annexure 'H' goes to show that Bhim Singh appeared at Sl.No.18, Gurdev Singh at Sl.No.25 and of Gurmit Singh at Sl.No.33. By the order dated 26.11.1987 (Annexure-I), Gurdev Singh and Gurmit Singh were brought on list 'D' (Technical) for the post of A.S.I./M.T. (Operational)

w.e.f. 23.11.1987. However, Gurdev Singh is shown as S.C. Both Gurdev Singh and Gurmit Singh were promoted as A.S.I./M.T. (Operational) w.e.f. 26.11.1987. The applicant made a representation that he is senior to Gurmit Singh as well as S.S. Gurdev Singh (S.C.). The applicant is also S.C., but has been passed over and has not been placed in promotion list 'D' (Technical) and has also not been promoted as A.S.I./M.T.

9. The respondents have contended in their reply (Annexure-L, order dated 8.1.1988) that since the applicant is a non-matriculate, he was not considered. In fact when the Recruitment Rules have been flouted, it cannot be said now that the applicant is non-matriculate. The respondents in their reply have stated that regular promotions have not been made and only ad-hoc promotions have been made to the post of A.S.I./M.T. The respondents have also admitted as the Recruitment Rules were bit confusing, it was decided that till such time the rules are modified and amended, the promotions in the rank of A.S.I./M.T. be made on ad-hoc basis. Even for making ad-hoc promotion, senior person cannot be ignored and the learned counsel for the applicant referred to the decision of Punjab and Haryana High

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Court reported in 1975 SLJ short note-16 at page (XX) Kishori Lal Versus State of Punjab and two others.

In this authority, a case of Delhi High Court, O.P. Gupta and Mullinath Jain reported in 1973 SLJ 239 was also relied upon; It is not disputed by the respondents that the applicant is a confirmed Head Constable since 30.9.1977 and he came in the zone of consideration for promotion to the post of A.S.I./M.T. in the last quarter of 1982. Thus before promoting juniors to the applicant, he should have been considered for enlistment in List 'D' which has not been done, so his promotion could not been done by D.P.C.

10. During the course of argument, the learned counsel for the respondents could not explain as to under what rules non-matriculate Head Constable Drivers were promoted in the posts albeit on ad-hoc basis, as A.S.I./M.T. In the absence of any reasonable criteria, the applicant who has clear record of service should have also been promoted as A.S.I./M.T. In fact, it appears from the record that by the order dated 6.3.1989, the applicant has been promoted w.e.f. 1.1.1984 to the post of A.S.I. (Driver). The applicant has moved MP 2233/89 for a further direction to the respondents that the applicant be promoted as S.I./M.T. (Operational) w.e.f. 7.8.1989. The

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applicant has stated in the M.P. that Gurdev Singh and Gurmit Singh by the order dated 8.8.1989 have been promoted as S.I./M.T. (Operational) w.e.f. 7.8.1989. It is contended by the learned counsel for the applicant that the Recruitment Rules for the post of S.I./M.T. (Operational) that a candidate should be confirmed A.S.I./M.T. with five years service in the grade. The said Gurdev Singh and Gurmit Singh who were promoted as A.S.I./M.T. (Operational) w.e.f. 26.11.198' (Annexure-J) were not eligible for promotion as they had not completed five years ' service as A.S.I./M.T. which is the basic requirement of the rules. It is contended by the learned counsel that the applicant in view of the judgement of Hon'ble Supreme Court in

Versus Union of India was promoted A.S.I. (Driver) w.e.f. 1.1.1984. At the time of the promotion dated 8.8.1989, the applicant fulfilled the required five years service in the grade as he had completed the same in January, 1989. Although the applicant was eligible under the rules, but he was not promoted as S.I./M.T. (Operational) whereas the persons who were not eligible under the rules, were promoted ignoring the lawful claim of the applicant.

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It was incumbent upon the respondents to have considered all eligible persons for promotion to the post of S.I./M.T.(Operational) even though they were promoted on adhoc basis. No reply was filed to the M.P. and by the order dated 21st January, 1990 a direction was issued to the respondents that any promotion to the post of S.I./M.T. shall be subject to the out come to this O.A. and the promotees so promoted should be specifically informed about this.

11. Singh the applicant is undisputedly senior, so both of them could not have been given adhoc promotion w.e.f. 7-8-1989 without considering the applicant who by the time had become eligible for consideration by completing required service in the grade of A.S.I./M.T. prescribed under rule for the promotion of S.I./M.T. Thus the applicant is entitled on the principle of next below rule to get promotion to the post of S.I./M.T.(Operational) though on adhoc basis w.e.f. 7-8-1989. M.P. 2233/89 is allowed to this extent.

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PER SHRI I.K. RASGOTRA

12. I concur with the judgement in O.A.
No.1665/88 - Shri Bhim Singh Vs Union of India.
However, I would add that the rules are meant for observance and only in exceptional circumstances powers of relaxation included in the rules are used for relaxing the eligibility conditions with the approval of the competent authority.
In this case the rule seem to have been substituted by the exception. When the exception becomes the rule, the time becomes for a fresh look at the rule in the circumstances obtaining and the rule itself should be amended to meet the needs of the situation. I am saying this because in every case the promotion from Head Constable to A.S.I. (MT) and from A.S.I. (MT) to S.I. (MT) has been made in contravention of the rule which provides that only matriculate should be considered for such promotion.

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13. In the case of Direct Recruit Class II Eng. Officers' Ass. Vs. state of Maharashtra their lordships of the Supreme Court held that:

"(D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation.

In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down."

14. While the observations of their lordships have been made in the context of quota-rotation rule, the underlying ratio cannot be underscored. When it becomes impossible to adhere to the rules, it is time for considering the substitution of the rule by an amended rule to meet the needs of the situation.

15. Accordingly, the respondents may consider if the rules for promotion from the post of Head Constable to ASI (MT) need to be retained in the present shape when so many promotions have been made in contravention of the said rule.

PER BENCH

16. Having given a careful consideration, we are of the opinion that the applicant should be given ad-hoc promotion w.e.f. 7.8.1989 as S.I./M.T. (Operational) *he shall* and will be entitled to all consequential benefits regarding pay and other allowances admissible to S.I./M.T. However, in the circumstances, the parties shall bear their own costs. The other reliefs claimed are disallowed.

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

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

21/5/91

*Pronounced by me in open Court
on 21/5/91.*

I.K. Rasgotra

21/5/91