

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1151/88
T.A. No.

199

DATE OF DECISION

3. 1. 91

Shri Hukam Singh Saini

Petitioner

Shri B.R.Saini

Advocate for the Petitioner(s)

Versus

Delhi Administration & Others Respondents

Advocate for the Respondent(s)

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The Hon'ble Mr. P.C. Jain, Administrative Member

The Hon'ble Mr. J.P. Sharma, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? ^{yes}
2. To be referred to the Reporter or not? ^{yes}
3. Whether their Lordships wish to see the fair copy of the Judgement? ^{no}
4. Whether it needs to be circulated to other Benches of the Tribunal? ^{no}

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

The applicant, Sub-Inspector, Delhi Police, claims that he should have been confirmed in his appointment alongwith his other batchmates and some juniors to him in that batch on 22.5.1974 and not on 3.7.1975. The applicant also challenged the seniority list dated 5.12.1984 which has been prepared on the date of confirmation and not from the date of appointment. The Principal Bench of the Central Administrative Tribunal in OA 302/86 and CA 392/86 by the judgement dated 7.1.1987 laid down that the seniority

of the Sub-Inspector was to be counted from the date of actual appointment and ^{not} from the date of confirmation. The applicant made representations to the respondent one after another to pass order of confirmation w.e.f. 22.5.1974 in favour of the applicant on the basis of the direction issued in the aforesaid judgement, but ^{to} no effect. Hence the present application under Section 19 of the Administrative Tribunal Act, 1985 (hereinafter called the Act) has been filed for the following reliefs :-

- (i) The Hon'ble Tribunal should be pleased to declare P.P.R.12.2.(3) and Rule 22 of the appointment and Recruitment Rules, 1980, which gives seniority from the date of confirmation as void and gives petitioner seniority above his next below junior in the merit list, seniority list published on 11.12.1984 (Annexure A/6); and further order the respondents to grant the petitioner seniority at Sl.No.315, below Darshan Singh at Sl.No.314 (date of appointment dt.13.10.69) and above Ram Phal Sharma (Sl.No.315) (date of appointment 16.10.69) and above Ram Nath Nager (Sl. No.316) (date of appointment 31.10.69);
- (ii) and further direct the respondents to place the petitioner in the promotion 'F' list, after giving due seniority and above his next junior in the said list and also to promote the petitioner to the post of

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- Inspector of Police from the date his next junior was promoted and considered;
- (iii) This Hon'ble Tribunal may be pleased to pass orders that after assigning due seniority the petitioner should also be considered for promotion as Inspector, to bring his name in the List 'F' alongwith other batchmates.
 - (iv) to quash and set aside the order bearing No.2888/Estt-DCP(S) dt.30.7.84 (Annexure-A/7) rejecting the request of the petitioner for confirmation from the due date;
 - (v) to quash/set aside all such orders denying to the petitioner due seniority, due confirmation and consideration for promotion to the next post of Inspector and of refusing to include the name of your petitioner in the promotion list 'F' prepared by the respondents in which the name of other juniors to the petitioner have been included ;
 - (vi) or such other reliefs be granted to the petitioner which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case.

2. The facts of the case stated by the applicant are :-

The applicant joined as direct recruit Sub-Inspector w.e.f. 16.10.69. The applicant was made quasi-permanent w.e.f. 16.10.72. That

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the applicant after probationary period was entitled to be confirmed. In the seniority list, the name of the applicant is shown at Sl.No.627 while of one Krishan Kumar ~~at~~, Sub-Inspector, at Sl.No.623 though he joined on 17.10.69. The name of the applicant in the seniority list should have been at Sl.No.315 below one Darshan Singh, Sub-Inspector who joined on 13.10.69. By the judgement dated 7.1.87 in OA 302 and 392/86, the respondents were under obligation to rectify the mistake and implement the said judgement uniformly and equally. The applicant represented (Annexure-3) to the respondent ^{to} but/no effect and instead by the letter dt. 24.7.1987 (Annexure-4), the applicant was informed that he was unfit for promotion.

3. The respondent contested the application and stated in reply : that the A.C.R. of the applicant for the period 1.4.71 to 31.3.72 was adverse. His conduct was censured vide order dated 27.2.73 for remissness and negligence. His confirmation was considered in 1974, when passed over due to his unsatisfactory record of service. The A.C.R. for the period 1.4.74 to 31.3.75 was also adverse. In a departmental enquiry commenced in the same period, his five years' approved service was forfeited vide Order dt.21.11.75 and ^{by the applicant} an appeal/was reduced to 2 years vide Order dt.22.3.76 of DIG/AP&T. He was again censured on 31.8.77. His A.C.R. for the period from 1.4.76 to 9.2.77 was adverse. He was placed under suspension w.e.f. 7.7.76 and Departmental Enquiry commenced against him ending in penalty of 2 years'

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forfeiture of approved service which ultimately by the Order of Appellate Authority Addl.CP(R)N.Delhi was reduced to one year w.e.f. 22.5.79. His case for confirmation was reviewed. He was passed over another time. He was again suspended w.e.f. 22.9.79 for certain misbehaviour with one Mrs. Goel and Miss Goel. His A.C.R. for the period 26.4.78 to 31.3.79 was again adverse. His conduct was again censured vide order dt.8.12.80. He was again placed under suspension vide order dt.18.3.81 in a prevention of corruption case in which he was arrested but reinstated on acquittal. He was again awarded a censure entry vide order dt.19.9.81. He was, however, confirmed as such w.e.f. 3.7.75. The respondent stated that the aforesaid judgement of Krishan Kumar is not applicable to the present case. The applicant is not entitled to any relief.

4. The applicant filed the rejoinder to the reply filed by the respondent. The facts regarding award of the adverse remarks has not been specifically denied nor the imposition of the penalties in the Disciplinary Enquiries conducted twice against the applicant by the respondent. However, it is stated that those direct recruit 1969 Sub-Inspector, of the batch of the applicant, who joined later than the applicant had almost the similar adverse reports in their service record and they have been confirmed w.e.f. 22.5.74. So as per the direction in the judgement of Narender Kumar and Krishan Kumar-OA 302/86 and OA 392/86 respectively decided by the Principal Bench of the Central Administrative Tribunal by the judgement dated 7.1.87, the applicant too deserves to be confirmed

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from 22.5.74. It is further stated that the similar directions were issued in the subsequent decisions in the bunch of seven cases of the direct recruit Sub-Inspector of 1969 batch of Mohan Lal and others decided on 17.11.89, and ⁱⁿ Devender Kumar Sharma Vs. Delhi Administration-OA 96/86, so the applicant irrespective of the adverse reports should have been confirmed w.e.f. 22.5.74. Moreover, it is also stated that the applicant has been confirmed retro-spectively w.e.f. 3.7.75 in 1983. In view of this, the applicant reiterated the stand taken in OA that the seniority list of 1984 be amended to show his confirmation w.e.f. 22.5.74 and seniority be counted from that date.

5. We heard the learned counsel of the parties at length and perused the record. The seniority list prepared on 5.12.84 was also called in question in the earlier cases filed by the direct recruit Sub-Inspector of 1969 batch namely S/Shri Narender Kumar, Krishan Kumar and several others. The relevant judgements in those cases have been filed by the applicant. The OA of Narender Kumar and OA of Krishan Kumar were disposed of by a common judgement on 7.1.87 with the following direction :-

"The applicants will be deemed to have been confirmed w.e.f. 22.5.74 as Sub-Inspectors. The seniority list of Sub-Inspectors of Police shall be re-arranged in the light of the direction and their further promotion shall be considered on the basis of the seniority list so arranged."

In the bunch of cases of the similarly placed Sub-Inspector of 1969 batch in the common judgement dated 17.11.89 by the Principal Bench, the

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following direction was issued.

"Subsequent to the aforesaid consideration, the impugned seniority list of the Sub-Inspectors dated 5th December, 1984 shall be re-arranged and further promotion of the above mentioned applicants shall be considered on the basis of the seniority list so revised." The applicant was passed over for confirmation even in 1974, so his claim in any case cannot be said to be justifiable seeing to the adverse reports in the service record since 1971 onwards. However, the respondent cleared him for confirmation w.e.f. 3.7.75 while considering his case in 1983. Further on the strength of the above quoted judgement of the Principal Bench, the claim of the applicant for confirmation, like his equals in earning adverse reports, has to be accepted and the applicant shall stand confirmed in his appointment w.e.f. 22.5.74.

6. The claim of the applicant for promotion to the grade of Inspector was considered by the D.P.C. and as Departmental Enquiry was pending, the sealed cover method was adopted. After the seal cover was opened, the applicant was not found fit for promotion. The applicant was duly communicated by the order dated 24.7.87 (Annexure A-4). Regarding addition of name to promotion list 'F' (Executive : "The sealed cover in respect of Sub-Inspector Hukam Singh No.D/844 has been opened. The Sub-Inspector has been declared 'unfit' by the D.P.C." The service record of the applicant is material for assessing his abilities and qualities for promotional post. The applicant has mostly earned the adverse reports and also suffered twice departmental punishments in the Departmental Enquiries and those punishments were

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upheld in appeal. Merely by having a berth in seniority list will not by itself earn the promotion. The Supreme Court in B.S.Minhas Vs. Indian Statistical Institute (1983)4 SCC, p-582 in para 27 observed, "It is not for the court to determine who is the superior of two candidates. It is for the authorities to select among the available candidates." Again in Mir Gulam Hussain Vs. Union of India (1973) 4 S.C.C., p-133, it has been observed, "In cases of selection for promotional posts, if a senior official is passed over, he generally complaining that his non-selection is malafide as there were no adverse remarks in his C.R. Such contention does not deserve to be accepted, for absence of A.C.R. ^(adverse) merely means that the person was discharging the function of the present post satisfactorily. It does not lead to a necessary inference of his fitness or suitability for the promotion, for the qualities manning superior promotional post may be higher."

The applicant, therefore, has only a right to be considered for promotion in his turn. It is not denied that he was not so considered by D.P.C. What the applicant prays for is that his stamping as 'unfit' by the D.P.C. be quashed. This is beyond the scope of the Tribunal unless the malafide is specifically alleged and established against the constitution of D.P.C. or its members. In any case, the service record, as stated in the counter reply by the respondent, the factual correctness, has not been doubted in the rejoinder filed by the applicant, goes to show that the applicant's performance on the present post was not satisfactory what to say of rewarding. The applicant, therefore, has no case ^{for} striking down the impugned order dated 24.7.87.

7. In view of the above discussion, the application is disposed of as follows :-

The applicant shall be confirmed w.e.f. 22.5.74 and the seniority list dated 7.12.84 shall be amended and arranged accordingly placing the applicant at the proper place. The relief for quashing the order dt. 24.7.87 for promotion as Inspector is disallowed and the applicant in the above circumstances shall not be entitled to any consequential reliefs. The parties are left to bear their own costs.

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(J.P. SHARMA)
MEMBER (J)

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(P.C. JAIN)
MEMBER (A)