

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH.

O.A. Nos.1175 of 1989 and 1218 of 1988

New Delhi this the 8th day of December, 1993

Shri B.S. Hegde, Member (J)

Shri P.T. Thiruvengadam, Member (A)

Shri Sulekh Chand Alias Salek Chand
R/o C/o Police Station Roshanara,
North District,
Delhi.

...Applicant

By Advocate Shri B.R. Saini

Versus

1. Commissioner of Police,
Police Headquarters,
Indraprastha Estate,
New Delhi-110002.
2. Deputy Commissioner of Police
(Headquarters-I)
Police Headquarters,
Indraprastha Estate,
New Delhi-110002.
3. Delhi Administration through
the Home Secretary,
Delhi Administration,
Delhi.
4. Union of India through
the Lt. Governor/Administrator,
Union Territory of Delhi,
Raj Niwas,
Delhi.

...Respondents.

By Advocate Shri Ashok Kashyap in OA 1218/1988

By Advocate Shri M.K. Giri in OA 1175/1989

O R D E R

Shri P.T. Thiruvengadam, Member

The applicant was working as Head Constable of Delhi Police and he was promoted to the post of Assistant Sub-Inspector with effect from 4.1.1979. His name appears at S.No.43 in the Promotion List 'D'(Executive) issued by Deputy Commissioner of Police, Security, New Delhi in extract Order No.408/CB dated 6.1.1979. This order contains the names of Head Constables (Executive) who had passed the Intermediate School Course and have been admitted to Promotion List 'D'(Executive) with effect from 4.1.1979. The applicant states that he was implicated in a criminal case (FIR No.23/83 under Section 5(2) POC Act and 161 IPC), registered by P.S. Anti-

Corruption Branch. The applicant was acquitted in the Court of Special Judge, Delhi, in the related C.C. No.7/84 vide judgment dated 3.10.1987. The operative portion of the acquittal order reads as under:-

" On a accumulative consideration of the evidence on record, and the arguments advanced at length by Lt. A. PP and Lt. Defence Counsel, I have come to the conclusion that prosecution has failed to prove the charges beyond reasonable doubt. Accused is, therefore, given benefit of doubt and is hereby acquitted."

No appeal against the judgment was filed by the Department. The applicant had been placed under suspension on the registration of the criminal case. For the period prior to suspension relating to the year 1983-84, namely, from 1.4.1983 to 03.08.1983, the applicant was given adverse remarks as under:-

" In the Annual Confidential Report of ASI Sulekh Chand No.2562/N for the period from 1.4.1983 to 3.8.1983, it is mentioned that his honesty...arrested under POC Act. There is no complaint against his moral character. His moral courage and readiness to expose the malpractices of subordinates and reputation for fair dealing with the public and accessibility to the public is nil. He is impartial and loyal. His attitude towards subordinates and relations with fellow officers are good. His general power of control and organising ability, personality and initiative, power of command, interest in modern methods of investigation, and in modern police methods generally and preventives and detective ability are satisfactory. He has enough experience of criminal law and procedure. He knows Hindi. His reliability is not tested. General Remarks of the Reporting Officer...The ASI was arrested vide case FIR No.23 dated 1.8.1983 u/s 5(2) P.O.C. Act and 161 IPC, P.S. Anti-Corruption Branch, Delhi. Categorised as 'C' Remarks of the Reviewing Authority...I have nothing further to add to what has been stated by the Reporting Officer, with which I am in general agreement."

2. If, ASI Sulekh Chand No.2562/N desires to submit his representation regarding the adverse remarks, he can do so within 30 days of the receipt of this letter."

2. It is the applicant's case that the above adverse remarks were given to him only on the ground that a criminal case was registered against him. The applicant filed a representation against the adverse remarks but the consideration of the representation was kept pending till the decision of the court case. After the acquittal

in the criminal case, the representation was finally considered and rejected.

3. After the acquittal, the applicant made a separate representation for confirmation and was advised on 9.6.1988 that he had been confirmed as ASI with effect from 01.10.1993. In the meantime his juniors had been sent for Upper Course Training and were placed in the Promotion List 'E' and were also promoted as Sub-Inspectors of Police, ignoring the applicant.

4. In the above background, these O.As. have been filed praying for the following reliefs:-

(i) In OA 1175 of 1989 the relief claimed is for a direction to the respondents to bring the applicant on Promotion List 'E-II(Executive)' with effect from 26.6.1988 in terms of Rule 16(1) of the Delhi Police (Promotion & Confirmation) Rules, 1980 and to promote him to the post of Sub-Inspector of Police as had been done in the case of other Assistant Sub-Inspectors and for giving him proper seniority and for other benefits like arrears of pay and allowances.

(ii) In OA 1218 of 1988 the relief claimed is for a direction to confirm the applicant as ASI with effect from 4.1.1980, i.e., one year after the period of probation and not from 1.10.1983. Further relief has also been sought for expunging the adverse remarks for the period 1.4.1983 to 3.8.1983 and also for promoting him to the post of Sub-Inspector with all consequential benefits from the date when his next junior was promoted.

5. The facts of the case in the two O.As. are same and the reliefs claimed are interlinked and hence it would be convenient to dispose of the two O.As. by a common order.

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6. During the earlier stages of hearing, a prayer was made for direction to the respondents to nominate the applicant for the Upper Training Course, a course which has to be passed by Assistant Sub-Inspectors for becoming eligible for promotion to the post of Sub-Inspectors. An interim order was passed on 16.8.1988 by this Tribunal directing that the applicant should be sent provisionally for the Upper Training Course which had just commenced then. The interim order already stated that the attending of the training by the applicant would be without prejudice to the outcome of the O.A. and would not confer any benefit which would not be warranted by such an outcome. During the later hearing, a copy of the order issued by the Deputy Commissioner of Police No.44515/CB-II-Admission of Names of List 'E'-II (Executive) dated 20.10.1993 was produced. As per this order, the applicant's name was included in the list of officers holding substantive rank of ASIs(Ex.) who had passed the Upper School Course and who have been admitted to Promotion List 'E'-II(Ex.) with effect from 16.10.93 in terms of Rule 16(1) of the Delhi Police (Promotion & Confirmation) Rules, 1980.

7. In the reply-affidavit respondents have stated that the applicant was promoted to the rank of officiating ASI with effect from 4.1.1979 and a permanent post in the rank of ASI became available with effect from 1.10.82. As the applicant was involved in a case of corruption vide FIR No.23/83 u/s 5(2) POC Act and 161 IPC, P.S. A.C. Branch and was also placed under suspension, his case for confirmation in the rank of ASI was deferred till the finalisation of the said corruption case. His annual confidential reports for the period from 7.6.80 to 31.3.81 and 1.4.1983 to 3.8.1983 have also been adversely recorded in his record of service. His name also exists on the secret list of officers of doubtful integrity since 1983. The applicant submitted an

application intimating that vide judgment dated 3.10.1987 passed by Shri O.P. Dwivedi, S.J. Delhi, he has been acquitted of the corruption charges by giving him benefit of doubt as the prosecution failed to prove the charge beyond reasonable doubt and requested for his confirmation as ASI. The case for confirmation w.e.f 1.10.1992, the date of availability of a permanent post of the applicant in the rank of ASI, was again examined in Police Headquarters. But due to adverse Annual Confidential Report for the period 7.6.1980 to 31.3.1981, the period from 1.10.1982 to 30.09.1983 was treated as probation period (one year in case of adverse ACR) and as such the applicant was made confirmed in his appointment as ASI with effect from 1.10.1983, the date of expiry of one year's probation period vide order No.13227-36/CB-VII dated 5.5.1988. The applicant also made representations against the adverse Annual Confidential Reports on the basis of his acquittal in the corruption case which were considered and rejected on the grounds that his acquittal in the corruption case was not Hon'ble and benefit of doubt was given to him.

As regards promotion from the post of ASI to SI, reference was invited to Rule 16(i) of the Delhi Police(Promotion and Confirmation) Rules, 1980. The relevant extract is as under:-

"Rule 16(i) List 'E'-(i) List 'E' (Executive) Confirmed Assistant Sub-Inspectors who have put in a minimum of 6 years service to this rank shall be eligible for List E(1). The selection shall be made on the basis of the recommendation of the Departmental Promotion Committee on the basis of evaluation system based on (i) service record (ii) seniority (iii) annual confidential reports (iv) professional tests comprising of (a) Physical training and Parade (b) Delhi Police Act, Rules/Regulations and Manual (c) police practical work, (d) Law (e) General Knowledge (f) Professional courses and viva-voce. The list shall be drawn up from amongst qualified candidates in order of their seniority keeping in view the likely vacancies in the rank of Sub-Inspector (executive) in the following one year. The selected Asstt. Sub-Inspectors shall be sent for training in the Upper School Course at PTS and on successfully completing the same their names shall be brought on list 'E' (Executive-II) in order of seniority in list E-1 for promotion to the rank of Sub-Inspector as and when vacancies occur."

9. As per the above provisions, ASIs have to be evaluated by a DPC for admission to list E-1 and the eligibility conditions prescribe confirmation as Assistant Sub-Inspector and the minimum of 6 years service in this rank. Thus, applicant and others who were promoted on 4.1.1979 were eligible for consideration for inclusion in list E-1 by January, 1985 provided they had been confirmed in the meantime. The applicant had been confirmed with effect from 01.10.1983 even though such confirmation letter was issued only in 1988. Yet his case was considered in the various DPC proceedings for admission to list E-1 with effect from 16.12.1985, i.e., 5.1.1987, 16.6.1987, 17.12.1987 and 7.4.1988. The applicant was found unfit for inclusion in the E-1 list on all these occasions due to unsatisfactory record of services. The learned counsel for the applicant argued that the adverse remarks for the period 1.4.1983 to 3.8.1983 had adversely affected the applicant at the time of consideration by the various DPCs. We called for the records of the DPCs and CR Roll of the applicant for the relevant periods. We have gone through the records including the CRs for the period from 1979-80 onwards keeping in mind the date of promotion as ASI with effect from 4.1.1979. We have also noted that the adverse remarks for the period 1.4.1983 to 3.8.1983 ~~merely~~ ^{merely} mentioned the fact that the applicant had been arrested under the relevant FIR.

10. Having seen all the CRs in totality, we are of the view that the Departmental Promotion Committee was not influenced by the remarks conveyed to the applicant relating to the Confidential Report for the period

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1.4.1983 to 3.8.1983. Even in the later DPCs held in 1989, 1990 etc. the applicant was not included in the E-1 list due to unsatisfactory record of service. For the first time he was found fit for inclusion in the E-1 list with effect from 25.09.1992. In the circumstances, the delay in confirmation with effect from 01.10.1993 instead of 1.10.1982 which would have been the earliest date for confirmation of the applicant had he satisfied all the requirements, has been of no consequence. We are thus satisfied that the case of the applicant for promotion to the post of Sub-Inspector of Police was duly considered along with his juniors but his name could not be included in the E-1 list due to unsatisfactory record of service and the applicant had to wait till 25.9.1992 for inclusion in the E-1 list, by which time only his overall records were acceptable. Your learned Counsel for the applicant mainly relied on the acquittal of the applicant in the court of Special Judge, Delhi in the judgment dated 03.10.1987. The representation against the adverse remarks submitted by the applicant was finally rejected by the department. From the nature of the adverse remarks, we note that the adverse entries, if any, are not directly related to the said court case. Accepting for the mere mention that the applicant had been arrested, no other remark has flown out of the criminal case. In view of this, we do not find it necessary to interfere with the disposal of the representation against the adverse remark.

12. For the reasons as above, both the O.As 1175/89 and 1218/88 are dismissed. No costs.

(P.T. Thiruvengadam)
Member(A)

(B.S. Hegde)
Member(J)

अमाणित सत्यप्रतिलिपि
CERTIFIED TRUE COPY
दिनांक
Date *28/2/89*

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