IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(12)

O.A. No. 743/88 and
O.A. No.1041/86 .. Date of decision: 7.5.1992

O.A. No.743/88

Shri R.C. Jain .. Applicant

Shri B.S. Charya .. Counsel for the Applicant

Versus

Commn.of Police .. Respondents.

Shri O.N. Trishal and
Shri B.R. Prashar .. Counsels for the Respondents.

O.A. No.1041/86

Shri Sumer Singh .. Applicant

Shri G.D. Gupta .. Counsel for the Applicant.

Versus

Chief Secy., Delhi Admn. .. Respondents

Shri S.M. Rattanpaul .. Counsel for the Respondents.

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HON'BLE SH.JUSTICE RAM PAL SINGH, VICE CHAIRMAN(J)
HON'BLE SH. I.P. GUPTA, MEMBER(A).

JUDGEMENT(Oral)

(Delivered by Hon'ble Sh. I.P. Gupta, Member(A)

The above two OAs raise a common point and therefore, the two OAs are being dealt with by a common order.

2. In OA No.743/88, the applicant was appointed as ASI(SHR) with effect from 29.1.76 after having undergone the prescribed test and other conditions of eligibility for the post of ASI under the Punjab Police Rules. The applicant was promoted to officiate as SI(SHR) with effect from 30.1.81 on purely temporarily and ad-hoc basis. This order was dated 6.2.81 (Annexure-P.II). The order also said that the applicant was liable for reversion at any time and he would also have no claim for seniority etc. The applicant continued to work as SI(SHR) from 30.1.81. By order dated 9.9.85/4.10.85, the applicant was reverted to the substantive rank of ASI(SHR) from the afternoon of 3.9.85. By the second paragraph of the same order, the applicant was promoted to officiate as SI(SHR) with effect from the subsequent day i.e. from 4.9.85.

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3. In O.A. No. 1041/86, the applicants were appointed as SIs on 13.4.78, 23.8.78 and 25.9.79 respectively in Delhi Police.

4. The grievance of all the applicants are that they are not being considered for promotion as Inspector(Executive).

5. The contentions of the learned counsels for the applicants are that :-

(i) In the case of Shri Ramesh Chandra Jain (O.A.No.743/88), he was reverted from the post of SI to the post of ASI retrospectively by the order dated 9.9.85/4.10.85 and by the same order he was promoted also. Therefore, while the reversion took place in the afternoon of 3.9.85, the promotion took place on the forenoon of 4.9.85 and thus, there was a continuity of his functioning as SI from 30.1.81, irrespective of the fact whether such functioning was on ad-hoc basis or officiating basis.

(ii) The applicants were appointed under the Punjab Police Rules and the Annexure.P.6 of OA No.743/88 shows that the Rules provide that "an officer who meets the physical and educational qualifications and wishes to be considered for promotion, be put through a six months' training as SI(Executive) and A, B, C & D courses provided in the rules. After six years of service, he would be considered eligible for promotion to the rank of Inspector (emphasis ours) in accordance with the provisions of Rule 13(2) of the Punjab Police Rules. The learned counsels argued that on the strength of the interim orders issued in both the OAs, the applicants have been put through six month's training

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as SI(Executive) and A, B, C & D courses as provided in the rules. They are graduates and they filfil educational qualifications. They also meet the physical qualifications as laid down in the Punjab Police Rules and in fact they were recruited only after they fulfilled the requisite physical qualifications.

6. The important points raised by the learned counsels for the Respondents were :-

(i) It is true that the applicants were appointed under the Punjab Police Rules, but by the time, they became eligible for promotion from the post of SI to that of Inspector, the Delhi Police Rules came into force i.e. with effect from 31st December, 1980 and therefore, their promotion to the post of Inspector(Executive) would be governed by the Delhi Police Rules. Attention in this connection was drawn to the Delhi Police Promotion and Confirmation Rules, 1980(Rule 17) where it has been mentioned that the posts of Inspectors in the Delhi Police are of 3 types namely, Inspectors (Executive), Inspector (Technical) and Inspector (Ministerial). The contention of the Respondents' counsels was that according to these Rules, confirmed Inspectors who had put in 6 years service in the rank of SI in their respective cadre would be eligible. The SIs(SHR) were eligible only for the post of Inspector (Technical) and not for the post of Inspector(Executive). Therefore, no irregularity has been committed by not appointing the applicants against the post of Inspector (Executive).

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7. In the case of Shri Ramesh Chandra Jain (O.A.No. 743/88), it was further argued that he was not a confirmed SI and his appointment in 1981 was only ad-hoc.

8. We would now proceed to analyse the facts and arguments concerning the above two OAs. Firstly, we would like to mention that the abrupt reversion of the applicant in OA No. 743/88 from a retrospective date cannot be said to be in order. This reversion was followed by promotion again from the following date. Thus, in any case the fact remains that the applicant has continued to work as SI from 30.1.81 either in ad-hoc or in officiating capacity. The recruitment rules that prevailed at the time of appointment of the applicant provided for their promotion after 6 years of service as SI (SHR). Neither the requirement of regular service nor the requirement of confirmation was provided for in the said rules. There is no denial of the fact that the Executive has the authority to amend or modify any Recruitment Rules unilaterally but the point for consideration is whether any right or privilege the applicants had acquired before the amendment or modification or change of rules can be allowed to affect the applicants' interests adversely. Section 149 of the Delhi Police Act makes the following provisions amongst others :-

"149. Cesser of operation of certain enactments and savings -

.....

(2) The cesser of operation under sub-section(1) of an enactment specified in Schedule II shall not affect -

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(b) any right, privilege, obligation or liability already acquired, accrued or incurred thereunder before such commencement :-..."

9. In the course of arguments by the learned counsels for the applicant, it was brought out that if a post of Inspector(Executive) was not made open to the applicants, they would have no avenues of promotion from the grade of Sub-Inspector. This was not specifically controverted by the learned counsels of respondents. The counsel for the respondents said that there are rules for promotion from the posts of SI(SHR). However, nothing could be shown to indicate that any Sub-Inspector(SHR) has been promoted as Inspector for the last several years. Some of the applicants have been working as SIs since April 1978 or so and they too have still not got any avenue of promotion.

10. In OA No. 2209/89 decided on 12.2.1992(Shri Radhey Shyam versus Commissioner of Police) where almost a similar issue was raised, the Bench had observed that the rules under which the applicants were appointed could not be varied to their disadvantage to the detriment of their interests, keeping in view the provisions of Section 149 of the Delhi Police Act. While it is true that no privilege or obligation had accrued to the applicants in matter of promotion as Inspector prior to coming into force of Delhi Police Rules in 1980 and while it is also true that in terms of well-known case of Roshal Lal Tandon V/s U.O.I. AIR 1967 SC II 1889 that Recruitment Rules can be changed unilaterally and no vested contractual right for Govt. servant exists and still further while it true than chances of promotion being not service conditions, the employees cannot challenge the change in the policy of recruitment on the ground that chances of promotion are reduced (D.Sivakumar V/s Director of Postal Services - ATR Vol.13 Part 3 CAT Madras 413), yet keeping in

view the orders of the Tribunal in OA No. 2209 decided on 12.2.92(Supra), the specific provision for promotion to the post of Inspector in the old PPR under which applicants were appointed and the lack of any avenues of promotion for SI(SHR), we would direct the respondents to consider the cases of promotion of the applicants as Inspector at an early date, preferably within 6 months from the date of receipt of this order, as they have rendered much more than 6 years' service. Whether such promotion is to the post of Inspector (Executive) or to any other post of Inspector in the same pay scale is for the respondents to consider, since even the recruitment rules under PPR made them eligible only to the post of 'Inspector' and not specifically for the post of 'Inspector(Executive)'.

With the above direction and order, the case is disposed of.

(I.P. Gupta)
Member (A)

(Ram Pal Singh)
Vice Chairman(J)