

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA.No.180/87

Date of Decision: 04.12.92

Shri Jwala Parshad

Applicant

· Versus

Commissioner of Police & Ors.

Respondents

Shri Shankar Raju

Counsel for the applicant

Shri M.C. Garg,

Counsel for the respondents

CORAM:

The Hon'ble Mr. P.K. KARTHA, Vice Chairman(J)

The Hon'ble Mr. B.N. DHOUNDIYAI, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter, or not? *yes*

JUDGEMENT

(of the Bench delivered by
Hon'ble Member Shri B.N. DHOUNDIYAL)

This OA has been filed by Constable Jwala Parshad under Section 19 of the Administrative Tribunal's Act, 1985, against the impugned order dated 11.12.1986, whereby, his name has been removed from the promotion list 'A'.

2. According to the applicant, he joined the Delhi Police on 6th of July, 1978 as Constable. In 1985, an examination was conducted for bringing Constables on promotion list 'A'. Those included in the list are sent for Lower School Course and after successful completion of the training, become eligible for promotion as Head Constables. He was declared successful and his name was brought on the promotion list 'A' vide order dated 20.12.1985. The DPC, which declared him successful consisted

of S'Shri P.V. Sinari, DCP/Ist Bn.DAP, Shri N.S. Rana, DCP/Vigilance and Murari Lal, ACP/FERO.

3. On 26.9.86, the Deputy Commissioner of Police, HQ(I) issued a Show Cause Notice to him stating that on receipt of a complaint, a Departmental Promotion Committee(DPC) consisting of DCP Vigilance and ACP(FERO), looked into the matter and found that the name of the applicant was brought to the list 'A' due to clerical error. As the applicant had failed to obtain the minimum qualifying marks, the DPC recommended for removal of his name from promotion list 'A'. He was called upon to show cause as to why this should not be done? On 13.10.1986, the applicant requested for a copy of the complaint and inspection of relevant records to satisfy himself about the genuineness of the complaint. On 6.11.86, the DCP informed him that the minimum qualifying marks prescribed were 135. The applicant appeared in person before the DCP on 7.11.86 and was given 10 days more time to submit his reply. His request for inspection of the records was not accepted for administrative reasons. In his representation dated 17.11.86 (ref. Annex 'F') he again requested for details regarding the alleged error and inspection of records. However, by the impugned order dated 11.12.86, the Show Cause Notice dated 26.9.86 was confirmed and his name was removed from the promotion list 'A'. He submitted a representation on 22.12.86, to which he did not receive any reply. He has prayed for setting aside and quashing of the impugned order and restoration of his name in promotion list 'A'.

4. On 27.5.87, this tribunal issued directions for allowing the applicant to join the training course on the condition that if he is found ineligible, he will refund the expenses incurred. On 3.6.88, an M.P. (No.946/88) was moved by the applicant, which

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was partially allowed and the respondents were directed to permit him to take the post training-test.

5. The respondents admit the fact that vide order dated 20.12.85, the name of the applicant was brought on promotion list 'A', on the recommendations of a DPC constituted under Rule-8 of the Delhi Police (Promotion and Confirmation) Rules, 1980. The recommendations were based on a written examination and other prescribed criteria like evaluation of CRs, training received etc. On receipt of a complaint, another DPC constituted to check the documents, found that the applicant had actually secured 112 mark against the prescribed minimum mark of 135 and there was a clerical error in totalling his marks. After observing the necessary formalities like issue of a Show Cause notice and giving personal hearing and considering the representations of the applicant, an order for removal of his name from the promotion list 'A' was issued on 11.12.86 with the prior approval of Additional C.P.(A). The order was confirmed on 17.12.86.

6. We have gone through the records of the case and heard the learned counsel for both parties. On 21.5.87, the respondents produced mark sheets showing marks secured by the applicant in different papers and he was allowed to inspect those documents. No rejoinder has been filed by the applicant and he does not challenge the authenticity of the mark sheet. His main contentions are as follows:

(a) under the Standing Orders, only Additional Commissioner could have carried out the review, that too, in case of certain conditions specified in para 4(i) of Standing Order 91 of 1985, which does not include clerical errors.

The order reads as follows:



(i) "Names on promotion list 'A' shall formally be kept for a period of one year. However, the name may be removed from the list without formal departmental proceedings by the Additional Commissioner of Police (Admn.), if a Constable fails to maintain exemplary standard of work and conduct. A Constable shall be deemed to have failed to maintain such a standard, if he is awarded a major punishment, is involved in criminal proceedings or is otherwise found unsuitable on account of acts of moral turpitude. However, before removing the name from promotion list 'A', a show cause notice shall be served on the constable concerned, affording him a proper opportunity to defend his case."

(b) The benefit once bestowed on an employee even by mistake cannot be withdrawn and;

(c) denial of all documents prejudicing his case.

7. In MP. 2840/90, the applicant mentioned that he passed the lower course training securing 93rd place in a batch of 325 and prayed for directions to respondents to promote him as Head Constable. He has also mentioned that his juniors whose names were included in the list 'B' have since been promoted. The respondents have replied that he cannot be given this benefit, till the OA is finally decided.

8. In the case of Shri Mukhtiar Singh Vs. Lt. Governor, Delhi and Others, (OA. 6/89) decided on 30.4.90, in which, one

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of us (Shri P.K. Kartha) was a party, it was held that, as the applicant had already completed the training course and passed on merit, his suitability for promotion may be considered by a DPC again.

9. We reiterate the same view in this case also. The application is therefore disposed of, with the direction that the review DPC may be constituted to assess his suitability. In case the DPC finds him suitable, he should be promoted as Head Constable from the date of promotion of his immediate juniors. The above orders shall be complied with, ~~preferably~~ ^{by} and expeditiously, ~~and preferably~~ within a period of three months, from the date of receipt of this order.

10. The parties will bear their own costs.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL) 4/12/92

MEMBER(A)

kam021292

P.K. Kartha
(P.K. KARTHA) 4/12/92

VICE CHAIRMAN(J)