

PRINCIPAL BENCH, NEW DELHI.

O.A.No. 1604/91

Date of decision: 15-09-1993

Shri Om Prakash

Applicant

versus

Delhi Administration & Ors.

Respondents

Coram:-

The Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman

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

For the applicant : Sh. Shyam Babu, counsel

For the respondents : Ms. Anju Doshi, proxy counsel

for Ms. Geeta Luthra, counsel

JUDGEMENT

(delivered by Hon'ble Sh. B.N. Dhoundiyal, Member(A))

The applicant came before this Tribunal challenging the orders dated 10.5.1991 and 21.6.1991 (Annexures 'C' & 'D') by which he was reinstated without prejudice to departmental action and a departmental enquiry was initiated against him, even though in a related criminal case he had been acquitted. He had also sought relief that his suspension period should be treated as spent on duty and the sealed cover containing the recommendations of the DPC be opened. Since then, vide order dated 18.9.1992, the enquiry proceedings have been dropped and his suspension period has been treated as period spent on duty for all intents and purposes. Taking into account these developments, the learned counsel for the respondents has drawn our attention to the

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M.P.No.1215/92 and confined himself to the argument that the D.P.C. which met on 7.12.1988 did not find the applicant fit for promotion because he was facing a criminal trial on a serious charge and was also under suspension. He also pleaded that when the second departmental promotion committee met in 1991, the applicant was still under suspension and was not reinstated. There was no adverse material against the applicant which could justify the applicant unfit for promotion. The relief claimed is thus confined to extraneous considerations by which the D.P.C. which met in 1988 and 1991 did not find the applicant fit for promotion and to a request for convening Review DPCs.

At the request of the learned counsel for the applicant, the proceedings of the D.P.C. held on 5/7.12.1988 and 9.1.1991 were called for to ascertain the procedure followed. It is clearly mentioned in the proceedings of the D.P.C. that in accordance with Rule 5 of the Delhi Police (Promotion & Confirmation) Rules, 1980 promotion from one rank to another shall be made by selection tempered by seniority. Thus, the selection method was followed by the D.P.C. in making the assessment of suitability of the candidates. The zone of consideration was fixed in accordance with the relevant rules prescribed for the method of selection. The proceedings also clearly mention the provisions of Rule 5(3) of the Delhi Police (Promotion & Confirmation) Rules, 1980 that in the case of officers who are under suspension or facing departmental enquiry in the criminal proceedings, their suitability for promotion should be assessed at the relevant time by the D.P.C. and finding

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reached whether if the officer had not been suspended or his conduct have not come under investigation, he would have been recommended for selection i.e. at the time of preparation of the promotion list by selection, the D.P.C. should also take a view as to what is the officer's position in the list would have but for suspension etc. Thus, the D.P.C. was quite clear that in such cases, the fact that an officer is under suspension or departmental enquiry has been initiated against him should be ignored while evaluating his suitability for promotion. The statement submitted to the D.P.C. shows that in Col.5 relating to the punishment in the rank of SC for the previous years. clearly shows that in case of the applicant two years service was forfeited temporarily on 22.10.1984 for handing over his licence revolver to one Shri Brij Lal without legal authority. It also mentions that his 3 years approved service was forfeited on 12.7.1988. The fact that he was under suspension in a criminal case was mentioned separately in Col. No.6. The D.P.C. examined the available ACRs of all the candidates and since it was a selection, covered all the officers within the zone of consideration. They did not recommend promotion of the applicant and as he was under suspension adopted the sealed cover procedure. Same provisions were before the D.P.C. which met on 9.1.1991 which took into account that the applicant had forfeited 3 years service permanently. Again as this was a selection, the DPCs were within their rights to evaluate the ACRs on a comparative basis. They did not recommend promotion of the applicant.

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We do not find any infirmity in the procedure followed by the D.P.C. which met in 1988 and 1991 and we hold that it is not within the jurisdiction of this Tribunal to re-evaluate the ACRs. No relief as such is permissible in this case and the O.A. is hereby dismissed.

No costs.

B.N. Dhaoniyal
(B.N. Dhaoniyal)

Member (A)

S.K. Dhaon
(S.K. Dhaon)

Vice-Chairman

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