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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 1739/91

New Delhi this the 28th day of July, 1995.

Hon'ble Shri N.V. Krishnan, Vice Chairman(A).

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Roshan Lal (959 C),
S/o Shri Prahlad Singh,
R/o A-2, Police Colony,
Paharganj,
New Delhi.

...Applicant.

By Advocate Shri Shyam Babu.

Versus

1. Delhi Administration, Delhi
through its Chief Secretary,
5, Sham Nath Marg,
Delhi.
2. Dy. Commissioner of Police,
(Headquarter I),
New Delhi.
3. Addl. Commissioner of Police,
(Northern Range), Delhi,
Police Headquarter, I.P. Estate,
New Delhi.

By Advocate Shri B.S. Oberoi, proxy for Shri Anoop Bagai.

ORDER

Hon'ble Shri N.V. Krishnan

This O.A. raises an interesting question about the scope of Rule 7(2) of the Delhi Police (Promotion and Confirmation) Rules, 1980 - Rules for short.

2. The facts are simple. The applicant, a Constable, was found fit for the inclusion of his name in the Promotion List 'A' under Rule-12 on 13.11.1987, which is the first step for promotion as ^{u Head} Constable, so that he could be sent for training to the lower School course. The training which is stated to be of six months' duration was completed

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by him successfully and he was declared passed by the order dated 12.10.1989 which states that the final examination was held in August, 1989. In the meanwhile, on 12.12.1987, within a month from the date of his inclusion in the promotion 'A' list, the applicant is alleged to have been involved in an act of misconduct. Accordingly, disciplinary proceedings were ordered on 16.2.1988. Those proceedings ended in a penalty of withholding one future increment temporarily for one year, in terms of the order dated 9.5.1988 of the disciplinary authority. An adverse remark was also entered in his Character Roll for the period from 1.4.1987 to ^{11.} ~~31~~ 12.1987 in which a remark based on the aforesaid incident was also mentioned, besides certain other remarks. His report was also categorised as 'C'. This was communicated on 22.9.1989 (Annexure 'E').

3. While the order of penalty imposed by the Annexure 'B' order has become final, the adverse remarks communicated were expunged by the order (Annexure-I) on 17.1.1990. The main ground ^{for expunging} was that the misconduct attributed in the ACR related to a period falling ^{out} outside the period for which the report was recorded. Hence, the adverse remarks were expunged and instead, it was recorded that his work and conduct was satisfactory and his grading was categorised as 'B'. In the meanwhile, on 6.12.1989, a notice was issued to the applicant to show cause why his name should not be removed from the promotion list, under Rule 7(2), on the ground that while his name existed in the promotion list, he has, by his specific act, shown that he was unfit for promotion to higher rank. ^(An. G.) The ground for the notice was the penalty imposed in the DE as mentioned above



and the categorisation of his CR as 'C' for the period from 1.4.1987 to 31.12.1987^{u (sic)} The applicant gave an explanation which was found unsatisfactory and hence, the impugned Annexure-J order was passed on 21.5.1990 removing his name from the promotion list 'A'.

4. Thereafter, his representation in this regard has also been rejected by the Addl. Commissioner on 2.2.1991 Annexure 'L'. Hence, this O.A.

5. The learned counsel for the applicant contends that the penalty imposed on the applicant on 9.5.1988 subsisted for only one year and has been suffered fully by him. Therefore, no action can be taken on the basis of that order. Likewise, no reliance can be placed on the adverse remarks in the ACR which have been expunged. Hence, the two grounds mentioned in the Annexure 'G' show cause notice have lost their importance and, therefore his name should not be deleted under Rule 7(2). He further contended that the list 'A' is not a promotion list because the inclusion of the name in that list only enables a person to undergo a training. The promotion is actually effected after the name is brought in the list 'B'.

6. These claims are denied by the respondents. It is contended that the action taken is fully justified in terms of Rule 7(2).

7. Rule 7 of the Rules reads as under:

"Promotion of enrolled Police personnel.- List A,B,C,D-1, D-II, E-I, E-II and F shall be maintained for selection, for regulating promotional courses, where applicable and promotion to various subordinate ranks. Each list shall be the nominal roll of police personnel considered suitable for further advancement in the concerned ranks, as provided in this rule, and shall be maintained separately for (1) Executive (2) Technical and (3) Ministerial Cadres".

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(II) The conduct and efficiency of men on promotion list shall be, at all times, watched with special care. Any officer whose name exists on the promotion list, if found guilty of a misconduct of nature reflecting upon his character or fitness for responsibility or who shows either by specific acts or by his record as a whole that he is unfit for promotion to higher rank shall be reported to the Deputy Commissioner of Police, Hdqrs.(I), Delhi in respect of persons on lists 'A' to 'E' and to Addl. C.P. Administration, Delhi in respect of officers on list 'B'. However, final decision regarding removal of name(s) from a promotion list shall be taken by the Appointing Authority only after giving show cause notice to the individual".

8. The other relevant rule is Rule 5(iii). Prior to the amendment by the notification dated 4.9.1986, it provided that a member of a subordinate rank will not be eligible for admission for training in departmental courses if he is under suspension or facing departmental enquiry or criminal proceedings have been initiated. After amendment, it is provided that in respect of such a person, the DPC should consider the case as if the official was not either under suspension or facing a departmental enquiry or criminal proceedings but the findings should be kept in a sealed cover which should be opened after the departmental enquiry is over.

9. A careful perusal of the second para of Rule 7 shows that as long as the name of the official exists on a promotion list, his conduct should be free of any blemish. If he is found to be guilty of misconduct of a nature reflecting upon his character or fitness for responsibility or if he shows by specific acts, that he is unfit for promotion, his name can be removed after a show cause notice is issued to him. A plain reading of the rule shows that the name can be removed even

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from List 'A'. We do not find any merit in the contention of the learned counsel for the applicant that List 'A' is not a promotional list. It is so described in Rule 12. If removal of name from List 'A' was outside the purview of Rule 7, there was no need to provide for submitting a report in respect of an official included in List 'A', but who has rendered himself liable for action under Rule 7, to the Deputy Commissioner.

10. The applicant's name was included in List 'A' on 30.11.1987, i.e. before he committed the act of misconduct which was on 12.12.1987. Therefore, the question of taking action under Rule 5(iii) i.e. placing recommendation of the DPC in a sealed cover, did not arise. No doubt, as soon as the Annexure 'B' order of penalty was issued on 9.5.1988, the competent authority could have straightway initiated proceedings under Rule 7 also. That was done much later on 6.12.1989 by which date the applicant had successfully undergone training. We are of the view that even this circumstance will not militate against the action under Rule 7 because the applicant's name was still included in promotion List 'A'. By reason of the ^{penalty} imposed upon him, he has committed an act of misconduct and the competent authority has found, after giving a show cause notice, that it was necessary to remove his name from that list. In our view, this can be done as long as the name of an official stands included in the List ^u 'A'. We do not wish to examine whether after the inclusion in List 'B' the name can be deleted from List 'A', on the ground mentioned in Rule-7.

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11. In reply to a query^a, learned counsel for the respondents submitted that a consequence of this decision is that the applicant's case would have^{to} ~~been~~ considered again for inclusion in the List 'A' and if included, he has to pass the examination again.

12. We have considered this matter. Rule-7 only provides for the deletion of the names from the promotion list. It does not place an embargo on the further consideration of the name of an official for inclusion in the list again. In other words, such a name can be considered as soon as the next opportunity arises. It is not clear from the record whether after the impugned Annexure-J order was passed the applicant's name was considered. We are also of the view that as the applicant has successfully completed the training already, the mere deletion of his name should not make him liable to undergo the training again after his name is again included in the List.

13. In the circumstance, while we find no merit in the O.A. we are of the view that a direction should be issued that if any DPC meeting has been held after 21.5.1990, (i.e. the date when the Annexure-J order was passed^u), to consider the names of Constables for inclusion in the Annexure-A List, and the name of the applicant was not considered, the respondents shall constitute a review DPC which should consider the case of the applicant also. In case his name is so included, it would not be necessary for the applicant to undergo the training^u contemplated in Rule 12 for

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officials included in the List 'A'. He should be deemed to have passed the course of training. His further promotion will be considered in his turn on the basis of the inclusion of his name in that List 'A', along with those included in that list who also pass the examination. O.A. is disposed of accordingly.

(Smt. Lakshmi Swaminathan)
Member(J)

(N.V. Krishnan)
Vice Chairman(A)

'SRD'