

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 1755/91
T.A. No.

199

DATE OF DECISION 7-6-96

Shri Shish Ram

Petitioner

Shri Mukl Talwar

Advocate for the Petitioner(s)

Versus

Delhi Admn. Through Chief Secy., Respondent
and Commissioner of Police.

Shri Vijay Pandita

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. S.R. Adige, Member (A)

The Hon'ble Mrs Lakshmi Swaminathan, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? X
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal? *NO*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO.1755/91

New Delhi, this the 7th June Day of 1996

Hon'ble Shri S.R. Adige, Member (A)

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

Shri Shish Ram,
Ex Head Constable
No.2080/DAP
R/o H.No.A62/1 East Azad Nagar,
Shiv Mandir Gali,
Delhi.

.... Applicant

By Advocate: Shri Mukul Talwar

Vs.

1. Delhi Administration,
through its
Chief Secretary,
Old Secretariat,
Delhi.

2. Commissioner of Police,
Police Headquarters,
IP Estate,
New Delhi.

.... Respondents

By Advocate: Shri Vijay Pandita

O R D E R

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

The applicant, Ex-Head Constable, Delhi Police being aggrieved by the order dated 7.9.90 (Annexure I) passed by the Deputy Commissioner of Police compulsory retiring from service, has filed this application under section 19 of the Administrative Tribunals Act, 1985.

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2. The brief facts of the case are that the applicant was enlisted in Delhi Police as Constable in 1958 and promoted to the rank of Head Constable with effect from 16.10.66 and confirmed in that rank w.e.f. 31.7.72. In a disciplinary proceeding held against him for an incident occurring in 1971, the reviewing authority passed the order dated 11.1.74 dismissing him from service. The applicant filed a Civil Writ Petition No.1534/75 which was later transferred to the Tribunal as T-225/8 which was disposed of by the judgement dated 15.1.88. In compliance with the judgement of the Tribunal, the applicant was reinstated in service vide order dated 24.11.88 treating the intervening period from 17.1.74 to 13.6.88 as period spent on duty.

3. After the applicant was reinstated in service by order dated 8.9.89 his name was approved by the review DPC held on 23.8.89 for training in the Intermediate School Course. The applicant claims that this had been done after evaluating his record of service and his name had been approved by the DPC for training in the promotional course for admission of his name to Promotion List 'D' (Executive) with effect from 29.2.80. The petitioner was sent for training in the Intermediate School Course on 3.3.90 vide order dated 23.2.90. However, in the meanwhile he was served with the impugned order of compulsory retirement with effect from 7.9.90 before completing his course.

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4. Shri Mukul Talwar, learned counsel for the applicant has assailed the order of compulsory retirement mainly on two grounds, namely, (1) that this is a mala fide order. He submits that between 3.3.90 and 7.9.90 nothing adverse had come to the notice of the respondents. Since the review DPC had, after considering his record of service, considered him fit to be put on List 'D' for promotion to the rank of Assistant Sub Inspector (ASI) and had sent him for training in the Intermediate School Course, he could not be compulsorily retired on 7.9.90. He relies on the judgements of the Supreme Court in D. Ramaswamy V. State of Tamil Nadu (1982(1) SCC 510), Baikunth Nath Dass and another Vs. Chief District Medical Officer (JT 1992(2) SC 1) and Ramachandra Raju Vs. State of Orissa (JT 1994(5) SC 459). The learned counsel for the applicant submits that from the date of his dismissal in 1974 till he was reinstated in 1988, there would be no confidential reports that he would have earned for this period. He further submits that after the applicant has been promoted and sent for training in the Intermediate School Course for consideration of promotion as ASI on 3.3.90, whatever earlier adverse reports he might have earned, which obviously has to be prior to his date of reinstatement in service in 1988, cannot be taken into account while passing the impugned order of compulsory retirement in 1990. The learned counsel submits that after his selection

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being
for promotion to the higher rank and sent for training in the Intermediate School Course, the earlier adverse remarks, if any lose their sting. According to him the applicant had earned no adverse remarks in the confidential reports after his reinstatement in 1988-1989 and so there was absolutely no ground on which the respondents could have come to a decision to retire him in the public interest and such action is, therefore arbitrary, illegal and malafide.

5. The respondents have on the other hand disputed the above averments. They have submitted that in accordance with the Ministry of Home Affairs, Department of Personnel Affairs Office Memos dated 7.8.85 and 7.3.86, the cases of all the personnel who had completed either 55 years of age or 30 years of service are required to be reviewed by the Screening Committee for further retention in service. The name of the applicant existed on the Agreed List of persons of doubtful integrity. The Screening Committee and the Reviewing Committee after going through the entire record, therefore, came to the decision that the applicant should be prematurely retired under Rule 56(j) of the Fundamental Rules read with Rule 48 of the CCS(Pension) Rules, as he had already completed 30 years of service. Shri Vijay Pandita, learned counsel for the respondents has submitted the relevant files pertaining to the Screening Committee and the Reviewing Committee as well as the

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character roll of the applicant together with the "Agreed Register," in which there is an endorsement to show that the name of the applicant was continued in this list by Note dated 10.11.89 for one year. During this period when his name was on the Agreed List, the respondents had passed the impugned order of compulsory retirement dated 7.9.90 and hence Shri Vijay Pandita, learned counsel for respondents submits that there is no infirmity in the order.

6. We have perused the minutes of the Screening Committee dated 12.6.90 in which against the remarks column for the applicant, it is stated that his name is on the Agreed List i.e. he is of doubtful integrity. This fact is substantiated in the 'Agreed Register' which has been submitted by the respondents for our perusal in which his name has been ordered to be continued for one year vide Note dated 10.11.89. Shri Mukul Talwar, learned counsel for the applicant has strenuously argued that since the applicant's case had already been approved by the review DPC held on 23.8.89 and he had been sent for training in the Intermediate School Course for promotion to the higher rank of ASI, any previous bad record that he might have had loses the sting and there was, therefore, nothing on record to justify his compulsory retirement.

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The relevant portion of the order dated 8.9.89 sending the applicant for training in the Intermediate School Course reads as follows -

" Subject:- Ante-dating seniority.

H.C. Shish Ram No.2096/DAP and H.C. Preet Singh No.79/C, 39/C may be informed that their names have been approved by the Review DPC held on 23.8.89 w.e.f. ante-dates for training in Intermediate School Course. Their cases for further promotion at par with their counter parts will be decided as soon as they successfully complete the said training course alongwith the next batch of trainees."

relevant
The rule under which confirmed Head Constables are considered for promotion to the rank of ASI is Rule 15 of the Delhi Police (Promotion and Confirmation) Rules 1980, which provides as follows: -

"List 'D' - List 'D' shall be a list of confirmed Head Constables considered suitable for promotion to the rank of Assistant Sub-Inspector.

- 15(i) List-D(Executive) - Confirmed Head-Constables, who have put in minimum of 5 years service in the rank, shall be eligible. The selection shall be made on the recommendations of the Departmental Promotion Committee. The Head-Constables, so selected, shall be brought on list D-I, keeping in view the number of vacancies likely to occur in the rank of Assistant Sub-Inspector in the following one year, in order of their respective seniority in the rank of Head Constable. They shall be detailed for training in the Intermediate School Course. Those, who successfully qualify the Intermediate School Course, shall be brought on List D-II, as per their respective seniority on List D-I. Promotions shall be ordered from amongst the Head Constables on List D-II as and when vacancies occur."

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7. From the above rule it is seen that confirmed Head Constables (Executive) who have, minimum of 5 years service in the rank are eligible to be selected by the D.P.C. to be brought on List D-I, depending upon the number of vacancies, in order of their respective seniority in the rank as Head Constable. After their successful training in the Intermediate School Course they will be brought on List D-II in accordance with their respective seniority in List D-I and thereafter promoted when vacancies occur. Since the applicant was a confirmed Head Constable, he was eligible to be sent for training in the Intermediate School Course after he had put in 5 years of service as Head Constable on seniority basis. It is an admitted fact that he had not completed the Intermediate School Course when the impugned order of compulsory retirement was passed. Therefore, the question of his being put in List D-II does not arise in this case. It is only after List D-II is prepared of those Head Constables who have successfully qualified in the Intermediate School Course that promotions are to be ordered from amongst them when vacancies occur. This contingency has not arisen in this case and the applicant continued to be a Head Constable (Exe.) at the time when the impugned order was passed.

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8. In this connection, the Supreme Court in Baikuntha Nath Dass and another Vs. Chief District Medical Officer (supra) (see also Ramchandra Raju Vs. State of Orissa (JT 1994 (5) SC 459) has held that "if a Govt. servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting more so if the promotion is based upon merit (selection) and not upon seniority." Shri Mukul Talwar, learned counsel for the applicant had relied heavily on this judgement of the Supreme Court. From the facts narrated above it is clear that not only the applicant has not been promoted to the higher rank of ASI but was being sent for training in the Intermediate School Course on the recommendations of the DPC based purely on seniority and not on merit (selection) as was contended by the learned counsel. Once it is clear that the applicant has not been actually promoted to the rank of ASI, which can be done only after he has successfully completed the Intermediate School Course and brought on List D-II, the observations of the Supreme Court in the aforesaid case, sought to be relied upon by the applicant, are not applicable to the facts in this case.

9. We note from the records of the Screening Committee and the Review Committee held on 5.4.90^{12.6.90¹²} and 28.8.90/31.8.90 that they had considered his entire service records which include the fact that his name is on the 'Agreed List' which means that his name was in the list of persons with doubtful integrity for one year vide note dated 10.11.89.

¹² Therefore, keeping in view the circumstances

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of the case and his previous record, the Review Committee had recommended his case for premature retirement in August, 1990 and he was accordingly retired by order dated 7.9.90. Taking into account these facts and circumstances of the case, therefore, we do not find any infirmity in the impugned order on this ground.

10. The second main ground urged by Shri Mukul Talwar, learned counsel for the applicant is that the impugned order of compulsory retirement is not passed by the Competent authority. His point is that the impugned order has been passed only by the Deputy Commissioner of Police and not the Commissioner of Police, who is the competent authority. The applicant states that as he was appointed as Constable under the Punjab Police Act his appointing authority was the Inspector General of Police, who is equivalent in rank to the Commissioner of Police under section 150 read with Schedule III, after coming into force of the Delhi Police Act, 1978. This argument has been refuted by the respondents who state that the order has been passed in accordance with the law by the competent authority in public interest.

11. It is settled law that the impugned order of compulsory retirement is not a punishment order but is passed by the Government on forming the opinion that it is in the



public interest to retire a Govt. servant compulsory after seeing his entire service record. The Screening Committee and the Review Committee were justified in taking up the case of the applicant along with other persons under the DuP&T O.MS. dated 7.8.85 and 7.3.86, as he had completed 30 years of service, to see if he should be retained in service or compulsory retired in public interest. We have seen the original records of the Screening Committee and the Review Committee. The interal Screening Committee which was constituted to screen the cases of 39 Police Officers/men recommended three persons, including the applicant, for premature retirement. The Review Committee in its meeting held on 28.8.90 and 31.8.90 recommended 25 cases for retirement, including the case of the applicant (Head Constable), on which orders of the Commissioner of Police, as Head of the Department, were sought and obtained on 4.9.90. Therefore, we find that the order of compulsory retirement has the approval of the Commissioner of Police and the applicant's contention to the contrary has, therefore, to be rejected. In view of ^{the} facts, the applicant's contention that the impugned order has not been passed by the competent authority, namely, the Commissioner of Police is rejected. The fact that in the order of compulsory retirement dated 7.9.90 it is stated that the Deputy Commissioner of Police is the appropriate authority to pass the order does not in any way detract from its validity.

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12. We have also seen the other grounds taken in the application which were, however, not seriously pressed by the learned counsel for the applicant, but do not find merit in the same.

13. For the reasons given above, this application fails and is dismissed. No costs.

Lakshmi Swaminathan

(SMT. LAKSHMI SWAMINATHAN)
MEMBER(J)

S.R. Adige

(S.R. ADIGE)
MEMBER(A)

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