

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.No.603/91

New Delhi this the 31st Day of May, 1995.

Hon'ble Sh. B.K. Singh, Member(A)
Hon'ble Mrs. Lakshmi Swaminathan, Member(J)

Sh. Bhag Mal,
S/o Sh. Kishori Lal,
R/o Police Station Lodhi Colony,
New Delhi. Applicant

(None for the applicant)

versus

1. The Lt. Governor/Administrator,
through the Chief Secretary,
Delhi Administration, Delhi.
2. The Commissioner of Police,
Delhi, Police Headquarters,
M.S.O. Building, New Delhi.
3. The Dy. Commissioner of Police,
Headquarters(I) Police Headquarters,
M.S.O. Building, New Delhi. Respondents

(through Sh. O.N. Trisal, advocate)

ORDER

delivered by Hon'ble Sh. B.K. Singh, Member(A)

This O.A.No.603/91 has been filed
against the following orders:-

(i) Against the order of
non-promotion of the applicant
from the date his juniors were
so promoted.

(ii) U.O. letter No.695/Est.BR(PCR)
dated 26.8.1988 whereby the
representation of the applicant
was rejected by the respondent

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(iii) Letter No.F.21/23/89-Home(P)/Estt

dated 4.4.1990 whereby the representation presented to the respondent No.1 was also rejected.

The admitted facts of the case are that the applicant was appointed as Constable in Delhi Police in the year 1963 and was subsequently promoted as Head Constable. He was promoted as A.S.I. (Ex) on ad hoc basis on 16.7.84 vide Annexure 'A' enclosed with the O.A. This Order No.21851/CB stipulated that promotion was on purely temporary and ad hoc basis under Rule 19(1) of Delhi Police (Promotion and Confirmation) Rules, 1980. It further stipulated that he would have not claim for seniority etc. and he would be liable for reversion at any time without assigning any reason.

A D.P.C. was held for promotion of Head Constables to the rank of A.S.I. from 13.1.1986 to 16.1.1986 which considered the cases of all eligible Head Constables (Ex) for promotion to the rank of A.S.I.(Ex) and had also considered the cases of those promoted on ad hoc basis including the applicant for admission of their names to promotion list D-I(Ex).

It is admitted by the applicant that he got an adverse remark in his A.C.R. during the period 1982-1983 from the S.H.O. under whom he was working. A perusal of the record also shows that he

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was censured in 1980 for misbehaviour with his superior officers and he was also censured in 1984 for his misbehaviour with subordinate officers. It is also admitted that he filed the representation against the adverse remark but the same was rejected.

The reliefs prayed for are:-

"(i) That the applicant be promoted as A.S.I. from the date his next junior ASI Ranbir Singh No.311/L 1556/ND was so promoted.

(ii) That the applicant be further confirmed from the date the said A.S.I. was so confirmed.

(iii) Any other relief which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case be also awarded in favour of the applicant."

On notice the respondents filed the reply contesting the application and grant of reliefs prayed for.

Heard the learned counsel Sh. O.N. Trisal for the respondents. None was present on behalf of the applicant. The matter has been on board since 20.3.95 and none was present for the

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applicant on 20.3.95, 28.4.95, 22.5.95 and 23.5.95.

None was present on behalf of the applicant on the first call. It was taken up on the second call when none appeared for the applicant, it was decided to adjudicate upon the matter on the basis of pleadings on record and on the basis of the arguments of the learned counsel for the respondents.

The respondents in their counter have categorically stated that the case of the applicant was duly considered by the respondents and he was not found fit for promotion by the D.P.C. on the basis of service record. The applicant had a right to be reconsidered but he had no right to be promoted and after taking into consideration the proceedings of the D.P.C., the competent authority passed orders for promotion of other eligible candidates on the basis of over all service record of all the eligible candidates including that of the applicant for the last five years and on the basis of the A.C.R. for the year 1982-1983 and the censure entries made in 1980 and also in 1984 he was not found fit for admission to promotion List D-I(Ex) due to unsatisfactory service record. It has been further pointed out that he was censured for the year 1980 for misbehavior with senior officers and was censured for the year 1984 for his misbehavior with the subordinates. This coupled with the adverse A.C.R. for the period from 1.4.1982 to 31.3.1983 made him unfit for promotion although his case was duly considered alongwith other eligible candidates.

The applicant has also filed rejoinder reiterating the facts mentioned in the O.A. The pleadings on record show that the applicant could not make the grade and that is why he was not sent for the training course and also was not promoted as A.S.I. on regular basis although it is admitted that he had been promoted on a purely temporary and ad hoc basis earlier. There is no dent in his seniority although his juniors have taken a march over him on account of their good conduct and performance as reflected in the A.C.R. The learned counsel for the respondents Sh. D.N. Trisal made a statement at the Bar that though he was superseded in the D.P.C. held in 1986 but he was promoted on regular basis in the D.P.C. held in 1987.

It is clear that the initial appointment of the applicant was only on an ad hoc basis and was not according to rules and it was made as a stop gap arrangement and as such he was reverted in terms of the appointment letter issued to him in 1984. In AIR 1991 SC 284 Keshav Chandra Joshi and Others etc. Vs. Union of India and others it has been laid down "where the initial appointment is only ad hoc and not according to rules and is made as a stop gap arrangement, the period of officiation in such a post cannot confer any benefit." The quintessence of the proposition is that the appointment to a post must be according to rules and not by way of ad hoc and stop gap

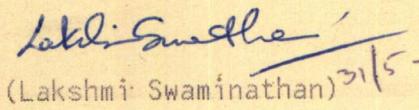
arrangement made due to administrative exigencies. If initial appointment is dehors the rules, no benefit accrues to such an incumbent.

As back as 1967 the Hon'ble Supreme Court held in the case of Sant Ram Sharma Vs. State of Rajasthan (AIR 1967 SC 1910) that promotion is not automatic being made on the basis of ranking in the gradation list. The promotion cannot be claimed as of right since the question of merit enters in promotion and this is determined by consideration of ACRs reflecting on the work and conduct of an officer. In AIR 1987 SC 1889 (State Bank of India Vs. Mohd. Mynuddin), the Hon'ble Supreme Court laid down the proposition that in case of promotion on the basis of merit no officer can claim promotion to the higher post as a matter of right. He has a right to be considered but he has no right to be promoted and the court is not competent to sit as an Appellate Authority and appreciate the performance and attributes of the eligible candidates. The same view was reiterated in AIR 1988 SC 1069 (Union Public Service Commission Vs. Hiranyalal Dev). It laid down that the selection for promotion has to be made by the D.P.C. and the court cannot usurp the role assigned to the D.P.C. In one of the latest judgements JT 1995(2) SC 654 (Major General IPS Dewan Vs. Union of India & Ors), the Hon'ble Supreme Court has categorically forbidden the court to sit as an Appellate Authority other the acts and proceedings of the DPC. Thus, this Tribunal is barred from looking into the minutes of the D.P.C.

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duly held in 1986. The law is absolutely clear on the subject that a candidate has a right to be considered but he has no right to be promoted if his work and conduct are not found satisfactory and he fails to make a grade. The applicant after taking into consideration, has been given promotion by the D.P.C. held in 1987. Thus, his grievance partially has been removed.

On merits, the application fails and is dismissed, leaving the parties to bear their own costs.


(Lakshmi Swaminathan) 31/5-

Member(J)


(B.K. Singh)

Member(A)

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