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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.2321 of 2004

New Delhi, this the 31st day of October, 2005

**HON'BLE SHRI JUSTICE B. PANIGRAHI, CHAIRMAN
HON'BLE SHRI M.K. MISRA, MEMBER (A)**

Head Constable (Driver)
Dalbir Singh
No.4006/PCR
S/o Shri Jage Ram,
Aged about 47 years, R/o 535 -A, Pooth Khurd,
Delhi - 89.Applicant.

(By Advocate Shri T.D. Yadav)

Versus

1. Union of India
Through Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Joint Commissioner of Police
Police Head Quarter,
M.S.O. Building, I.P. Estate,
New Delhi.
3. Deputy Commissioner of Police,
Head Quarter (ESTT.)
Delhi.
4. Addl. Dy. Commissioner of Police,
Police Control Room Sarai Rohilla,
Delhi.
5. Addl. Commissioner of Police,
PCR & Communication : Delhi.Respondents

(By Advocate Shri Ajesh Luthra)

O R D E R

Shri M.K. Misra :

The applicant - Shri Dalbir Singh, Head Constable (Driver), filed this OA with the following prayer:-



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- “(a) to quash and set aside the impugned orders dated 20.5.2004, 7.7.04, 20.5.2004, 11.4.2002, 12.11.2001 and 11.7.2001.
- b) to direct the respondent to promote the applicant as ASI (Driver) Grade-I i.e. from the date his juniors were promoted.
- (c) to direct the respondent to grant all the consequential benefits as release the difference of arrears and maintain seniority position on the promoted post.
- (d) to grant any other appropriate relief as per facts and circumstances of the case.
- (e) To avoid costs.”

2. Briefly the facts of the case are that the applicant joined Delhi Police on 13.5.1981 as a Constable and thereafter he was promoted to the rank of Head Constable on 1.1.1986. The applicant along with other employees posted in PCR Van, DL-IA-0360, were found guilty of taking bribe of Rs.50/- from the Truck Driver. Accordingly a preliminary inquiry was held on 26/27.5.1998 and on finding the applicant guilty, he was placed under suspension on 2.6.1998 and similarly departmental inquiry was also ordered on 14.7.1998 without seeking prior approval of the Additional Commissioner as alleged by the learned counsel for the applicant. The applicant was subsequently reinstated in service on 10.8.1998. He was served with the summary of allegations on 24.7.1998 by the inquiry officer alleging that the applicant took bribe of Rs.50/- from a Truck Driver. In the departmental inquiry, the prosecution got examined and the public witnesses clearly denied the allegations against the applicant. The inquiry officer stated in his report that the complainant and other public witnesses had denied the allegations against the applicant. The disciplinary authority did not agree with the findings of the inquiry officer on the ground that the conclusion of the guilt, as in the preliminary inquiry statement of the witnesses, was not taken into account by the inquiry officer. However, a penalty of forfeiture of five years



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approved service permanently along with reduction of pay was imposed on the applicant. The period of suspension was also not treated as having been spent on duty. The appellate authority vide its order dated 1.10.1999 affirmed the findings of the disciplinary authority. In the OA No.2697/1999, which was filed by the applicant, the above orders of the disciplinary authority as well as the appellate authority were set aside with the liberty to the disciplinary authority to pass a fresh order without taking into account the statement taken at the time of the preliminary inquiry. Accordingly, fresh disciplinary proceedings were started against the applicant and the disciplinary authority came to the conclusion that the penalty of censure to be imposed on the applicant and in an appeal, which was filed at the time when the promotion was to take place, the same was rejected by the appellate authority on the ground that it is belated as late as four years. However, his representation was considered by the competent authority and it was stated therein that the censure on the ground of moral turpitude as in the case of the applicant would have adverse effect of five years and since the penalty of censure is still effecting the career of the applicant, therefore, he was not given the benefit of promotion. The applicant, therefore, visited this Tribunal through another OA 2643/2002, which was disposed of vide order dated 10.9.2003 with the direction as follows :-

“2. The applicant has filed the present petition without filing an appeal against the said order. It would be in these circumstances (when the applicant has not exhausted his remedies in accordance with law) proper to direct and accordingly we dispose of the present O.A. that the applicant must exhaust his remedy under law. Thereafter, if so advised, may file the petition in this Tribunal.”

As per the said directions of the Tribunal, an appeal was filed before the appellate authority but the same was rejected vide order dated 7.7.2004 on the ground that the same is barred by limitation. This is the third time when the



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applicant visited this Tribunal with another OA. In this OA, it was argued that as per rules, punishment of censure has no effect for consideration for the promotion. Therefore, the applicant is eligible for further promotion as ASI (Driver) Grade-I w.e.f. 12.11.2004 when his juniors got promoted. It was further alleged that the charges of taking bribe of Rs.50/- from a Truck Driver was not proved that is why penalty of censure is not on the ground of moral turpitude. The punishment of censure was awarded against the principles of natural justice. The past services of the applicant are alleged to be excellent. The appellate authority is not empowered to reject the appeal of the applicant on the technical ground of delay because the same has been filed as per the directions of this Tribunal (supra). The appellate authority should have considered the appeal of the applicant on merits.

3. In the counter reply, the learned counsel for the respondents submitted that the applicant and two other police personnel on the PCR Van misbehaved with the teachers of the School in Jhangirpuri and as a result of this incidence, the punishment was imposed by reducing the pay of the applicant and two other police personnel by one stage on 30.9.2004. In another incidence, penalty of censure was imposed upon the applicant for misleading the senior officer about the damage of Govt. vehicle. On third occasion, the applicant along with other Constable sought illegal gratification from the Truck Driver and he was caught red handed. Suspension order was passed in their case. Subsequent incidence happened as narrated by the applicant above.

4. The Promotion From Head Constable (Driver) to ASI (Driver) is governed under Rule 13 (iii) of Delhi Police (Promotion and Confirmation) (Amendment) Rules, 1994 read with S.O. No.126 which provides that Head Constable (Driver) Grade -II who have completed their probation period and have qualified the



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Trade Test as prescribed under the Rules shall be eligible for promotion to the rank of ASI (Driver) Grade-I. This criteria was adopted by the DPC held on 8.11.2001 and 20.8.2002 to adjudge the suitability of candidates for admission of their names in Grade-I (Driver) for promotion to the rank of ASI. Officers having 3 "Good or above" in their ACRs without any "below average or adverse" may be empanelled where the minimum required qualifying service of five years or less than five years in the lower rank was prescribed. The service record of preceding 10 years would be taken into account. Punishment on account of corruption and moral turpitude are to be viewed seriously and officers who have been awarded major or minor punishment in the preceding 5 years on the charges of corruption, moral turpitude and gross dereliction of duty will not be empanelled. Officers who have been awarded censure during last 6 months with no other punishment can be allowed to be brought on promotion list. However, the effect of censure by debarring the official for promotion by six months from the date of award shall continue. The name of the applicant was not approved to the rank of ASI (Driver) due to his poor service record. He also filed the appeal before the competent authority which considered his representation and thereafter he came to the conclusion that on the basis of poor service record, the applicant is not entitled to be considered for promotion to the post of ASI (Driver) Grade-I.

5. We have heard the learned counsel for the parties. We observe from the record that the applicant was awarded punishment, namely:-

- (i) one major penalty of reduction of pay by one stage for the period of one year vide order dated 30.9.94;
- (ii) one minor penalty of censure was awarded to the applicant vide order dated 26.9.1995;



(iii) penalty of censure on the ground of moral turpitude was awarded vide order dated 10.7.2001.

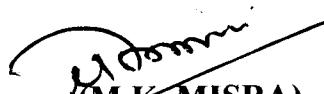
Thus, the applicant was a habitual defaulter as it is apparent from the above service record of the applicant. As per Rule 5 of the Delhi Police (Punishment and Appeal) Rules, 1980, the punishment of ~~censure~~^{fine} is a minor punishment. The record of the applicant was considered by the DPC held on 8.11.2001 for promotion to the rank of ASI (Driver) Grade-I for the preceding five years i.e. 1996-97 to 2000-01 and DPC graded him 'unfit' due to his poor service record. It was also submitted by the learned counsel for the respondents that the appeal was filed by the applicant because he has not exhausted all the remedies not because this Tribunal gave the directions to the respondents to consider the appeal even though it became time barred. Thus, in our opinion, it is the correct interpretation on the view expressed by the Tribunal in OA No.2643/2001 vide order dated 10.9.2003. The argument taken by the learned counsel for the applicant that two co-accused, namely, shri Inder Singh (Head Constable) and Shri Dalbir Singh (Head Constable) were exonerated by the competent authority. Therefore, the applicant also should have been exonerated by the same authority. In this respect, we observe that two Head Constables filed the appeal before the competent authority who exonerated them whereas the applicant did not file any appeal, hence his case was not considered by the appellate authority and the penalty order of the disciplinary authority remained effective. Therefore, after a lapse of four years, the appeal was filed by the applicant that too at the time of DPC was to be held, which was rejected by the competent authority on the ground of belatedly filed. Hence, this argument of the applicant has no substance. Because he did not exercise his right to file the appeal whereas the other two Head Constables chose to file the appeal against the order of the disciplinary authority.



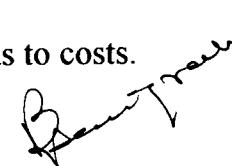
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The decision of the Hon'ble Delhi High Court in the case of *W/HC Tejwati vs. Union of India and others* in Civil Writ No.4821 of 2001 has been referred to by the applicant in support of his contention. The facts of that case are not similar to the case of the applicant in the present OA. Hence, it is not applicable in the present case. Learned counsel for the applicant, in support of his contention that the appeal should not have been rejected on technical ground of limitation, the decision of the Hon'ble Supreme Court in the case of *Sengara Singh vs. State of Punjab*, (1983) 4 SCC 225, has been referred to. That decision relates to reinstatement and other remedies. Therefore, facts are not similar to that of the applicant. Hence, it is not applicable in this case.

6. In the light of the above decision, we are of the confirmed view that the OA suffers from merits and hence it is dismissed with no order as to costs.



(M.K. MISRA)
MEMBER (A)



(B. PANIGRAHI)
CHAIRMAN

/ravi/