

Central Administrative Tribunal
Principal Bench

OA No. 2343/2004

New Delhi this the 11th day of August, 2005.

Hon'ble Mr. Shanker Raju, Member (Judl)
Hon'ble Mr. S.A. Singh, Member (Admnv)

Kunwar Pal Singh,
R/o O-1/1, Police Colony,
Andrews Ganj, New Delhi-49.

-Applicant

(By Advocate Shri Anil Singhal)

-Versus-

1. Govt. of NCT of Delhi,
through Commissioner of Police,
PHQ, I.P. Estate,
New Delhi & Others

-Respondents

(By Advocate Shri Ram Kanwar)

1. To be referred to the reporters or ~~not~~? Yes/~~No~~
2. To be circulated in the outlying Benches or ~~not~~? Yes/~~No~~

S. Raju
(Shanker Raju)
Member (J)

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Hon'ble Mr. Shanker Raju, Member (Judl)
Hon'ble Mr. S.A. Singh, Member (Admnv)

Kunwar Pal Singh,
R/o O-1/1, Police Colony,
Andrews Ganj, New Delhi-49.

-Applicant

(By Advocate Shri Anil Singhal)

-Versus-

1. Govt. of NCT of Delhi,
through Commissioner of Police,
PHQ, I.P. Estate,
New Delhi.
2. Special Comm. of Police,
Administration & Training,
Police Head Quarter,
IP Estate,
New Delhi.
3. DCP Headquarters (Estt.),
Police Head Quarter,
I.P. Estate,
New Delhi.
4. DCP (Vigilance),
through Commissioner of Police,
Police Head Quarter,
I.P. Estate,
New Delhi.
5. Sub-Inspector Tarsem Singh,
At Sr. No.65 in order dt. 28.1.96
At Sr. No.100 in order dt. 3.5.91
At Sr. No.80 in order dt. 30.3.94

(To be served through respondent No.3)

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(By Advocate Shri Ram Kanwar)

**ORDER****Mr. Shanker Raju, Hon'ble Member (J):**

Applicant impugns respondents' order dated 5.6.2004, where his probation period has been extended and non-promotion to the post of Sub Inspector (SI). A direction has been sought to hold a review DPC to consider him for promotion w.e.f. 2.5.91 on ad hoc basis and on regular basis w.e.f. 29.3.94, with arrears thereof and interest.

2. Applicant, who is working as Assistant Sub Inspector (ASI) in Delhi Police was allegedly implicated in case FIR No.4/89 and was placed under suspension on 4.1.89. On acquittal by the competent court on 26.10.2002 a departmental enquiry (DE) was initiated after applicant was reinstated in service on 4.12.2003. Applicant filed OA-290/2004 for quashing the DE and by an order dated 4.3.2004 DE held against applicant was dropped and suspension period was treated as spent on duty for all intents and purposes. Accordingly, OA was disposed of on 4.3.2004.

3. As applicant was promoted as ASI on 16.1.86 and put on probation no orders for completion of probation were issued whereas juniors to applicant have been successfully shown to have completed the probation period on 9.5.89.

4. Review DPCs to consider the case of applicant were held on 25.11.94, 16.1.97, in 1998, 2000, 2002 and 2003 but due to indifferent service record and non-achievement of benchmark of three Good and above ACRs applicant has been conveyed the

decision that he has not been found fit, giving rise to the present OA.

5. Learned counsel for applicant states that whereas applicant has not been communicated any remarks, yet his ACR for the period 19.8.89 has been now expunged by respondents communicated vide an order dated 5.7.2004. In this backdrop it is stated that when nothing adverse existed against applicant he should have been confirmed from the date his juniors were confirmed as ASI and he is entitled to ad hoc promotion in 1991 and regular promotion from 1994 as accorded to the juniors. Shri Singhal states that in the light of the decision in OA-603/2004 - **Shri Sadat Ali v. Union of India & Others** decided on 13.10.2004 grading of 'B' in the ACR amounts to 'Very Good', as such meeting out the criteria of three 'B' gradings one is entitled for promotion.

6. On the other hand, respondents' counsel has produced the departmental record as directed and vehemently opposed the contentions. It is contended that as applicant was continued in the agreed list w.e.f. 4.8.2000 after acquittal his name was continued in the list and was removed on 26.10.2003. Applicant was not confirmed w.e.f. 9.5.89 and his probation period extended due to adverse record. However, his name was considered by the review DPC to consider him at par with his juniors but due to indifferent record and non-achievement of benchmark of three 'Good' grading the same was turned down.

7. We have carefully considered the rival contentions of the parties and perused the material on record.



8. In so far as ACR for the period 1.7.88 to 3.1.89 is concerned, on expunction of adverse remarks the grading in the ACR has been made 'B'. On perusal of the DPC record the review DPC was held on 21.10.2004, which considered the case of applicant for admission to promotion list 'E-I', i.e., to the post of SI w.e.f. 25.9.92, 25.11.94, 16.1.97, 2.12.98, 1.9.2000, 15.3.2002 and 28.2.2002 but could not be found fit due to indifferent service record and non-achievement of benchmark. From the table drawn by the DPC we find that for the year 1986 to 1987 applicant was graded 'B' in the ACR. He is also grade in the ACR for the period 1.4.83 to 31.3.88 for the period 1.4.88 to 30.6.88 applicant was graded 'B' and on expunction ACR for the period 1.2.88 to 31.1.89 was also grade 'B'. ACR for the period 1989 to 1992 as well as subsequently applicant has been placed under suspension. As such no ACR had been written. In the drawn chart of particulars except ACR for the period 1993 onwards applicant was placed under suspension and was not written whereas rest of the ACRs are graded as 'B'. Except minor penalty of censure, which is on administrative grounds, no punishment or adverse material has been brought to our light.

9. As regards criminal case, once on acquittal the disciplinary authority decided to drop the DE and the suspension period has been treated as spent on duty, there is no adverse material against applicant.

10. As regards grading 'B', in **Sadat Ali's** case (supra) relying upon a decision of the Tribunal in OA-1333/99 - **Heach Constable Randhir Singh v. Union of India**, decided on

10.9.99 grading 'B' has been observed to be equivalent to 'Very Good' and on affirmation of this decision by the High Court of Delhi the findings of the Tribunal in **Sadit Ali** (supra) it is no more res integra that grading 'B' should be treated as equivalent to 'Very Good'.

11. As regards non-availability of the ACR, DoPT OM which is also adopted by the Delhi Police in the matter of holding DPC, DGPT's OM dated 10.4.89 as amended by OM dated 27.3.97 in the matter of evaluation of CR where one or more CR has not been written during the relevant period it is incumbent upon the DPC to consider the ACR of the period preceding the period in question.

12. If one has regard to the above the preceding ACR of applicant beyond 1989 are graded as 'B' and has to be treated as 'Very Good'. This aspect of the matter has not been considered by the DPC and they have acted in derogation of the rules, though circular dated 3.12.1998 issued by the Commissioner of Police stipulates consideration of five years' record in the form of ACR and officers with three 'Good' gradings or above should be empanelled.

13. From the perusal of the record we find that if the name of applicant is to be considered for regular promotion in 1994 as in the case of his juniors and colleagues last five years' ACRs reckoned from 1988 are graded 'B' and those which are not written taking the preceding ACRs the grading comes to 'B', which is equivalent to 'Very Good', applicant fulfills the

benchmark stipulated by the Commissioner in the Standing Order, *ibid*.

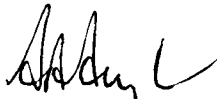
14. As regards adverse ACR, having expunged the part of the ACR for the period 1.7.1988 till 3.1.1989 on 5.7.2004 the ACR would be treated as 'Very Good' as grading 'B'. No minor punishment or major punishment exists on record to debar applicant for promotion.

15. As regards secret list, on acquittal and dropping the DE name should have been removed from the secret list from its inception. Assuming the same has been on doubt is mentioned in the secret list would not be an impediment for promotion of applicant.

16. Although we know our constraints not to act as an appellate authority in the matter of DPC, yet the judicial interference is permissible when the DPC has acted in derogation of the rules or the findings are mala fide. It appears from the grading that the DPC has given the grading and by non-consideration of grading 'B' as equivalent to 'Very Good' and by not giving grading to the ACR when it was not written as applicant was under suspension on the basis of the preceding ACR there is certainly a procedural infirmity and the DPC has not followed the rules, which vitiates the review DPC held on 21.10.2004, it is de hors the rules with non-application of mind.

17. In the result, for the foregoing reasons, OA is partly allowed. Impugned order whereby applicant had been declared unfit for promotion is set aside. Respondents are directed to hold a review DPC afresh and consider applicant for promotion

on ad hoc basis w.e.f. 2.5.1991 and on regular basis from 29.3.1994. In the event of promotion applicant shall be entitled to all consequential benefits, including arrears of pay and allowances. Respondents are further directed to implement the aforesaid directions within a period of three months from the date of receipt of a copy of this order. No costs.


(S.A. Singh)
Member(A)


(Shanker Raju)
Member(J)

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