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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. NO.2655/2004

New Delhi, this the 8th day of November, 2006

**HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)
HON'BLE MR. N.D. DAYAL, MEMBER (A)**

Shri Jeevan Lal,
S/o Shri Harswaroop Singh,
R/o D-1016, Gali No.12,
Ashok Nagar, Delhi – 110094
(By Advocate: Shri S.K. Gupta) ... Applicant

Versus

1. Govt. of NCT of Delhi,
Through Chief Secretary,
Delhi Secretariat,
Players Bhawan, I.P. Estate,
New Delhi – 110 002
2. Commissioner of Police,
Delhi Police Headquarters,
MSO Building, I.P. Estate,
New Delhi – 110002
3. Special Commissioner of Police,
Delhi Police Headquarters,
MSO Building, I.P. Estate,
New Delhi – 110 002
4. Deputy Commissioner of Police,
PAP Lines, Mehram Nagar,
Palam Air Port,
New Delhi ... Respondents

(By Advocate: Shri Ajesh Luthra)

O R D E R

By Mukesh Kumar Gupta, Member (J):

Whether applicant is entitled to promotion or not is the question raised in present OA. The relief prayed for, in this OA, read thus:

"(i) to quash and set aside the action of the respondents to the extent that the Applicant has been declared UNFIT by the notification dated 1.4.2003, and also declare the action of the respondents as illegal in not considering the Applicant for promotion from the

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date when his juniors were considered and promoted;

(i-a) to quash and set aside the impugned order dated 2.6.2004 (**ANNEXURE A-1/a**)

(ii) to direct the respondents to hold review DPC and consider the case of the Applicant from the date when his juniors were considered w.e.f. 1994 onwards and if the Applicant found fit he may be promoted to the post of Inspector (List-F) with salary and seniority etc.

(iii) to pass such other and further order which this Hon'ble Tribunal may deem fit and proper."

2. The facts, as stated, are that the applicant was enrolled as Sub Inspector in the year 1982 as direct recruit. While posted at P.S. Kalyan Puri, he was placed under suspension vide order dated 05.05.1989. After holding a departmental enquiry, he was dismissed from service vide order dated 25.04.1991 and statutory appeal preferred was also rejected vide order dated 19.09.1991. He instituted OA No.2871/1991, challenging aforesaid orders, which was allowed vide order dated 06.05.1997 and the matter was remitted back to the disciplinary authority to follow the procedure from the stage at which the fault arose and respondents were directed to complete the enquiry. Consequently he was reinstated in service and placed under deemed suspension w.e.f. the original date of dismissal in terms of directions issued vide aforesaid order of this Tribunal. On conclusion of enquiry, once again a penalty of removal from service was inflicted upon him vide order dated 09.11.1998. Statutory appeal preferred against aforesaid order was also rejected on 15.07.1999 and thereupon he instituted OA No.1928/1999, which was dismissed by this Tribunal and, therefore, he preferred Civil Writ Petition No.1870 of 2001 before the Hon'ble Delhi High Court. Vide order dated

19.03.2002, the said Writ Petition was allowed and the matter was remitted back to this Tribunal "for consideration of the matter afresh". Thereafter, upon hearing the parties and on consideration of entire matter, said OA No.1928/1999 was allowed vide order dated 09.07.2002 and orders passed by disciplinary as well as appellate authorities were quashed. Respondents were directed to reinstate him in service, but back wages for intervening period till date of reinstatement was denied on the ground of "no work no pay".

3. Being aggrieved against denial of back wages, he preferred Civil Writ Petition No.8230 of 2002, which was again remitted back to this Tribunal on 10.09.2003. His claim for back wages was allowed, which was challenged by the respondents herein before the Hon'ble High Court of Delhi and same was stayed. In the meantime, in August 1994, a DPC was held and number of his juniors were considered and promoted as Inspector vide promotion orders dated 12th, 13th and 18th August, 1994. Further DPCs were held in the years 1998 and 2001. However, he was found unfit for promotion. On his final exoneration vide order dated 09.07.2002, though he was reinstated on 20.08.2002, but his case for promotion to List-F (Inspector-Exe.) had not been considered despite representation dated 04.09.2002. Immediately, thereafter respondents issued order dated 01.04.2003 bringing eligible Sub-Inspectors to Promotion List-F(Exe.) w.e.f. 01.04.2003 in terms of Rule 17(i) of Delhi Police (Promotion & Confirmation) Rules, 1980. However, vide aforesaid order, he was found unfit, as he could not achieve the bench mark fixed for making selection. On making representation dated 07.05.2003 seeking reasons for denial of promotion, which remained unconsidered and on

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filings OA No.2760/2003, he was informed vide communication dated 02.06.2004 that consequent upon reinstatement in service, his merit and suitability for admission to Promotion List-'F'(Exe.) w.e.f. 12.8.1994, 24.12.1998 and 09.11.2001 had been considered by Review DPC, met on 17.05.2004, but he being found unfit in the years 1994 and 2001 and he being outside the zone of consideration in the year 1998, could not be promoted. Therefore, OA No.2760/2003 was dismissed as withdrawn & hence the present OA.

4. Shri S.K. Gupta, learned counsel appearing for applicant vehemently contended that once he was fully exonerated by this Tribunal on 09.07.2002, under the law, he was entitled for inclusion of his name in List-'F'. In terms of instructions issued from time to time, 5 years ACRs only were required to be considered and thus, taking into consideration the ACRs from the year 1989 to 1994, he was entitled to be given the bench mark. In absence of actual ACRs, as he was dismissed from service vide order dated 25.04.1991 till he was reinstated after the judgment dated 06.05.1997, there were no CRs written and, therefore, said bench mark cannot be taken as 'average', and rather it has to be presumed that his services were satisfactory. Moreover, there appears to be contradiction in the respondents' own stand as conveyed vide impugned communication dated 02.06.2004, that he was considered 'unfit' in the DPCs held on 12.08.1994 as well as on 09.11.2001, then how he could be declared to be not within the zone of consideration for DPC held in the year 1998. Ld. counsel contended that numerous juniors were promoted in the said DPCs held in between 1994 and 2001. Moreover, aforesaid impugned communication specifically noticed that besides his service records and

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ACRs, respondents had also considered his "integrity etc". It was contended that once applicant was completely exonerated, the respondents cannot be allowed to harp on the element of his "integrity". Similarly, what were the additional materials considered in the form of "etc." have not been disclosed or pointed out by respondents, which weighed the Review DPCs in arriving at the conclusion of his unfitness.

5. The aforesaid claim has been strongly resisted by Respondents by filing detailed reply. During the period from 1991 to 2002, when he remained out of the department, meetings of various DPCs for selecting Sub Inspectors for admission to Promotion List-'F' (Exe.) were held on 12.08.1994, 24.12.1998 and 09.11.2001. Upon his reinstatement on 20.08.2002, he was considered for promotion by a regular DPC, meeting of which was held on 01.04.2003. His merit and suitability were assessed along with others in terms of the criteria adopted. As he could not achieve the bench mark set out by the DPC while making selection, he was assessed as "unfit" and informed vide HQrs Notification dated 21.04.2003. Later a review DPC meeting was held on 17.05.2004 to assess his merit & suitability for admission of his name to Promotion List-'F' (Exe.) w.e.f. 12.08.1994, 24.12.1998 and 09.11.2001. After careful evaluation of service record, confidential reports etc., the review DPC did not find him suitable. The review DPC also observed that he was beyond zone of promotion in the year 1998 and no junior to him had been admitted to the said Promotion List-'F' (Exe.). All original records of DPCs as well as review DPC were made available to us for our perusal, which we have carefully perused. Respondents further stated that empanelment of a

Government servant on Promotion List to a selection post is dependent upon attaining the bench mark prescribed by the DPC. It is not only the integrity alone, which determines his suitability, but the ACRs, punishments and adverse entries earned by him are also vital factors having bearing upon his fitness. Accordingly he was assessed unfit by the review DPCs.

6. Applicant rebutted respondents' claim by filing his rejoinder and reiterating contentions raised vide O.A.

7. We have heard learned counsel for the parties and perused the pleadings, besides the original records made available to us.

8. On perusal of minutes of DPC held in July, 1994, we find that applicant had not been considered therein as at that point of time he had been dismissed from service vide order dated 25.4.1991. It is no doubt true that his juniors were considered in the said DPC. Similarly, in the DPC held on 8th & 24th December, 1998, he had not been considered. The same was the position in the DPC held on 09.11.2001. We have also perused the minutes of review DPC held on 17.05.2004 vide which he was considered against the DPCs held in the years 1994, 1998 and 2001. He was reinstated in service w.e.f. 20.08.2002 treating the period of suspension from 05.05.1989 to 20.08.2002 as "no work no pay" vide the order of the said date. In the review DPC held for the year 1994 he was considered at serial No.353 of gradation chart / compilation. The review DPC recorded that after careful evaluation of the service records, available ACRs of preceding years and integrity etc. in terms of the guidelines adopted by the regular DPCs, the applicant was not fit for admission to Promotion List 'F' (Exe.) on any of the occasions on 12.08.1994 or

09.11.2001 due to adverse ACRs for the period from 1.4.1986 to 31.3.1987 & 08.10.1987 to 31.03.1988 and his name being on Secret List of persons of doubtful integrity. Similarly, it was observed that: "The review DPC has not assessed the merit and suitability of the SI(Exe.) with reference to the Promotion List 'F' (Exe.) 24.12.1998 as the selection of general category candidates had ceased at SI. No. 31 and the SI was not within the zone of promotion". On perusal of original DPC proceedings for the said year of 1998, we find that the number of vacancies for general category in the said year had been quite nominal in comparison to other two DPCs, i.e. for the years 1994 and 2001. In the said year of 1998 there were only 12 vacancies in the general category in comparison to the year 1994 when the number of vacancies had been 276. For the DPC of the year 2001, the number of general category vacancies had been 32. In the year 1994, officers having at least 3 Good & above reports during the last five years were recommended in the general category, while for the DPC held in the year 2001 candidates with four good and above reports out of six reports were empanelled. As per the service particulars of the applicant for the last five years, it was noticed that his services were satisfactory in the years 1984-85, 1985-86 and 1988-89. For the year 1986-87, the same were adverse while for the year 1987-88, a part of it was adverse & the other part was satisfactory. He remained out of service w.e.f. 25.4.1991 to 20.08.2002 and hence his ACRs for the year 1991 onwards were not available and preceding five years ACRs to the same date were considered, which we have noticed hereinabove. We may also note that penalty of censure was imposed

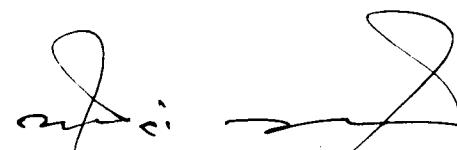


on four occasions in the year 1988 alone, namely, on 11.04.1988, 17.06.1988, 12.08.1988 and 16.08.1988.

9. On bestowing our careful consideration to all aspects of the case as noticed hereinabove, we hardly find any scope for interference in the findings recorded by the said review DPC. The reasons assigned vide the impugned communication dated 02.06.2004 are just and reasonable and the facts as noticed hereinabove do not warrant any further leniency or interference by this Tribunal in exercise of power of judicial review. Finding no merits in the claim laid, the O.A. is dismissed.



(N.D. Dayal)
Member (A)



(Mukesh Kumar Gupta)
Member (J)

/PKR/