

Central Administrative Tribunal, Principal Bench

O.A. No. 1312/2004

New Delhi this the 16th day of February, 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. S.K. Malhotra, Member (A)

Tej Pal Singh
Head Constable in Delhi Police,
PIS No. 28760278
R/o C-57 Street No.3,
North Chajju Pur,
Shahdara, Delhi.

...Applicant

By Advocate: Shri Anil Singal.

Versus

1. Government of NCT of Delhi
through Commissioner of Police,
Police Head Quarters,
IP Estate,
New Delhi.
2. Joint Commissioner of Police,
Administration, PHQ,
I.P. Estate,
New Delhi.
3. Deputy Commissioner of Police (Headquarters)
PHQ,
I.P. Estate,
New Delhi. ...Respondents

By Advocate: Shri Rishi Prakash.

ORDER (ORAL)

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

The OA is filed for quashing the orders mentioned in para (1) of the OA and for
directing the respondents to empanel the applicant in the Promotion List 'D' with effect

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from 12.6.2003 and for promoting him to the rank of ASI w.e.f. the date his junior was promoted to the said post with all consequential benefits, including seniority and arrears of pay; declaring Clause (iii) of Circular dated 3.12.1998 as ultra vires the provisions of Delhi Police Act and the rules made thereunder and the Constitution of India; declaring that the minor penalty of censure will not attract Clause (iii) of the Circular dated 3.12.1998 which has the effect of debarring the empanelment of any officer awarded minor punishment and; declaring that the minor penalty of censure is to be on allegations of corruption of moral turpitude, which may attract the provision in Clause (iii) of the Circular dated 3.12.1998 must be imposed after following the major penalty proceedings.

2. The facts of the case, in brief, are that the applicant is working as a Head Constable (Executive) in Delhi Police. His name was considered for empanelment for promotion to the rank of ASI as per Delhi Police (Promotion & Confirmation) Rules, 1980. The DPC constituted therefor considered the name of the applicant in June, 2003 for promotion but has declared him unfit as per order dated 24.6.2003 on the premises that he had been awarded punishment of censure by order dated 14.12.2000. The applicant had never earned any adverse remarks in his ACR throughout his 27 years of service. Hence this OA.

3. The respondents contesting the OA pleaded that as per Rule 5 of Delhi Police (Promotion & Confirmation) Rules, 1980 read with Government of India, Ministry of Personnel and Training OM No. 22011/5/86-Estt.(I) dated 10.4.1989 promotion from one rank to another and from lower grade to higher grade in the same rank is made by selection tampered by seniority. Efficiency and honesty are main factors governing selection. The Departmental Promotion Committee enjoys full discretion to devise its

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own method and procedure for objective assessment as to the suitability of candidates who are to be considered by them. As per Rule 15 of the above said rules, confirmed Head Constables with minimum 5 years service in the rank, are eligible for consideration for promotion on the recommendation of a DPC. The name of the Head Constables, so selected, are brought on list D-I (Exe.) in order of their respective seniority keeping in view the number of vacancies likely to be occurred in the following one year. On successful completion of Intermediate School Course Training, their names are brought on Promotion List D-II (Exe.) for promotion to the rank of ASI (Exe.) as and when the vacancy occurs. For evaluating the service records and ACRs of 5 years for empanelment for promotion in the list D-I (Exe.), the criterion applied is as follows:

Officers having 3 'Good or above reports' and without any below average or adverse report should be empanelled where the minimum required qualifying service in the lower rank prescribed is 5 years or less but where the minimum qualifying service prescribed is above 5 years, the DPC has to see the ACRs for the years equal to the required qualifying service and the officer having more than 50% good or above report and without any below average or adverse report during those years, are taken into consideration for empanelment. Further, the service record of the officer during preceding 10 years in that particular rank is also taken into consideration with particular reference to the gravity and continuity of punishment till date. The punishment on account of corruption and moral turpitude is viewed seriously. The officers who have been awarded major or minor punishment in preceding 5 years on charges of corruption, moral turpitude and gross dereliction of duty to protect Government property or major punishment within 2 years on charges of administrative lapses from the date of

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consideration, may not be empanelled. Similarly those officers whose names appear in the Secret List are not considered fit. Besides officers who have been awarded censure during the last six months with no other punishment, can be allowed to be brought on promotion list after six months but such officer will be debarred for promotion for six months from the date of award.

4. The respondents further contended that the DPC was held on 12.6.2003 for considering the names of 737 eligible Head Constables (Exe.) who were within the zone of consideration for empanelment for promotion in list D-1 (Exe.). After assessing overall records in respect of the applicant, the applicant was graded unfit due to indifferent service record as he had been awarded censure by the disciplinary authority vide order dated 14.12.2000 on the allegation that he kept the TSR without any entry in Roznamcha and did not deposit it in Makhana under Section 66 Delhi Police Act and further that he had demanded a sum of Rs.35,000/- from the complainant to release the TSR and that the TSR was ultimately handed over to the complainant on the intervention of senior officers. The Notification declaring the applicant unfit was issued on 20.6.2003. The applicant submitted a representation dated 16.7.03 against the said Notification. The same was finally rejected and the circumstances which led to his declaration were informed by the DCP, Headquarters (Establishment). The applicant filed OA 153/2004 in this Tribunal which was disposed off on 21.1.2004 at the admission stage itself directing the respondents to consider the representation of the applicant and dispose it of by appropriate order within 4 months. Accordingly, the representation was considered and was rejected in terms of the Circular No.83135-234-CB-1 dated 3.12.1998 and

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appropriate orders were passed. It is submitted that the case of the applicant has no merit and the same should be dismissed.

5. In the rejoinder, the applicant has reiterated his case and has controverted the allegations of the respondents.

6. We have heard the learned counsel for the parties and we have gone through the records of the case.

7. The applicant has not traversed the allegations of the respondents made in the counter that he was awarded the punishment of censure by the disciplinary authority by order dated 14.12.2000 on the allegation that he had kept a TSR without making entry in the Roznamcha and had not deposited it in the Malkhana, as required by Section 66 of the Delhi Police Act, and further he had demanded Rs.35,000/- from the complainant for releasing the TSR but the TSR was ultimately released on the intervention of the senior officers. However, the argument of the learned counsel of the applicant is that the case of the applicant ought to have been considered by the DPC in terms of guide-lines under clause (v) rather than under clause (iii) of the circular, which is filed by him as Annexure A-3. Being relevant, the two clauses of the Circular are reproduced as under:-

“(iii) Officers who have been awarded any major/minor punishment in the preceding 5 years on charges of corruption, moral turpitude and gross dereliction of duty to protect government property or major punishment within 2 years on charges of administrative lapses, from the date of consideration may not be empanelled.

(v) Officers who have been awarded censures during the 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”.

Re-enclosed 11.1.01

8. The learned counsel for the applicant has fairly conceded that 'censure' is a minor penalty under Delhi Police (Promotion & Confirmation) Rules, 1980. However, his argument is that for attracting the principles laid down in para (iii) of the guide-lines, the penalty of censure "on charges of corruption, moral turpitude and gross dereliction of duty to protect government property" ought to have been imposed in a disciplinary proceeding for major penalty. It is argued that in the present case the disciplinary proceedings were for minor penalty and the award of censure by order dated 14.12.2000 was washed off in six months' time and could not have debarring effect on the applicant's empanelment since the DPC was held on 12.6.2003.

9. The sole question, as such, is which of these guidelines would be applicable in the case of the applicant.

10. The principles to be followed for promotion laid down in para (iii) reproduced above, are in two parts. The first part applies to both whether the punishment is a major or a minor penalty awarded in the preceding 5 years. It is qualified by "on charges of corruption, moral turpitude and gross dereliction of duty to protect government property". The second part applies to "the major penalty imposed on charges of administrative lapses within 2 years on the date from which the empanelment of the officer for promotion is considered by the DPC". The emphasis in the first part is that, the punishment whether it is major or minor, must have been imposed (i) on the charge of corruption; (ii) on charge of moral turpitude; and (iii) on gross dereliction of duty for protection of government property. Clause (iii) does not make any distinction whether punishment was awarded in a disciplinary proceedings initiated for awarding major punishment or they were initiated for minor penalty. Therefore, the contention of the

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applicant that it would apply only to those cases where the disciplinary proceedings were initiated on charges for major penalty and it would not apply to cases where the disciplinary proceedings are for awarding minor penalty, is not borne out of this clause. The authorities who have laid down the guide-lines and evolved the principles for promotion from one rank to the other were not oblivious of the distinction between the disciplinary proceedings undertaken to award major penalty or those which were started for minor penalty. If the intention was that the guidelines in clause (iii) would apply to only those who though were proceeded for award of major penalty but were finally awarded minor penalty, the same would have been clearly stated as these were to be taken into consideration by the Departmental Promotion Committee.

11 Conversely clause (v) of guidelines in Circular, Annexure A-3 is distinct and clear. There is no ambiguity that the award of penalty of censure imposed within 6 months from the date on which the empanelment of the officer was considered by the DPC would operate as a bar to the empanelment in the Promotion List D-1 (Exe.). The clause (v) speaks of "awarded censures". Clause (iii) above reproduced, also speaks of minor punishment which included "censures". Clause (v) and (iii) of Annexure A-3, therefore, will have to be read together. The harmonious construction which can be placed on these two guidelines/principles for empanelment of officers for promotion by the DPC, unambiguously distinguish the minor punishment including the censure imposed upon an officer, whether it in a disciplinary proceeding for major penalty, or disciplinary proceedings for a minor penalty preceding 5 years on the charges of corruption, moral turpitude and gross dereliction of duty to protect government property, on the one hand, and a censure, which was not on the charges of corruption, moral

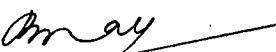
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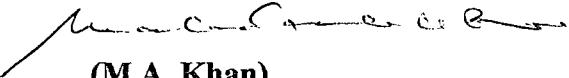
turpitude and gross dereliction of duty to protect government property, on the other. In the former case clause (iii) would be attracted. In the latter case the paragraph (v) would apply.

12. In the instant case, the disciplinary proceedings were started against the applicant for imposing minor penalty on the charge of corruption. There is no denial of this fact. If it is so, minor punishment of censure awarded to the applicant would be covered by clause (iii), it will act as a bar to the promotion to the applicant since it had been awarded within 5 years preceding the date of DPC.

13. Nothing has been argued before us as to the vires of the clauses (iii) and (v) being violative of the Constitution of India or the Delhi Police Act and Rules.. It cannot be stated that such principles or guidelines laid down in Annexure A-3 are violative of any of the provisions of the Constitution of India or contravene the provisions of Delhi Police Act and rules framed there-under.

14. The result of the above discussion is that the OA has no merit and the same is dismissed but without any order as to costs.


 (S.K. Malhotra)
 Member (A)


 (M.A. Khan)
 Vice Chairman (J)

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