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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1610/2004

New Delhi, this the 9th day of March, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K.Naik, Member (A)**

Renu Bala
W/ASI (Exe.), No.7057/DAP
D/o Late Sohan Singh
R/o 141, Mukharjee Nagar West
Delhi – 110 009. ... Applicant

(By Advocate: Sh. Shyam Dev Lal for Sh. R.D.Sharma)

Versus

1. Union of India
Through Secretary
Ministry of Home Affairs
North Block
New Delhi.
2. Commissioner of Police
Delhi Police Hdqrs.
MSO Building, I.P.Estate
New Delhi.
3. Joint Commissioner of Police
Hdqrs., Delhi Police Hdqrs.,
MSO Building, I.P.Estate
New Delhi.
4. Deputy Commissioner of Police
Hdqrs. (Estt.), Delhi Police Hdqrs.,
MSO Building, I.P.Estate
New Delhi. ... Respondents

(By Advocate: Smt. Rashmi Chopra)

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O R D E R

By Mr. Justice V.S. Aggarwal:

Applicant joined in Delhi Police as Woman Constable (Executive) on 19.10.1983 on compassionate grounds. She was promoted as Woman Head Constable [Executive] on 6.6.1991. In the year 1995, she was promoted as Woman Assistant Sub-Inspector (Executive) on ad hoc basis vide order dated 7.8.1995. A Departmental Promotion Committee meeting took place on 15.2.2000, and she was not found fit for admission to Promotion List D-1 (Executive). By virtue of the present application, she seeks setting aside of the said order and to direct the respondents to regularize her from 1996, when she had completed the mandatory five years of service in the rank of Head Constable, and to grant her due seniority in this regard.

2. She had submitted a representation which had been rejected on 17.2.2004 vide the following order:

"Reference your office memo. No.31879/Estt./North dated 29.12.2003, on the subject cited above.

The representation submitted by adhoc W/ASI (Exe.) Renu Bala, No.7057/DAP regarding admission of her name to promotion list D-I (Exe.) w.e.f. 15.2.2000 has been considered in this Hdqrs. but could not be acceded to as she had failed to achieve the bench mark of ACRs as per D.P.C. guidelines. She was also heard in person by DCP/HQ(Estt.)

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on 13.2.2004. She may be informed accordingly.

Sd/-
(B.S.Bamel) ACP/CB/PHQ
for Joint Commissioner of Police
Headquarters:Delhi"

3. The applicant assails the said order contending that when she was found fit to be promoted on ad hoc basis, in terms of Sub-Rule (i) to Rule 19 of the Delhi Police (Promotion & Confirmation) Rules, 1980, there was no ground to ignore the applicant subsequently. Under Sub-Rule (i) to Rule 15 of the Delhi Police (Promotion & Confirmation) Rules, 1980 read with Rule 20, no special qualification is required for bringing the name of the candidate in the said Promotion List. Once she had put in five years of service, selection had to be made and this should have been done in the year 1996 when the applicant became eligible. Had it been considered at that time, the applicant would have been promoted.

4. According to the applicant, there was no reason not to hold the DPC meeting from the year 1996 till 2000.

5. The application has been contested. Respondents contend that as per Rule 5 of the Delhi Police (Promotion & Confirmation) Rules, 1980, promotion from one rank to another is made by selection tempered by seniority. Efficiency and honesty are main factors. Under Rule 15 of the Delhi Police (Promotion &

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Confirmation) Rules, 1980, Head Constables who have put in five years of service are eligible to be considered. The names of Woman Head Constables, so selected, are brought on List D-1 (Exe.) in order of their respective seniority keeping in view the number of vacancies likely to occur in the following one year. Following the said criteria, a Circular even had been issued on 3.12.1998 and operative part of which is:

“(i) Officers having 3 ‘Good or above’ reports and without any ‘below average or adverse’ reports may be empanelled where the minimum required qualifying service, in the lower rank has been prescribed as 5 years or less than 5 years. However, in cases where the required qualifying service in the lower rank is prescribed more than 5 years, the DPC should see the record with particular reference to CRs for the years equal to the required qualifying service and the officer having more than 50% good or above reports, and without any ‘below average’ or ‘adverse’ reports during the years for which the CRs have been taken into consideration for empanelment of the officers.

(ii) The service record of the officer during preceding 10 years in that particular rank shall be taken into account with particular reference to the gravity and continuity of punishment till date. Punishments on counts of corruption and moral turpitude are to be viewed seriously.

(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.

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(iv) Officers whose names stand on Secret List shall not be considered fit as per S.O. No.265/96.

(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.

(vi) Result of officers, who are under suspension or facing DE or involved in Criminal Cases shall be kept in sealed covers."

6. The Departmental Promotion Committee meeting was held on 15.2.2000. After assessing overall record of the applicant and others, the applicant was found '**unfit**' for promotion. According to the respondents, there is no ground to interfere because the applicant had not scored three '**Good**' reports, which is the benchmark, in the last five years.

7. We have heard the parties' counsel and have seen the relevant record.

8. In the first instance, the learned counsel for the applicant had pointed that when applicant has been found suitable for being promoted on ad hoc basis, there was no reason to find her unsuitable for regular promotion. So far as this particular proposition is concerned, the contention in its broad proposition, must be rejected. Sub-Rule (i) to Rule 19 refers to making of appointments on ad hoc basis. The same reads as under:

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“19. **Ad-hoc promotions**- (i) In special circumstances when there are no approved names on promotion lists, and vacancies exist, the Commissioner of Police, may promote suitable officers in order of seniority to next higher rank temporarily. Such promotions shall not entitle the officers concerned to claim and right for regular appointment or seniority or for appointment to such or any other equivalent post and shall be liable to reversion without notice as soon as qualified men become available.”

9. Perusal of it clearly shows that when there are no approved names and vacancies exist, the Commissioner may promote suitable officers in order of their seniority on ad hoc basis. But this itself shows that no right for regular appointment is conferred. Necessarily, so far as regular appointment is concerned, the same is to be effected in accordance with the relevant rules on the subject. The suitability, necessarily, has to be the same on the relevant date when the regular promotion is to be granted. The contention, therefore, so much thought of must fail.

10. However, in that event, it was urged that vacancies arose in the year 1996 and DPC only met in the year 2000. In accordance with the instructions, which are applicable even to Delhi Police, panel necessarily should be prepared yearwise and vacancies would be determined starting from the earlier years even if the DPC had not met for quite sometime.

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11. We know from the decision of the Supreme Court in **SADASIVA RAO v. SECRETARY, MINISTRY OF DEFENCE** [2003 SCC (L&S) 1175]. In that case also, vacancies arising during several years have been considered together notwithstanding the ordinary practice of having a select list for every year in respect of the vacancies arising for that year. The Supreme Court in that case has held as follows:

“On the conceded position that the panel had not been prepared yearwise as is required under para 4 (b) of OM dated 24.12.1980 in case where for reasons beyond the control of DPC it could not have been held beyond a particular year even though vacancies arising during that year were available, the Tribunal rightly interfered with the seniority list drawn up and directed to redraw the seniority list in consonance with the provisions contained in para 4(b) of OM dated 24.12.1980.

In the aforesaid premises, we see no infirmity with the impugned direction of the Tribunal so as to be interfered with by this Court under Article 136 of the Constitution of India.”

12. In another case **UNION OF INDIA v. N.R. BANERJEE** [(1997) 9 SCC 287] the Supreme Court has held that when there was a delay in convening of Departmental Promotion Committee and when such a delay in convening of DPC the candidates who became eligible subsequently on the date of DPC, should not be taken into consideration. In that case, the Supreme Court has observed as follows-

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"The question in this case was the year up to which the DPC should have considered, the eligible candidates and the year up to which the DPC should have taken into consideration the ACRs of the candidates, for preparing panel for the year 1994-95 for promotion as Senior General manager in the Indian Ordnance Factories. Four members of the Ordnance Factory Board were to retire in August, September, October, 1994 and March, 1995. The Board initiated action on 22.12.1993 and after completing the process of consultation with the UPSC, selected candidates joined as members of the Board on 22.8.1994, 3.9.1994, 6.10.1994 and 1.3.1995. The DPC for filling up of the resultant four vacancies was held on 15.3.1995. The Central Administrative Tribunal held that only those candidates were to be considered for promotion who were eligible up to March 1993 and ACRs for the year 1994 should not have been taken into consideration by the DPC. The Union of India contended that crucial date for DPC meeting for selection should be April or May 1995."

13. The decisions of the Supreme Court are binding in nature.

14. From the counter reply, it appears that the DPC was not held for five years and it was held for all those five years at one time. This indeed is not the correct procedure. Resultantly, on this short ground, we dispose of the present application directing that yearwise panels should be prepared, even if the DPC has not met every year. The panel should be drawn in accordance with the procedure prescribed and thereupon the claim of the applicant may be taken note of.

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15. With these directions, the OA is disposed of.

S.K.Naik
(S.K.Naik)
Member (A)

/NSN/

V.S.Agarwal
(V.S.Agarwal)
Chairman