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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.748/2004

New Delhi, this the 25th day of October, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member (A)

Shri Gopal Singh Bhandari
S/o Late Sh. Jawahar Singh
Working as Assistant Sub Inspector,
Delhi Police
Badge No.3162/D, PIS No.28700392
Place of posting: Police Station
Subzi Mandi, North District
Delhi.

... Applicant

(By Advocate: Sh. K.K.Patel)

Versus

Govt. of NCT of Delhi, through

1. The Commissioner of Police
Police Headquarters
I.T.O., New Delhi.
2. Deputy Commissioner of Police
Headquarters (Estt.), Delhi.
3. Joint Commissioner of Police
CA/PHQ, Headquarters, Delhi
4. Deputy Commissioner of Police
North District, Delhi.

... Respondents

(By Advocate: Sh. Ajesh Luthra)

ORDER

By Mr. Justice V.S. Aggarwal:

Applicant (Gopal Singh Bhandari) was promoted as officiating Assistant Sub Inspector (Executive) with effect from 29.6.1988. After he completed the probation period, his name along with his immediate junior was considered for admission to promotion list E-I by the Departmental Promotion Committee (for short 'DPC') held on 16.1.1997. The applicant was found 'unfit' for promotion on the ground of indifferent service record. His name had subsequently been considered by the DPCs held on 2.12.1998, 1.9.2000, 15.3.2002 and 28.2.2003 for



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admission to promotion list E-I(Exe.). After evaluation of his service record, he was found 'unfit' for the promotion.

2. By virtue of the present application, the applicant seeks quashing of the Circular of 3.12.1998 being contrary to law and resultantly, quashing of the impugned orders of 20.3.2002, 9.7.2002 and 28.3.2003. He further seeks to direct the respondents to consider him for promotion to the post of Sub-Inspector (Executive) after holding a review DPC.

3. To keep the record straight, it is relevant to mention that applicant had earlier filed OA 2048/2003. On 17.2.2004, he had withdrawn the same with liberty to challenge the Circular of 3.12.1998. The applicant contends that adverse entries had not been communicated. The Circular which is impugned had been issued without the authority of law and on the basis of the said Circular which is illegal, the claim of the applicant could not be ignored.

4. The impugned order whereby the claim of the applicant had been rejected reads:

“Kindly refer to your office letter No.7534/CR-II(SB) dated 27.6.2002, on the above subject.

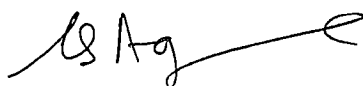
The name of ASI (Exe.) Gopal Singh Bhandari, No.3162/D was considered by the D.P.C. held on 15.3.2002 for promotion list E-I (Exe.), but after evaluation of his service record, the D.P.C graded him 'UNFIT' for admission to promotion list E-I (Exe.) due to his indifferent service record and his name to promotion list E-I (Exe.) and promotion to the rank of SI (Exe.) could not be acceded to, as the same does not come within the ambit of existing rules/instructions on the subject. ASI (Exe.) Gopal Singh Bhandari, No.3162/D may be informed accordingly.”

5. The application has been contested. The respondents contend that the applicant had been awarded the following penalties:

“1. Censured on 27.5.1994 for not submitting case diaries with some malafide intention.

2. Censured on 27.5.1994 for not submitting case diaries with some malafide intention.

3. Censured on 27.5.1994 for not preparing the dossier.



4. Censured on 28.7.1994 for not obtaining report from CFSL.
5. Two years approved service forfeited for a period of two years on 10.5.1995 for not taking any legal action on a complaint and favoured the accused person.
6. The name brought on Secret List of Officers of doubtful integrity w.e.f. 3.7.1995 for a period of 5 years upto 3.7.2000."


6. The applicant is stated to have filed an appeal against the award of the penalty of two years forfeiture of the approved service. The appellate authority after due consideration had set aside the same and awarded him 'censure'. A review DPC was held and after evaluation of his record, he was not found fit for promotion. It is denied that the Circular is invalid but a plea has been raised that a Departmental Promotion Committee Meeting was held on 16.1.1997 and he was declared 'unfit' for promotion on the basis of Circular of 2.12.1994 because of his indifferent service record.

7. The respondents plead further that besides the provisions of Delhi Police (Promotion & Confirmation) Rules, 1980, the instructions in Paragraph 6.2.1 of the guidelines of the DPC issued by the Department of Personnel & Training also provide for evaluation of the Annual Confidential Reports and the applicant was rightly ignored.

8. We have heard the parties' counsel and have seen the record.

9. Learned counsel for the applicant assailed the Circular of 3.12.1998 contending that the same has been issued by the Commissioner of Police. According to him, Rules have been framed in exercise of the powers conferred under Article 309 of the Constitution or in exercise of certain statutory powers and therefore, Circular could only be issued by the said authority, namely, Lt. Governor. In support of his claim, he relied upon the decision of the Supreme Court in the case of **DR. KRUSHAN CHANDRA SAHU & ORS. v. STATE OF ORISSA & ORS.** JT 1995(7) SC 137.

10. This is a short question that has been agitated before us.



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11. Before venturing further, we deem it necessary to refer to Rules 5 and 16(i) of Delhi Police (Promotion & Confirmation) Rules, 1980. They are being reproduced below for the sake of facility:

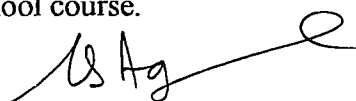
“5. General principles of promotion- (i) “Promotions from one rank to another and from lower grade to the higher grade in the same rank shall be made by selection tempered by seniority. Efficiency and honesty shall be the main factors governing selection (Amended vide Notification No.F.5/60/83-H(P)/Estt., dated April 7, 1984). Zone of consideration will be determined in accordance with the rules/instructions issued by the Government from time to time.

[(ii) All promotions from one rank to another against temporary or permanent vacancies, except in the case of ad-hoc arrangements shall be on officiating basis. The competent authority on completion of probation period of two years may assess the work and conduct of the officer himself and in case the conclusion is that the officer is fit to hold the higher grade, he will pass an order declaring that the person concerned has successfully completed the period of probation. If the competent authority considers that the work of the officer has not been satisfactory or needs to be watched for some more time, he may recruit him to the post or grade from which he was promoted, or extend the period of probation, as the case may be.]

[(iii) In the case of officers who are under suspension or facing departmental enquiry, criminal proceedings, their suitability for promotion list should be assessed at the relevant time by the Departmental Promotion Committee and finding reached whether, the officer had not been suspended or his conduct had not come under investigation, he would have been recommended for selection. At the time of preparing the promotion list by selection, the Departmental Promotion Committee should also take a view as to what the officer's position in the list, would have been but for his suspension etc. The findings should be recorded separately and attached to the proceedings in a sealed envelop superscribed findings regarding merit and suitability for promotion list (name of promotion list) in respect of Shri (Name and rank of the officer) and not to be opened till after the termination of the departmental enquiry/criminal proceeding against (Name and rank of the officer)”.

A departmental enquiry shall be deemed to have been initiated after the summary of allegations has been served.

[List A for selection of confirmed Constable for training in lower school course.



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“One Addl. Commissioner of Police and two DCP to be nominated by the C.P.

List B (i) (Executive) for Pso (confirmed constable Lower School Course Trained) to the rank of H.C.

Names shall be brought on this list in order of seniority as on list 'A' in terms of Rule 13 (1) after obtaining report of DE/PB/Criminal case etc. etc. from concerned Distt./Unit. Etc. instead of holding any regular DPC.

(ii) (Technical) for promotion of Constable professionally qualified in Technical Trades to the rank of A.C.

One additional Commissioner of Police and two DCP to be nominated by the C.P.”

Rule 16(i) **List 'E'**- List-E(Executive)

Confirmed Assistant Sub-Inspector (Executive), who have in a minimum of 6 years of service in the rank of Assistant Sub-Inspector (Executive), shall be eligible for List-E-I (Executive). The selection shall be made on the recommendations of the Departmental Promotion Committee. The Assistant Sub-Inspector so selected, shall be brought on List E-I in order of their respective seniority, keeping in view the vacancies in the rank Sub-Inspector (Executive) likely to occur in the following one year. Subject to the medical fitness by the Civil Surgeon the selected Assistant sub-Inspectors (Executive) shall be sent for training in the Upper School Course. On successfully completing the Upper School Course, their names shall be brought on promotion List E-II (Executive) in order of their respective seniority in List-E-I for promotion to the rank of Sub-Inspector (Executive) as and when vacancies occur.”

12. Perusal of both the Rules clearly show that promotion has to be made by selection tempered by seniority. As the efficiency and honesty are the main factors, the DPC has to consider the same. In the present case before us, the respondents made available to us the proceedings of the DPC meeting. They have evaluated the service record of the applicant. We have already reproduced above the penalties awarded to the applicant. In addition to that, his conduct was again 'censured' on 24.9.1996 for negligence and again on 11.3.1999 for failure to challan two other accused persons for extraneous consideration.

13. In other words, the evaluation clearly indicates that continuously from 1994, the applicant has been 'censured' at least seven times. In this backdrop,



Rule 5 clearly would indicate that in the case of the applicant, honesty and efficiency required were missing.

14. As regards the guidelines of 3.12.1998 to which the applicant refers to and seeks quashing of the same, it transpires that the Departmental Promotion Committee had not considered the same.

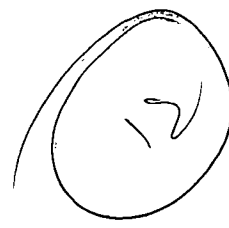
15. It is settled principle that the Departmental Promotion Committee can devise its own criteria and we take advantage in reproducing the same from Swamy's Establishment and Administration Manual. Para 6.1.2 (at Page 840) reads:

“6.1.2. At present, DPCs enjoy full discretion to devise their own methods and procedure for objective assessment of the suitability of candidates who are to be considered by them. In order to ensure greater selectivity in matters of promotions and for having uniform procedures for assessment by DPCs, fresh guidelines are being prescribed. The matter has been examined and the following broad guidelines are laid down to regulate the assessment of suitability of candidates by DPCs.”

16. These guidelines have been issued by the Department of Personnel & Training and, therefore, if in accordance with the same, the evaluation of the applicant had been made, we find that there is no ground to interfere.

17. Reverting back to the decision in the case of *Dr. Krushan Chandra Sahu & Ors (supra)* which was relied upon, it is obvious that the decision is distinguishable. The Supreme Court was concerned with Orissa Homoeopathy Medical Teaching Service (Methods of Recruitment and Conditions of Service) Rules, 1980. The appointment was to the post of Junior Teacher. As the Government had not issued any administrative instructions, the Selection Board determined the suitability on the basis of the character rolls of the candidates in their previous jobs. In the cited case, the Supreme Court held that Members of the Selection Board did not have jurisdiction to lay down the criteria/norms for selection unless they are specially authorized in that regard.

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18. This is not the position in the present case before us. In the present case, as we have already referred to above, such guidelines have already been issued by the Department of Personnel & Training.


19. The present controversy, as raised at the Bar, even was alive before this Tribunal in the case of UMA KANT TIWARI v. COMMISSIONER OF POLICE DELHI AND ORS., 2001 (3) (CAT) AISLJ 153. Almost a similar situation had arisen before a Bench of this Tribunal. It was held:

“9. As held in Dr. Sahu’s case (supra), if the rules have been made as in the present case, but they are silent on any subject or point in issue, the omission can be supplied and the rules can be supplemented by executive instructions. In this case, the Govt. of India DOP&T O.M. dated 10.3.1989 had laid down that each DPC can decide its own method and procedure for objective assessment of the suitability of the candidates. The DPC in the present case has adopted certain guidelines which it has followed for objective assessment of all the eligible candidates. We are in respectful agreement with the reasoning given in *Ranjit Singh’s* case (supra) that the applicant’s case can succeed if he establishes that although he possessed a better record of service for the relevant period, he has been passed over for promotion or those with lesser service record than him have been promoted. This has neither been the case of the learned Counsel for the applicants nor established by him. It is also settled law that the applicants have only a right to be considered for promotion by a duly constituted DPC, which has been done in the present two O.As. The decision taken by the DPC, based on the assessment of the ACRs of the eligible candidates and the criteria adopted by them for such assessment cannot, therefore, be held to be arbitrary or illegal justifying any interference in the matters. The criteria adopted by the DPC for assessment of the eligible candidates cannot also be held to be contrary to the Rules as the relevant Rules mentioned above clearly state that it is by method of “selection tempered by seniority”. It is settled law that guidelines or executive instructions can supplement Rules but cannot supplant them. See the observations of the Supreme Court in *State of M.P. v. G.S.Dall and Flour Mills*, 1992 Suppl. (1) SCC 150, in which it has been held that “Executive instructions can supplement a statute or cover areas to which the statute does not extend. But they cannot run contrary to statutory provisions or whittle down their effect”.


20. We find ourselves in agreement with the said view point.


21. No other arguments have been raised.

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22. Resultantly, we find that there is no ground to interfere. It is unnecessary thus to go into the validity of the Circular in the present case. The Original Application must fail and is accordingly dismissed. No costs.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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