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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.790/2004

New Delhi, this the 30th day of September, 2004

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

S.I. (Ex.) Naresh Kumar
S/o Sh. Chiranji Lal
R/o H.No.10-H Police Colony
6th Battalion, DAP Model Town-II
Delhi – 110 009.

... Applicant

(By Advocate: Sh. B.S. Verma)

Versus

1. Govt. of NCT of Delhi *through Lt. Governor*
Raj Bhawan
Delhi – 110 054.
2. The Commissioner of Police
Police Head Quarters
MSO Building
PHQ, New Delhi. .. Respondents

(By Advocate: Sh. Ajesh Luthra)

ORDER

By Mr. Justice V.S. Aggarwal:

Applicant is a Sub-Inspector (Executive) in Delhi Police. By virtue of the present application, he seeks setting aside of the order of 6.6.2003 passed by the Joint Commissioner of Police and for a direction to grant one rank out of turn promotion to him.

2. Some of the relevant facts, on which the controversy has been raised, are that applicant was enlisted as Constable (Executive) in 1987 in Delhi Police. He qualified the competition held by the Staff Selection Commission as a departmental candidate and was selected as Sub-Inspector (Executive) on 28.8.1996. Applicant contends that he has been taking challenging jobs. In the year 2000, he took up the job of arresting proclaimed offenders between 22.2.2000 and 21.2.2001. In 1992, Respondent No.2 had formulated a Scheme for rewarding those subordinate officers who have arrested proclaimed offenders

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and those who have arrested more than the prescribed Proclaimed Offenders, they were to be given one out of turn promotion. The applicant had arrested more than the prescribed Proclaimed Offenders and his case was recommended even by the Officer/In-charge, Police Station, Kotwali.

3. The applicant contends that he was only given a cash reward of Rs.5000/- and promotion referred to above has been denied. Hence, the present application has been filed.

4. At this stage, it is relevant to mention that the representation filed by the applicant was rejected by the Joint Commissioner of Police with the following order:

“Subject:- Representation on against the order of PHQ’s U.O.No.7489/CB-IV dated 30.1.2003 – case of SI Naresh Kumar, No.D-3773.

Reference your memo. No.4812/CR(RC)/North Distt. dated 23.4.2003, on the subject cited above.

The case of SI (Ex.) Naresh Kumar, No.D-3773 for the grant of Out of Turn Promotion has been examined in this Hdqrs. in the light of circular dated 29.11.92, instructions on the subject and O.A.No.1443/2000 – Rishi Pal Vs. GNCT of Delhi but could not be acceded to as the SI Naresh Kumar has physically arrested only 64 Pos in a year. He has also been called in person and explained the rule position. He may be informed accordingly.

Sd/-
(B.S.Bamel) ACP/CB/PHQ
Joint Commissioner of Police
Headquarters, Delhi.”

5. The application is being contested. Respondents contend that applicant was appointed as temporary Sub-Inspector (Executive) on 28.8.1996. He was confirmed on 28.8.1998. The request of the applicant that he had arrested the large number of Proclaimed Offenders had been examined. It revealed that 13 Proclaimed Offenders were arrested on issuance of production warrants by the Court and for that, as per the Circular dated 21.5.2001, credit could not be given to the applicant. Respondents plead that as per the Circular of 3.5.2001, the

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criteria of considering the case for out of turn promotion from one rank to next higher rank is to apprehend 75 Proclaimed Offenders, including 25 Proclaimed Offenders in heinous cases. The applicant had physically arrested 65 Proclaimed Offenders in a year and, therefore, he could not get the promotion as claimed.

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

7. Learned counsel for the applicant had argued that the applicant had arrested more than 75 Proclaimed Offenders in one year and, therefore, he was entitled to get out of turn promotion. On behalf of the respondents, it was urged that a Circular had been issued on 3.5.2001, which clearly clarifies that out of 75 Proclaimed Offenders, 25 Proclaimed Offenders should be of heinous cases. Further, vide the Circular of 21.5.2001, the Proclaimed Offenders arrested on production warrant and traced as dead will not be considered in the purview of arrest of Proclaimed Offenders. According to the respondents' learned counsel, these Circulars of 3.5.2001 and 21.5.2001 will have retrospective effect.

8. To appreciate the said controversy, we take liberty in reproducing the Circular of 29.11.1992 which reads as under:

"CIRCULAR

No.10/CB-VI/PHQ

Subject:- Reward for arresting Proclaimed Offenders.

It has been noticed that a number of subordinate officers have taken keen interest in arresting Proclaimed Offenders. Some of these officials have arrested as many as 200 Proclaimed Offenders which act is indeed commendable. In order to recognize their hard work and commitment to duty, these officers have been given, from time to time, varying rewards, including out of turn promotion. In order to have a uniform policy for recognizing the services of such officers, the following norms have been set for award of different categories of rewards:-

1. OUT OF TURN PROMOTION

Out of turn promotion will be given to an officer who apprehends:



- i) More than 75 Pos in one year, or
- ii) More than 125 Pos in two years, or
- iii) More than 250 Pos in 5 years.

II. ASADHARAN KARYA PURASKAR

50 Pos in 2 years

2. It has also been decided in CP's law and order meeting held on 11.6.92 that a portion of reward should go to that police officers on whose information the arrest of a PO is made. As such, all DCPs while sending recommendation in future, under incentive scheme will follow the above norms and also indicate the names of police officers/men on whose information arrest of a particular P.O. was made.

3. These instructions may be given wide publicity by announcing in Roll Call etc. for at least 3 days so that the officers are aware of the scheme and take suitable follow up action."

9. Thereafter, the Circular of 3.5.2001 was issued and it was provided that for first timers, out of turn promotion will be given to an officer who physically apprehended 75 Proclaimed Offenders (25 should be of heinous offences, i.e., dacoity, murder, attempt to murder, robbery, riot, kidnapping for ransom and rape, in a year. The list of the classification of heinous crime had been given in the abovesaid circular. Another Circular of 21.5.2001 reads as under:

"CIRCULAR

Reference this Hdqrs. Circular No.25042-25142/CB-IV dated 3.5.2001 regarding arrest of proclaimed offenders.

On perusal of D.D. entries vide which proclaimed offenders shown arrested it is found that D.D. entries have been lodged by SI/ASI/HC and the name of HC/Const. have been recommended for the grant of out of turn promotion on arrest of Pos. On query, DCP/West Distt. has informed that Constable is not entitled to make entries in the Daily Diary regarding the arrest.

There is a provision in Cr. P.C. Chapter-IV under heading arrest of persons:-

- i) 41(1) When police may arrest without warrant:
Any police officer may without an order from a Magistrate and without a warrant, arrest any person.

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- © Who has been proclaimed as an offender either under this code or by order of the State Government;
- ii) 43(1) Arrest by private person and procedure on such arrest:- Any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station.

The proclaimed offenders arrested on production warrant and traced as dead will not be considered in the purview of arrest of Pos for the grant of out of turn promotion.

It is emphasized upon all concerned that in future D.D. entries regarding arrest of proclaimed offenders will be lodged only by the officer/men who actually/physically arrest the proclaimed offenders.

Sd/-
(Pranab Nanda)
Deputy Commissioner of Police
HDQRS. (Estt.), Delhi."

10. So far as the plea of the respondents that these Circulars will have retrospective effect is concerned, we have no hesitation in rejecting the said contention. This is for the reason that on 7.3.2001, the Officer/In-charge, Police Station, Kotwali had recommended the claim of the applicant for out of turn promotion. The Circulars have been issued thereafter. Once the vested right had accrued to the applicant, if any, it could not have been withdrawn or taken away by a subsequent Circular. Therefore, the principle that a clarificatory circular necessarily will have a retrospective effect, has no application in the facts of the present case.

11. But that is not the end of the matter. Perusal of the Circular of 29.11.1992 which we have reproduced above clearly shows that a person, who apprehends 75 Proclaimed Offenders in one year, is entitled to be considered for out of turn promotion. But Paragraph 2 of the same by itself clarifies that the Police Officer, who gives the information about the arrest of a Proclaimed

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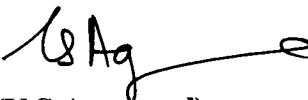
Offender, is only entitled to the portion of the reward. In other words, if a person gives information to the Court and production warrants are issued pertaining to the Proclaimed Offenders, he can be taken to be entitled to the portion of the reward. The said portion of the reward was explained to be a cash award. He, therefore, cannot be taken to be one who has apprehended a Proclaimed Offender to take advantage of the said Circular.

12. Section 41(1)© of the Code of Criminal Procedure (Chapter IV) permits the Police Officer to arrest the person without warrant, namely, who has been proclaimed as an offender either under the Code of Criminal Procedure or by an order of the State Government. The applicant had physically arrested only 65 Proclaimed Offenders, 13 had been taken into custody because of the information given and by issuance of a production warrant. As is apparent from the plain language of the Circular of 1992, for those with respect to whom he gave information, he cannot take advantage. Therefore, the claim of the applicant does not fall to the number of 75 persons who have been apprehended by him in one year.

13. The applicant had only physically apprehended 65 Proclaimed Offenders. For others, he had given the information and production warrants were issued, for which he was given cash awards, therefore, he cannot take the advantage of the said Circular. Thus, he is not entitled to out of turn promotion.

14. Resultantly, in the absence of any other argument, Original Application must fail and is dismissed.


(S.A.Singh)
Member (A)


(V.S.Aggarwal)
Chairman

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