

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.166/92

New Delhi this the 13th day of February, 2003.

HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMN)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Inder Singh S/o Sh. Mange Ram,
R/o H.No.50, Jyogi Vihar,
Behind Police Quarters,
Nangloi : Delhi.

-Applicant

(By Advocate Shri Ritesh Singh)

-Versus-

1. Commissioner of Police,
Delhi Police Headquarters,
M.S.O. Building,
I.P. Estate,
New Delhi.
2. Deputy Commissioner of Police
(Head Quarter I),
Delhi Police Headquarter,
I.P. Estate, New Delhi.

-Respondents

(By Advocate Shri Ajesh Luthra)

O R D E R

By Mr. Shanker Raju, Member (J):

In this OA applicant, who has voluntarily retired from service has sought his promotion as Inspector from the date of promotion of his immediate junior resorted to vide promotion list dated 12.2.91.

2. Applicant, who had earlier filed this OA the same was dismissed in default on persisted absence of applicant on 13.11.96. Subsequently MA-2727/2002 filed by applicant who is in judicial custody undergoing sentence on account of his conviction in a criminal case MA was allowed and the OA was restored. Learned counsel who has been appointed by the Legal Aid Committee defended the case of applicant.

3. Applicant was enrolled as Sub Inspector in Delhi Police on 10.4.72 and was confirmed on 10.3.76.

(24)

During the period of his working as Sub Inspector he was awarded 35 commendation certificate although he had five censure, i.e., minor penalties awarded to him on 6.10.97, 5.1.89, 7.3.89, 29.12.89 as well as 23.3.90 but has no major punishment in his record. Applicant stood at serial No.33 of the seniority list and accordingly 14 officers were promoted on ad hoc basis as Inspectors on 21.11.90. Applicant aggrieved by the promotion of his junior approached this court in OA-348/91 and by an order dated 10.1.95 his claim was rejected in the light of record not found satisfactory.

4. Subsequently another notification was issued on 12.2.91 whereby Sub Inspectors have been admitted to promotion list 'F' (Executive) under Rule 17 (1) of the Delhi Police (Promotion & Confirmation) Rules, 1980 but name of applicant had not figured in the list.

5. Applicant preferred representations and finding no response filed this OA.

6. Learned counsel for applicant Shri Ritesh Singh contended that withholding of promotion of applicant is arbitrary and violative of Articles 14 and 16 of the Constitution of India. It is contended that as per Rule 17 the promotion is to be made on the basis of seniority if the record is otherwise good. He places reliance on a decision of the Apex Court in H.P. State Electricity Board v. K.R. Gulati, 1998 (2) SCC 624 to substantiate his plea.

(3)

7. Moreover it is contended that whereas he has been for the last five years of consideration, i.e., record from 1986-90 has been given grading 'B' in the ACRs which denotes assessment as very good and as none of the censures awarded is on account of corruption or moral turpitude as per the guidelines promotion cannot be denied to him but he can be debarred for six months. Moreover, placing reliance on PHQ circular dated 18.8.97 it is contended that 'B' report denotes that the recommendation of promotion is to be given in ordinary course of seniority.

8. In the aforesaid background it is stated that applicant has been meted out a differential treatment as the juniors who has also been awarded censure during the last have years have been empanelled but promotion has been denied to him arbitrarily.

9. On the other hand, respondents' counsel Sh. Ajesh Luthra, appearing for the respondents strongly rebutted the contentions and produced the ACRs and DPC record. In the background of the record it is stated that DPC has taken into consideration the case of applicant for promotion on the basis of the procedure devised by it as per DOPT OM dated 10.3.89 applicants ACRs have been found to be unsatisfactory and as he has been censured five times on the allegation of barking the offence, non-registering the cases, letting of the accused in view of Rule 5 (1) of the Rules as promotion from one rank to another is by way of selection tampered with seniority and as efficiency and honesty are the main factors governing the selection, as applicant has not been found fit as per his record his promotion was rightly turned down.

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10. Lastly, it is contended that no discrimination has been meted out to him and moreover by referring to the ACRs it is contended that not merely the grading but the other relevant factors figuring in various columns of the ACRs have to be considered to arrive at the grading, the DPC on the basis of individual columns has rightly arrived that applicant's performance was not satisfactory. Moreover, it is stated that applicant has sought voluntary retirement and has retired from service on 15.7.93. It is also stated that sealed cover pertaining to applicant has been opened after finalisation of DE and he was found unfit.

11. We have carefully considered the rival contentions of the parties and perused the material on record. In so far as promotion to the rank of Inspector is concerned, as a general provision under Rule 5 (1) of the Rules *ibid* promotion from one rank to another in Delhi Police is on the basis of selection tampered with seniority. The basic factors to be considered are efficiency and honesty. Although, guidelines have been laid down having requirement of five or more Good ACRs and no punishment either minor or major on corruption or moral turpitude yet censure has an effect of debarring the officer for promotion for a period of six months if it is inflicted on administrative grounds alone. Although as per DOPT guidelines dated 10.4.89 DPC is free to devise its own method to assess the candidate and it is not influenced by the grading given in the ACR. From the perusal of the DPC record we find that DPC held on 11.2.91 had taken into considered the cases of eligible Sub Inspectors falling

within the zone of consideration and declared them fit or unfit on scrutinising the service record and ACRs for the last five years. DPC has considered ACRs from 1985-90.

12. We find that applicant's ACRs for the year 1984-85 have been shown as satisfactory, for 1986-87 as Good, 1987-88 and ~~1988~~¹⁹⁸⁸-89 unsatisfactory and for 1989-90 satisfactory. Apart from this, applicant was inflicted five censures during the last five years.

13. On perusal of the ACRs of applicant from ACR folders we find that ACR for the period 1.4.85 to 31.3.87 has been graded as 'B' with the remarks that the performance remain satisfactory. For the period 1.4.86 to 31.3.87 the grading was 'B' with the remarks of above average performance. Again ACR for the period 1.4.88 to 4.1.89 applicant has been categorised as 'B' as an average officer. For the period 5.9.88 to 1.4.89 he has been categorised as Good having graded 'B'. The ACR for the period 1.4.89 to 7.9.89 has been graded as Good as well as ACR from 12.10.88 to 31.3.89.

14. In so far as minor penalty of censure inflicted on 6.10.87 is on the allegations that applicant has wrongly mentioned the date of forged documents in order to favour the accused.

15. Censure dated 5.1.89 is on the ground of keeping the complaint pending. Censure inflicted on 7.3.89 is for failure to register a case. Censure dated 29.12.89

is for omission in investigating a rape case which led to acquittal of the accused and the last censure was inflicted on 23.3.90 is for remaining absent from duty.

16. As per policy and the circular issued by the Delhi Police in vogue in 1989 a censure inflicted for corruption and moral turpitude is an impediment for empanelment. But censure coupled without^u any major punishment, i.e., on administrative grounds is not a disqualification for empanelment of a Sub-Inspector in list 'F' for promotion to the post of Sub-Inspector.

17. From the perusal of punishment imposed upon applicant,^u none of the censure is either on corruption charges or for moral turpitude, as such the same would have no effect over promotion except debarring applicant for a period of six months only.

18. In so far as reports are concerned, as per the PHQ circular dated 18.8.97 'B' report^u has been categorised where the promotion is recommended to be given in ordinary course of seniority.

19. In OA-1657/94 - Dharmender Kumar v. Union of India, decided on 6.8.99 this court placing reliance on a letter issued by Lt. Governor on 9.7.96 where grading 'B' in the ACR has been equated with Very Good, allowed the claim of applicant. We find that whereas the DPC has considered ACRs for the period as satisfactory and unsatisfactory the grading given in the ACRs including the individual columns show the performance of applicant as Good. As such there has been a variance between the

gradings highlighted in the DPC record and what exists on ACR Folders. This clearly shows that the DPC has with a closed mind considered his case without following the guidelines laid down as well as the ACRs. No doubt the DPC is free to devise its own guidelines but while doing so it cannot go beyond the performance evaluated by the reporting and reviewing officers in the ACRs as per the respondents' letter grading 'B' is to be considered as Very Good. From the perusal of the ACRs and individual columns as applicant has been graded 'B' the DPC which has taken into consideration the performance of applicant as unsatisfactory cannot be sustained as the same is not borne out from the record. It is settled principle of law that though this Tribunal cannot act as an appellate authority over the findings of the DPC but if the DPC findings are vitiated by malafides and are against the rules and guidelines, the same can be interfered with in a judicial review.

20. From the perusal of the record we find that assessment of applicant has not been properly conducted as per rules by the DPC, ignoring his grading as 'B' in the ACRs and declared him unfit only on the basis of censures which are neither on corruption or moral turpitude and have lost its effect on expiry of six months.

21. In the result, for the foregoing reasons, OA is allowed. The respondents are directed to hold a review DPC to consider the case of applicant for inclusion in promotion list 'F' from the date his immediate juniors have been included and in the event he is found fit for promotion he shall be accorded all the consequential

benefits, including retiral benefits, within a period of three months from the date of receipt of a copy of this order. No costs.

22. Before parting with the matter we must appreciate the sincere efforts put-forth by Sh. Ritesh Singh, Advocate appointed through Legal Aid Committee to defend applicant who is in judicial custody.

S Raju
(Shanker Raju)
Member (J)

(Govindan S. Tampi)
Member (A)

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