



CAT/7/12

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

**O.A. No. 1177/92
T.A. No.**

199

DATE OF DECISION 24.8.93

<u>Shri Surinder Pal</u>	Petitioner
<u>Mrs. Avnish Ahlawat</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India</u>	Respondent
<u>Shri Amreesh Mathur</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. J.P.SHARMA MEMBER (J)

The Hon'ble Mr. S.GURUSANKARAN MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *yes*

JUDGEMENT

This judgement was delivered by Hon'ble Shri S.Gurusankaran, Member (A)

The applicant is aggrieved by the order dated 13.1.1992 (Annexure 'D') informing him that his promotion to the rank of Head Constable has been withheld with effect from 8.1.1991 on administrative grounds. He has prayed for directing the respondents to bring his name on list 'B' and to give promotion with effect from 8.1.1991, the date

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on which his counterparts were given promotion, with all consequential benefits of pay and allowances.

2. The facts of the case are not in dispute. While the applicant was working as constable, he was taken up under disciplinary proceedings for accepting illegal gratification for the release of a scooter involved in a road accident and was dismissed from service by the Addl. D.C.P. vide order dated 18.1.1989. He appealed against the same and the Addl. Commissioner of Police vide his order dated 18.3.1989 (Annexure 'A') reinstated him in service, but imposed the punishment of forfeiture of two years approved service permanently entailing proportionate reduction in his pay for a period of two years. Since this major punishment was imposed on him in a corruption case, his name ^{was} brought on the secret list of officers of doubtful integrity by D.C.P./Vigilence with effect from 5.5.1989. He appeared in the competitive list 'A' in the year 1989-90 and he made the grade and his name was included in list 'A' with effect from 15.2.1990 vide order dated 25.4.1990 (Annexure 'B'). Consequently, he was deputed for lower school course in his turn along with his batch-mates, which he passed in September, 1990. In view of this, his name was considered for inclusion in promotion list 'B' and promotion to Head-Constable. But since his name was included in the secret list, his name was not included in the list 'B'. The applicant made a representation to D.C.P./Headquarters for his promotion and he was informed vide letter dated 13.1.1992 that his promotion was withheld on administrative grounds. The applicant did not make any appeal to the Addl. Commissioner of Police and filed this application.

2. We have heard Ms. Avinash Ahlawat for the applicant and Shri Amrish Mathur for the respondents and we have

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carefully gone through the pleadings and the case laws referred to. The short ~~question~~ involved in this case is whether an employee, who has been penalised for certain misconducts and whose name is borne on the secret list, can be promoted during the period when he is undergoing the penalty and even at the conclusion of the penalty period can claim the promotion as a matter of right notwithstanding the fact that his name is borne on the secret list?

2. Ms. Avinish Ahlawat, the learned ~~and~~ unsel for the applicant, took us elaborately through the Standing Order (S.O. for short) No. 91/1989 (Annexure 'E') regarding the promotion of constables to head constables. She referred to para 4 of the S.O. ~~that as per sub-para (ii) a constable under suspension or is~~ facing departmental proceedings shall not be eligible for admission for training in departmental course and after the departmental enquiry is over, his case will be considered by DPC and if he is considered suitable, he will be placed in his original position in the list. She pointed out that in the present case the disciplinary proceedings against the applicant had already been concluded before he appeared for the selection to list 'A'. Further, as per para 6 (iv) while allotting marks for service record seniority, the punishment imposed on the applicant had already been taken into consideration and inspite of it the applicants was considered suitable for inclusion in list 'A'. She submitted that as per the procedure laid down in the S.O. vide para 6 for preparing the promotion list 'B', the only criteria is the successful completion of the lower school course. It is the case of the applicant that once his name is included in list 'A' and he has successfully completed the lower school



course, his name should have been included in list 'B' and given promotion in his turn.

3. The second leg of the argument of the learned counsel for the applicant was that the applicant was never informed about the inclusion of his name in the secret list. She submitted that such inclusion of name in the secret list, which leads to denial of promotion, amounts to adverse remarks in the Annual Confidential Reports (ACR for short) and hence the same cannot be done without informing the applicant.

4. We are unable to agree with the above submissions. We have carefully gone through the S.O.91/1989 and would like to give the extracts of relevant portions for adjudicating in the matter:

" 4. Duration of promotion list 'A' (Male & Female constables)

- i) Names on promotion list 'A' shall normally be kept for a period of one year. However, the names may be removed from the list without formal departmental proceedings by the Addnl. Commissioner of Police (Admn) if a constable fails to maintain an exemplary standard of work and conduct. A constable shall be deemed to have failed to maintain such a standard, if he/she is awarded a major punishment, is involved in criminal proceeding, or is otherwise found unsuitable on account of acts of moral turpitude. However, before removing the name from promotion list 'A', a show cause notice shall be served on the constable concerned affording him a proper opportunity to defend his case.
- ii) No member of a subordinate rank, who is under suspension or facing departmental enquiry/criminal

6

proceedings shall be eligible for admission for training in a departmental course. Such case shall be decided on merit by the DPC, after such proceedings are over. A departmental enquiry shall be deemed to have been initiated, after summary of allegations are issued. In case he is considered suitable for training after the departmental enquiry/criminal proceedings are over, he will be placed at an original/appropriate place along with his counter-parts.

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5. Lower School Course(Male and Female Constables)

Constables on promotion list 'A' shall be detailed in order of their seniority to undergo six months training at Police Training School

6. Promotion list 'B' (Male and Female Constables)

i) The names of all constables, who have successfully completed the Lower School Course and have been declared to have qualified for bringing their names on promotion list 'B', shall be considered. The constable on promotion list 'B' shall be promoted to the rank of Head Constable on officiating basis.
However, the names can be removed from promotion list 'B', by the Addnl. Commissioner of Police(Admn), if an individual fails to maintain an exemplary standard of work and conduct as per guidelines contained in para 4 above"

(emphasis supplied)

5. It is by now well settled that (i) an employee has a right to be considered for promotion and not a right to promotion, (ii) past record including penalties imposed can be

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taken into account, while considering his promotion (iii) an employee cannot be promoted even after inclusion in the select list, being considered otherwise suitable, during the pendency of a departmental proceeding, and (iv) an employee cannot be promoted during the period he is undergoing a penalty, since otherwise it would amount to not having imposed the penalty at all. Viewed from the above well settled principles and the requirements laid down in S.O. the action of the respondents cannot be faulted for not including the applicant's name in list 'B'. It is clear from para 4 (ii) and 5 ~~not suitability~~ ^{not suitability} extracted above that the purpose of List 'A' is only to decide the ~~eligibility and suitability~~ ^{eligibility} for being sent for Lower School Course training course. Thus inclusion of a constable's name in list 'A' only entitles him to be sent for training. In the case of the applicant, since there was no pending departmental proceeding, he was considered for inclusion in list 'A' and was included. It is obvious and has to be presumed, as pointed out by the learned counsel for the applicant, that the fact of the applicant having been awarded a major penalty must have been taken into consideration by the DPC before including his name in list 'A'. Since his name was in list 'A', ~~not~~ ^{he} was sent for training and he passed the same. However, a perusal of para 6 of S.O. states that those who have successfully completed the course and have been declared to have qualified shall be considered for bringing their names in list 'B'. Thus, inclusion in list 'A' and passing the training course are only the essential conditions for consideration for inclusion in list 'B' and ~~not automatic~~ ^{not} inclusion itself. Before inclusion in list 'B', the competent authority has to consider as to whether the constable is otherwise suitable, like any new pending disciplinary/ criminal case, being borne on "secret list", etc. The provisions of the S.O. themselves have not been challenged as to their

8

validity and since they have been followed correctly by the respondents, the applicant has to fail.

6. Regarding inclusion of the applicant's name in "secret list", in the circumstance of the case, it was not necessary to have intimated the fact to the applicant. As per S.O. 265, officials who are awarded a major penalty departmentally (a) on charges of lack of integrity (b) on charges of gross dereliction of duty in protecting the interest of the Govt., although the corrupt motive(s) may not be capable of proof and (c) punished for misuse of power, abuse of official position to intact money, will be included in the "secret list". In the circumstances of the case in which the applicant was imposed the major penalty of dismissal, which was subsequently reduced by the appellate authority to forfeiture of 2 years of approved service permanently entailing proportionate reduction in his pay for 2 years, the respondents had to include his name in "secret list" to watch his further performance regarding integrity. Apart from this, the applicant was undergoing the penalty of reduction in pay for 2 years from 28.3.1989 and hence he could not have been considered for inclusion in list 'B' during that penalty period. Therefore, there is no merit in the applicant claiming that he should have been promoted with effect from 8.1.1991.

7. Ms. Ahlawat referred to the judgement of this Tribunal in the case of Jagdish Chand Vs. UOI (OA 2208/88 decided on 24.5.1989) and Jai Kishan Vs. UOI (OA 1542/89 decided on 16.3.1990) and argued that on the basis of the ratio laid down in these cases, the applicant should have been included in list 'B'. In Jai Kishan's case, the circumstances were different. The applicant therein had been served an order of enquiry on 11.1.1988, which was later overruled by order dated 8.8.1988. In the meantime the OPC met in May, 1988 and

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declared him unfit on the ground that his name figured in the "Agreed List". Similarly in Jagdish Chand's case, the only reason for not including his name was that it was borne on "secret list". Thus the present case is clearly distinguishable in that, the applicant has been awarded a major penalty in a case involving moral turpitude and his name has been included in the "Secret List" only after the imposition of punishment.

8. Finally the learned counsel for the applicant argued that after the applicant's penalty period was over in March, 1991 his case should have been considered for inclusion in list 'B' taking into account that his name figures in ~~secret~~ list and his subsequent performance after the imposition of punishment. She further argued that even otherwise the "secret list" should have been reviewed at the end of 3 years i.e. in May, 1992 and his name should have been considered for inclusion in list 'B' atleast in May, 1992. This application was filed in April, 1992 and the respondents have filed their reply in January, 1993. Even though the respondents have referred to the relevant S.C. about inclusion of names in the "secret list", they have not made any averment in their reply as to whether the applicant's name was considered in March, 1991 for inclusion in list 'B' and again in May, 1992 after reviewing, to continue the applicant's name in the "secret list". During the arguments also the learned counsel for the respondents could not throw any light on this points of law raised by the applicant's counsel. To this extent, we find merit in the submission of the applicant's counsel.

9. In view of the above, we allow this application partly and dispose of the same with the following directions:

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1. The competent authority should consider the inclusion of the name ^{of the applicant} in list 'B' in March, 1991 taking into account the fact ~~is~~ that his name figures in the "secret list" and his subsequent performance, after his name was included in the "secret list". In case the applicant's name is considered suitable for inclusion of his name in list 'B' in March, 1991 he should be given retrospective promotion from that date with all consequential benefits, except for ^{arrears of} pay and allowances, but ~~with~~ ^{pro forma} effect.
2. In case the competent authority comes to the conclusion that his name cannot be included in list 'B' in March, 1991, he should review the "secret list" as on May, 1992 as to whether it should be continued ^{to remain in} ~~on board~~ ^{up} the "secret list". Along with this review the competent authority should also consider the case of the applicant for inclusion in list 'B' with effect from May, 1992 in accordance with law. In case the competent authority finds that the applicant can be included in list 'B' in May, 1992, he should be promoted with effect from May, 1992 with all consequential benefits including arrears of pay and allowances.
3. The above directions shall be complied with by the respondents within a period of six weeks from the date of receipt of a copy of this order and the results of the same shall be intimated to the applicant.

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4. In case the applicant is still aggrieved with the decision of the competent authority for inclusion of his name in list 'B', he will have liberty to agitate the same before the Tribunal, after exhausting the normal remedies provided to him and in accordance with law.

There shall be no order as to cost.

Signature
S.GURUSANKARAN
MEMBER (A)

Signature
J.P.SHARMA
MEMBER (J) 24.8.93

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pronounced by me.

Signature
24.8.93