

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A.2034/93

New Delhi this the 23rd day of February, 1994.

HON'BLE SHRI J.P. SHARMA, MEMBER (J)
HON'BLE SHRI B.K. SINGH, MEMBER (A)

Constable Bachi Singh No.9466/DAP
S/o Shri Ram Singh
Presently posted in 8th BN. DAP
R/o S-8, Harish Chander Mathur Lane, Near Janpath,
New Delhi-110001 ... Applicant

(Advocate : Shri Shankar Raju)

Versus

1. Delhi Administration
(Through Commissioner of Police)
Police Headquarters, MSO Building.
NEW DELHI.

2. Dy Commissioner of Police,
Headquarters I, MSO Building,
I.P. Estate, New Delhi. ... Respondents

(Advocate : Amresh Mathur)

ORDER (ORAL)

Hon'ble Shri J.P. Sharma, Member (J)

The applicant Constable Bachi Singh No.9466/DAP presently posted in 8th Bn. DAP was appointed as a Constable in Delhi Police on 14.04.1977. The applicant earned commendation by showing exemplary courage and bravery and for this he got out of turn promotion by the Order dated 6th January, 1984 to the rank of Head Constable under the provisions of Rule 19 (2) of the Delhi Police (Promotion and Confirmation) Rules, 1980. The applicant in this application is aggrieved by the Order of 18.06.1985 regarding his reversion to its substantive post of Constable and Order dated 01.10.1992 rejecting his representation regarding his promotion to the rank of Head Constable as well as Order of 12th April, 1993 rejection of his

representation by Commissioner of Police.

2. He prayed for the relief that the impugned order of reversion dated 24th June, 1985 and Orders dated 19.10.92 at (Annexure A-7) and order 16.4.93 at (Annexure A-9) be quashed with a direction to the respondents that the applicant be promoted as Head Constable (Executive) with effect from 18.6.1985 with all consequential benefits. Further, the applicant be considered for next higher post of A.S.I.

3. A notice was issued to the respondents who filed the reply, contesting the application, opposing the grant of relief prayed for stating that the applicant was put under suspension because of enquiry in March, 1985 and he was punished with a order, imposing the penalty of with-holding three increments for a period of 3 years by the Order dt 23rd April, 1985. Since the applicant was found u/nfit for the post of Head Constable, his ad hoc promotion was considered and he was reverted by the impugned Order dated 24.06.1985. The representation against the aforesaid Or~~der~~ has been duly considered by the Higher Authority and has been reject~~ed~~ by the Additional Commissioner of Police as well as Commissioner of Police by the Orders of October, 1992 and March, 1993 respectively.

4. We have heard the learned counsel for the parties. The Applicant's counsel has argued that the promotion to the applicant to the rank of Head Constable was given due to the approval of the Lt Governor under the provisions of Rules 19 (II) of the Delhi Police (Promotion and Confirmation) Rules 1980. In fact, Rule 19 is regarding ad hoc promotion . The relevant Rule is quoted

below :-

Rule 19(ii) "To encourage outstanding sportsmen, marksmen, Officers who have shown exceptional gallantry and devotion to duty, the Commissioner of Police may, with prior approval of Administrator, promote such officers to the next higher rank provided vacancies exist. Such promotions shall not exceed 5 per cent of the vacancies likely to fall vacant in the given year in the rank. Such promotions shall be treated as ad-hoc and will be regularised when the persons so promoted have successfully completed the training course prescribed like (Lower School Course), if any. For purposes of seniority such promotions shall be placed at the bottom of the promotion list drawn up for that year."

5. The contention of the learned counsel is that the applicant was unaware of the Order of reversion. Earlier to the Order of reinstatement was passed on the basis of decision on the application filed by the applicant before the Principal Bench in OA 4174/89 whereby he was removed from the service by the order of 21st November, 1985 and it was directed by the Principal Bench in the Order passed in the aforesaid O.A. that the applicant shall be reinstated in service and the period of suspension as well as the period that he was out of employment be considered by the respondents. The respondents by the Order 4.10.1991 reinstated the applicant and he was also paid allowances for the period he was not allowed to perform his duties till the order of removal from service of November, 1985 was set aside by the Order of the Tribunal dated 6.12.90. We have given a careful consideration after hearing Counsel for the respondents. Firstly, applicant again assailed reversion at this belated stage. Delay and latches also defeat the right, if any available to an aggrieved person. Contention

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of the learned counsel is that the applicant was unaware cannot be lightly taken for granted in as much as the applicant was reverted in June, 1985 and earlier to it he was put under suspension from March, 1984. He, therefore, was earning lesser ^{Subsistence} ~~substantial~~ amount commensurate with the post of constable and not that of pay and scale for the post of Head Constable. He was removed from service in November, 1985. After exhausting departmental remedy, he filed O.A.474 in the year 1989 and he did not claim any relief with regard to this Order of reversion of June, 1985. Merely making an averment without ^{substantiating} ~~sustance~~ that the applicant was unaware, will not give fresh cause of action to the matter which has become stale. Further in the judgement dt 06.12.1990 there is no such direction that the applicant should be reinstated to the post of Head Constable. On 25.11.1985 when he was removed from service, he ~~was~~ already stood reverted as constable with effect from 24.06.1985. He was, therefore, rightly reinstated on the post of Constable. If the applicant still had any grievance of non-compliance of the Order dated 6.12.1990 he should have persued the remedy either by review of that judgement or by filing a C.C.P. to enforce his claim of reinstatement to the post of Head Constable. He has not done so and rightly because the judgement of O.A.474/89 does not grant that relief.

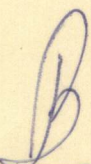
6. The contention of the learned counsel is that the ad-hoc promotion for all purposes was regular is not concievable by literal meaning of the provisions of Rule 19(ii) of the Rules referred to above.

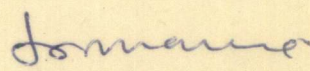
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7. We do not find any merit in this application. The applicant's counsel has given up his right to file the rejoinder to the counter, and the averments in the counter, therefore, have to be treated as unreverted. Since the pleadings of the case were complete we have heard the parties at length. The O.A. is, therefore, dismissed leaving the parties to bear their own costs.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

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