

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 553/2015
MA 438/2015

Reserved on: 20.10.2016
Pronounced on: 27.10.2016

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

HC (Exe) Balwant Singh Rana
S/o Shri Kunwarpal Singh
R/o Q.No.3A, Type-II
PS Madhu Vihar, Delhi-92Applicant

(Through Shri Sourabh Ahuja, Advocate)

Versus

1. GNCT of Delhi through
The Chief Secretary
Players Building, IP Estate,
New Delhi-110002
2. Commissioner of Police
Delhi Police
Police Head Quarters, I.P. Estate
MSO Building, New Delhi
3. Deputy Commissioner of Police
Establishment
Police Head Quarters, I.P. Estate
MSO Building, New Delhi

.... Respondents

(Through Sh. N.K. Singh for Mrs. Avnish Ahlawat, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant, under the leadership of Shri Sanjeev Kumar Yadav, Assistant Commissioner of Police, took part in the well-known Batla House Encounter Case against hardened terrorists

in which Inspector Mohan Chand Sharma actually laid down his life. The applicant was awarded police medal for gallantry vide notification dated 16.12.2009. According to the Statement of Service for which the decoration has been awarded, the applicant during the shootout, was hit by a bullet fired by militants in his right hand and his pistol fell down but by collecting all his strength, he picked up the pistol with his left hand in order to avoid its going into the hands of the militants. The encounter was a great success and the entire module of the terrorist outfit Indian Mujahideen was busted. In fact, in the penultimate para of the notification, the following has been noted:

"In this encounter S/Shri Sanjeev Kumar Yadav, Assistant Commissioner of Police, Dharmender Kumar, Sub Inspector, Balwant Singh, Head Constable and Rajbir Singh, Head Constable displayed conspicuous gallantry, courage and devotion to duty of a high order."

2. The DCP in the Citation for award of Out of Turn Promotion (OTP) for the applicant and others, recommended that the applicant be given OTP to the rank of Assistant Sub Inspector (ASI) in order to recognize the extra ordinary and excellent work done by him in the line of his duties. However, vide order dated 28.03.2011, the applicant was awarded Asadharan Karya Puraskar (AKP) with cash reward of 10,000/- instead of OTP. The applicant is aggrieved by this decision of the respondents and prays that the order dated 1.10.2013 be quashed and set aside and direction be issued to the respondents to promote the applicant on OTP basis to the rank of ASI from the due date with

all consequential benefits including seniority, difference in pay, promotion etc.

3. Learned counsel for the applicant stated that this matter had come up before this Tribunal in OA 4070/2011 and the Tribunal vide order dated 31.07.2013 had observed that OTP cannot be solicited as a matter of right and it would be the satisfaction of the Incentive Committee/Commissioner of Police to arrive at its own conclusion. The matter was remitted back to the Incentive Committee to take a fresh view in the matter. The respondents passed impugned order dated 1.10.2013 in compliance of this order of the Tribunal. Learned counsel pointed out that the Tribunal had noted in para 4 of its order as follows:

"4..... Nevertheless, it is explicitly viewed by their Lordships in the said case that the DD entry is a cryptic recording of information received at the Police Control Room/Police Station and likewise an FIR is not an encyclopedia and does not contain the minute details pertaining to the incident in respect whereof the information is recorded. Since in the present case also in denying out of turn promotion to applicant, the respondents relied upon the DD entry, in view of the aforementioned finding of Hon'ble High Court, the same cannot be approved. Of course, in the case before Hon'ble High Court there was recommendation of first Incentive Committee, thus it could be viewed that the matter required re-consideration by the Commissioner. In the present case, reliance placed by the applicant is only on the citation. The citation needs to be analyzed by the Incentive Committee. The Committee relied upon the DD and FIR to take a view that the performance of the applicant in the incident captioned hereinabove, as recorded in DD and FIR does not call for his out of turn promotion. However, the Committee has not commented upon the contents of the citation i.e. whether the facts narrated in the citation are incorrect/incredible or not reliable or even if correct,

the role of the applicant reflected therein is not gallant and exceptional enough for giving him out of turn promotion or there was some extrapolation in the citation. While the contents of the DD, and of FIR, and the facts narrated in the citation, may not independently be sufficient to be acted upon, as tested or proved documents, it is for the Incentive Committee to weigh all three of them, and to form its own opinion, while taking a decision. It would be appropriate for the Incentive Committee to make a reference to the contents of the DD / FIR in forming its opinion with simultaneous reference to the contents of the citation also, and to record as to how it has weighed them.”

4. It is stated that while passing the impugned order, the respondents have not bothered to take into account the observations of the Tribunal and, therefore, keeping in view the recommendations by the DPC and the facts as recorded in the Notification dated 16.12.2009, especially the fact that the Notification records that the applicant and the others involved in the encounter displayed conspicuous gallantry, courage and devotion to duty of a high order, the respondents may be directed to grant applicant OTP.

5. The learned counsel for the respondents initially raised the objection that while the order was passed on 1.10.2013, the applicant has filed this OA on 07.10.2014 i.e beyond the period of one year and, therefore, the instant OA is hit by delay and laches and as per provisions of Section 21 of the Administrative Tribunals Act, this is not maintainable. However, this is not a major breach and we condone the delay.

6. The learned counsel for the respondents stated that after the order of the Tribunal in OA 4070/2011 (supra), the matter was placed before the Incentive Committee again on 18.09.2013. The Incentive Committee considered citations, other relevant record and representation of the applicant and found that the earlier Incentive Committee had carefully considered the case and not found them eligible for OTP but recommended their names for AKP instead of OTP. In this meeting, the Committee agreed with the decision taken by the earlier Incentive Committee.

7. The learned counsel for the respondents stated that OTP cannot be claimed as a matter of right, as has been held clearly in OA 3066/2013 titled **HC Ashok Kumar Vs. GNCT & Ors.**, by relying on the decision of the Hon'ble High Court in W.P. (C) No. 10733/2009 (**Commissioner of Police Vs. SI Satbir Singh**), wherein it has been held as follows:

"5. Firstly, the respondent is not claiming any right to be promoted under the notified Recruitment Rules. Secondly, out of turn promotion being by way of a special benefit cannot be claimed as a matter of right and nobody can stake a claim to be promoted from a date when somebody has done good work justifying claim to be considered for out of turn promotion special incentive can never rank at par with statutory rights".

8. It is further argued that this is the second round of litigation. On the directions of the Tribunal, the matter has been re-examined by the Incentive Committee and they reiterated the decision of the earlier Incentive Committee. The learned counsel

also relied on the judgment of the Hon'ble Supreme Court in **People's Union for Civil Liberties & Anr. Vs. State of Maharashtra & Ors** (Criminal Appeal No.1255 of 1999). In this case, the Hon'ble Supreme Court laid down certain criteria and one of the criteria was as follows:

"14. No out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given/recommended only when the gallantry of the concerned officers is established beyond doubt."

9. There is no doubt that the respondents have recognized the contribution of the applicant. Therefore, they have not only granted him AKP but also Police Medal for gallantry. It is not that the applicant is alleging any malafide or discrimination. Question, therefore, remains whether the Tribunal should interfere in a domain in which clearly it has no expertise. What goes on during the operation is best known to the man in the field and, if the Incentive Committee has considered the case of the applicant twice and has rejected his claim, despite the fact that the same Commissioner of Police has recommended for gallantry award based on courage and devotion to duty displayed by the applicant and which award was bestowed on the applicant, there definitely must be cogent reasons for the Incentive Committee and the Commissioner of Police not to recommend him for OTP and it would not be in the interest of anyone that the Tribunal gets into the shoes of Incentive Committee and the Commissioner of Police starts evaluating the facts and evidence, thus acting as some kind of appellate

authority to the Commissioner of Police. What the Tribunal has to see is whether due consideration has been given by the respondents and that there has been no malafide or discrimination involved.

10. We are satisfied that there has been no malafide or discrimination and also that the Incentive Committee considered each and every aspect before coming to a conclusion, which was agreed to by the Commissioner of Police. We, therefore, refrain from interfering in this matter. The OA is, therefore, dismissed.

No costs.

(Raj Vir Sharma)
Member (J)

(P.K. Basu)
Member (A)

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