

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 693/2015

New Delhi this the 16th day of December, 2015

Hon'ble Mr. A.K.Bhardwaj, Member (J)
Hon'ble Dr. Birendra Kumar Sinha, Member (A)

Sh. Labh Singh (SI), Aged 54 years
S/o Sh. Balbir Singh,
R/o K-14/D Amar Colony,
Nangloi, Delhi-41

.. Applicant

(By Advocate Shri Sourabh Ahuja)

VERSUS

1. GNCT of Delhi
Through Commissioner of Police,
PHQ, M.S.O. Building,
IP Estate, New Delhi.
2. Additional Deputy Commissioner of Police
Establishment, Delhi
PHQ, M.S.O. Building,
IP Estate, New Delhi.
3. Joint Commissioner of Police
Headquarter, Delhi
PHQ, M.S.O. Building,
IP Estate, New Delhi.

.. Respondents

(By Advocate Mr. Amit Anand)

ORDER

Hon'ble Mr. A.K.Bhardwaj, Member (J):

In terms of the provisions of Rule 19 (ii) of Delhi Police (Promotion & Confirmation) Rules, 1980, the Commissioner of Police may with prior approval of administrator promote such officers to the next higher rank who would show exceptional gallantry and devotion to duty. The rule as reproduced by the respondents in their counter reply read thus:-

“To encourage outstanding sportsmen, marksmen, officer 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 promotion shall not exceed 5% 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 regularized when the person so promoted have successfully completed the training courses prescribed like (Lower School Course), if any. For purposes of seniority such promotees shall be placed at the bottom of the promotion list drawn up for that year.”

For his association with the working out of FIR No. 139/06 u/s 364-A/506 IPC PS Patel Nagar, FIR No.112/06 u/s 399/402/186/353/307 IPC and 25/27/54/59 Arms Act PS Punjabi Bagh, FIR No.792/2005 u/s 302/394 IPC PS Punjabi Bagh, a citation for grant of out of turn promotion to applicant was sent by DCP/West District, Delhi to headquarter on 04.04.2006. The recommendation was placed before Incentive Committee in its meeting held on 12.05.2006. The Committee which considered 11 cases including that of applicant for grant of incentive recommended his name for out of turn promotion. The recommendation was approved by the Commissioner of Police. Nevertheless, since the vacancies within the ceiling of 5% of the vacancies in the given year were not available, the promotion could not be granted. The Incentive Committee met on 8.12.2010, considered the case of applicant for out of turn promotion again and viewed that in none of the cases the applicant had shown any exemplary courage and valour which could warrant his out of turn promotion. The Commissioner of Police, Delhi also agreed with the recommendation of the Incentive Committee and the applicant was

apprised of the decision by way of reasoned and speaking U.O No.63024/CB-IV/PHQ dated 15.12.2010. Being aggrieved with the decision, the applicant approached this Tribunal by filing OA No. 2563/2011. The OA was allowed in terms of order dated 2.12.2011 and the applicant was granted ad hoc promotion to the next higher rank of ASI (Ex) on out of turn basis, vide notification No.73703-750/CB-IV/PHQ dated 28.12.2011. Thereafter the applicant made a representation for fixation of his seniority as ASI (Exe.) w.e.f. 14.09.2007, as was done in the case of head constable, Narender Kumar and others. The representation was nixed and the applicant filed OA 1064/2013 for antedating his out of turn promotion. The OA was disposed of in terms of order dated 14.03.2014, operative portion of the order read thus:-

”9. Without going deep into the merits of the rival contentions put forth by the counsels for the parties, we deem it appropriate to dispose of this OA with direction to the respondents to examine the claim of the applicant regarding date of his ‘out of turn’ promotion and fixation of his seniority as SI Executive in view of the judgment of the Hon’ble Delhi High Court in Writ Petition No.5203/2012, SI Umesh Barthwal *ibid*, afresh within two months from the date of receipt of a copy of this order. It goes without saying that outcome of the fresh examination would be communicated to the applicant by way of speaking order.”

In implementation of the order passed by this Tribunal, the respondents passed the impugned order dated 14.11.2014 with the view that his case is different from that of Umesh Barthwal as his out of turn promotion was antedated only on the ground that his co-team members were granted such promotion

from a different date, relevant excerpts of the impugned order read thus:-

“The claim of the applicant regarding date of his ‘out of turn’ promotion and fixation of his seniority as ASI (Executive) in view of the judgment of Hon’ble Delhi High Court in Writ Petition No. 5203/2014 relating to SI Umesh Barthwal has been examined. The facts of the case of SI Umesh Barthwal are that he had been granted OTP with immediate effect on 11.04.11 as per directions of the Hon’ble CAT in the OA filed by him. Thereafter, he filed writ petition in the Hon’ble High Court of Delhi for re-fixing his seniority from back date in the rank of Inspector w.e.f 15.12.2006 i.e the date when his co-team-members were granted OTP with all consequential benefits.Hon’ble CAT has given direction to Delhi Police to examine the claim of ASI Labh Singh on the basis of judgment of SI Umesh Barthwal and dispose of the claim by way of a speaking order. These are two different situations in case of SI Umesh Barthwal, the claim of seniority was based on the seniority of co-team members but in this case ASI Labh Singh was not having any co-team members which can be made the basis for granting him the back date OTP. These two cases are not seniority placed. Moreover, ASI Labh Singh has already been fixed for OTP from 28.11.2011. Therefore, in the case of the applicant, there is no co-team member, who was granted OTP in this case as such his case is not on the same footing as that of Umesh Barthwal.”

2. In the wake, the applicant filed present OA, praying therein:-

- (a) Quash and set aside the impugned orders to the extent as mentioned in para 1 of the OA.
- (b) Direct the respondents to antedate the seniority of the Applicant in the rank of ASI (Exe.) on his out of turn promotion w.e.f. 14/09/2007 (date when the vacancy of ASI earmarked for OTP quota has arisen for the first time the name of the applicant has been approved for OTP by the incentive committee and commissioner of police) and grant all consequential benefits including appropriate placement in seniority list, promotion and monetary benefits etc. and
- (c) Award costs of the proceedings and
- (d) Pass an other order/direction which this Hon’ble Tribunal deems fit and proper in favour of the applicants and against the respondents in the facts and circumstances of the case.”

Learned counsel for the applicant submitted that the view taken by the respondents in the impugned order dated 14.11.2014 is misconceived, as the view taken by Hon'ble Delhi High Court in Writ Petition No. 5203/2012 etc.etc. (**Umesh Barthwal Vs. Govt. of NCT of Delhi and Ors etc.etc.**) decided on 06.03.2013 was not that the petitioners were entitled to out of turn promotion from the date of promotion of the co-team members but was that the out of turn promotion should be granted against the vacancies accrued immediately in the year or the years thereafter. According to him, the Incentive Committee had recommended his promotion on 12.05.2006 and when four vacancies of ASI (Exe) were available in the year 2007, his out of turn promotion should have been made effective from the said year.

3. On the other hand, the learned counsel for the respondents espoused that the earlier Incentive Committees approved out of turn promotion to the police personnel even when there were no vacancies in the rank to which the promotion was to be made and in terms of Rule 19 (iii) of Delhi Police (Promotion & Confirmation) Rules, 1980, the out of turn promotion has to be restricted to the total 5% of the vacancies in the rank likely to fall vacant during the given year and there is no rule which permit out of turn promotion even when the vacancies do not exist. According to him OTP cannot be claimed as a matter of right. He further submitted that SI Umesh Barthwal was given antedated promotion w.e.f. 15.12.2006 only for the reason that its co- team had been granted promotion from such date and the ratio decidendi of the judgment of Hon'ble High Court in his case is not

that the promotion should be granted from the date of availability of vacancy during any of the years following the recommendation of Incentive Committee.

4. We heard counsel for parties and perused the record. It is not gainsaid that the OTP is discretionary power of the competent authority and cannot be claimed as a matter of right. We would not be incorrect in understanding the view taken by Hon'ble High Court in para 12 of its judgment dated 06.03.2013 as a view that the recommendation of Incentive Committee for OTP of an individual should not be shunned merely because the vacancy is not available during the relevant year and his claim should be kept alive against the vacancies that may arise during the following years. Relevant excerpt of the order read thus:-

“.....Firstly whether the reconsidered opinion to deny out of turn promotion could be sustained, and secondly whether the stand taken by Delhi Police that out of turn promotions could be granted only with respect to 5% vacancies in the year when the act of gallantry/bravery or achieving distinction in sports or a marksman was achieved was correct. And for the latter controversy we may simply note that a notification given in the alternative was that there were no vacancies which had accrued in the year in question and thus the question of reserving 5% thereof for out of turn promotion did not arise.

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12. The undisputed facts therefore would be that the petitioners were found being entitled to out of turn promotion. The vacancies to which they have to be adjusted would be the ones which accrued immediately in the year or the year thereafter as also the further year thereafter, till a vacancy became available in the 5% quota for the first time. This view has already been taken by a Division Bench of this Court, which has attained finality. Two other similarly placed persons have been granted notional promotion from the date when vacancy for their post accrued in the promotional post.”

In other words, no one can have right to promotion including OTP with effect from the date of availability of the vacancy and promotion become effective either from the date of DPC or assuming the charge of the post, whichever is later. We reject the contention of learned counsel for the applicant that the view taken by Hon'ble High Court in para 12 of the order has the ramification that the promotion of the applicant should be antedated. Nevertheless, we are convinced that once in OA 2536/2011 this Tribunal had taken a view that the applicant is entitled to the benefit of judgment of Hon'ble High Court in WP (C) no.5444/2010 and finally in WP (C) No.5203/2012 etc. etc. (**Umesh Barthwal Vs. GNCTD & Ors**) decided on March 06,2013, it could be viewed that the recommendation of Incentive Committee regarding OTP should not be limited to the vacancy during the relevant year but should be held valid against the vacancy during subsequent years also and in implementation of the said judgment, the respondents have granted him promotion from retrospective date, similar benefits cannot be denied to applicant. Once the respondents could take a view that Mr. Umesh Barthwal was entitled to retrospective promotion on the ground that his co-team were given OTP from such date, the applicant cannot be denied similar benefits. In fact, parity should be drawn not in between co-team mate alone, but in between all those who are recommended for OTP by Incentive Committee. In other words, those in respect of whom the recommendation of Incentive Committee is approved earlier should be given preference in OTP and those who were recommended later should be considered for OTP thereafter.

5. In the present case, it is not clear that what was the dates of recommendations in respect of SI Umesh Barthwal and the applicant herein. In the wake, the OA is disposed of with directions to respondents to verify the dates of recommendations/approval of the Incentive Committee in respect of those who are given OTP against the vacancy of 2007 onwards within 5% ceiling and if any individual recommended for OTP after the recommendation in respect of the applicant is given for OTP ahead of him, the applicant will also be given ad hoc promotion as ASI (OTP) from such date. No costs.

(Dr. Birendra Kumar Sinha)
Member (A)

(A.K.Bhardwaj)
Member (J)

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