

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1419/2015

Reserved on: 03.11.2017
Pronounced on:08.11.2017

Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. Uday Kumar Varma, Member (A)

HC Braham Dev, PIS No.28824642
Aged around 50 years
S/o Sh. Har Sarup
Post Office Narela,
Delhi – 40.

...Applicant

(By Advocate: Sh. Harpreet Singh)

Versus

1. The Commissioner of Police,
Police Headquarters,
MSO Building, ITO,
New Delhi – 110 002.
2. The Jt. Commissioner of Police,
Headquarters,
New Delhi.

...Respondents.

(By Advocate: Shri B.N.P. Pathak)

O R D E R

By Hon'ble Uday Kumar Varma, Member (A):

The instant Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 challenging the order dated 06.03.2015 whereby the respondents have rejected his representation dated 07.01.2015 to consider him for ad hoc promotion in terms of DoP&T OM No.22011/4/91-Estt(A) dated 14.09.1992.

2. Admitted facts of the case are that the applicant is working as Head Constable with Delhi Police. On

24.04.1997, an FIR No.297/97 was registered against him and four others, a chargesheet was filed in the same on 30.03.2001, and charges were framed under Sections 342/304A/34 IPC against him on 06.10.2001. Separately, a departmental enquiry was also initiated against him on 02.05.2012, which was quashed by the Tribunal, vide order dated 13.11.2013 [pages 27-36 of the paper book] and affirmed by the Hon'ble High Court of Delhi vide order dated 26.09.2014 [pages 37-39 of the paper book]. Admittedly, the case of the applicant for promotion firstly considered by the DPC held on 19.02.2010 and findings of the DPC were kept in sealed cover. Thereafter, subsequent DPCs held on 10.02.2011, 29.09.2011, 07.01.2013, 26.09.2013 and 27.10.2014 have also reviewed his case but decided to keep their findings in sealed cover due to pendency of above criminal case and also a DE dated 02.05.2012. Aggrieved, the applicant made a representation dated 07.01.2015 for granting him ad hoc promotion on the basis of the DOP&T OM dated 14.09.1972 which was rejected by the respondents vide the impugned order dated 06.03.2015 stating therein that there is no provision in the Standing Orders regarding guiding principles of granting ad hoc promotion as if the DoP&T OM is not applicable to Delhi Police.

3. Having carefully considered the pleadings, submissions of the respective parties, and the DoP&T OM dated 14.09.1972 relied upon by the applicant, the Tribunal was of the view that the applicant could not either show any standing order of the Delhi Police in which analogous provision, such as, that contained in para 5 of DoP&T OM dated 14.09.1972, exists or the DoP&T instructions are applicable in the case of Delhi Police Personnel. Therefore, finding no infirmity in the action of the respondents in rejecting the representation of the applicant for grant of ad hoc promotion, the Tribunal, vide order dated 24.05.2016, dismissed the OA being devoid of merit.

4. Aggrieved, the applicant had filed a Review Application bearing RA No.134/2016 against the Tribunal's order dated 24.05.2016 pointing out that an error on face of the record had crept in by the Tribunal by wrongly observing that DoP&T instructions were not applicable to Delhi Police. The applicant drew attention of the Tribunal to Rule 26(2) of Delhi Police (Appointment & Recruitment) Rules, 1980 [hereinafter referred to as 'Delhi Police Rules, 1980'], which was admittedly not cited by the applicant during the course of hearing in OA on the ground that the respondents never disputed that DOP&T instructions were not applicable to

them. For the sake of clarity, Rule 26(2) of Delhi Police Rules, 1980 is reproduced hereunder:-

“In regard to matters not specifically covered by these rules the police officers of subordinate rank shall be governed by the rules, regulations and other orders applicable to the corresponding grade of Civilian employees serving under the Govt. of India.”

5. Keeping in view the above provision, the Tribunal came to the conclusion that an error had occurred while deciding the OA and, therefore, allowed the Review Application and recalled the order dated 24.05.2016 by restoring the OA to its original number for fresh hearing. Accordingly, the instant OA was heard and reserved for orders on 03.11.2017.

6. The sole issue to be adjudicated upon in this case is whether DoP&T OM dated 14.09.1972 is applicable to the employees of Delhi Police where there is no specific analogous provision in the statute of Delhi Police; and if the answer to this is in affirmative, whether the respondents can be directed to consider the case of the applicant for grant of ad hoc promotion pending criminal case as per the provisions of the above DoP&T OM dated 14.09.1972.

7. Learned counsel for the applicant submits that the Tribunal, while allowing the RA No.134/2016, has clearly opined that DoP&T OM dated 14.09.1972 is applicable to

the employees of Delhi Police in view of the provisions of Rule 26(2) of Delhi Police Rules, 1980, reproduced above. On the other hand, learned counsel for the respondents though admitted that DoP&T instructions are applicable to the employees of Delhi Police only where there is no specific provision covering the issue, vehemently submitted that in the present case, which involves the issue of grant of ad hoc promotion, there is a specific provision for the same under Rule 19(i) of Delhi Police Rules, 1980 and, therefore, the said OM of the DoP&T is not applicable to the case of the applicant. Rule 19(i) of Delhi Police Rules, reads as under:-

“In special circumstances when no approved names on promotion lists, vacancies exist, the Commissioner of Police may promote suitable officers in order of seniority to next higher rank temporarily. Such promotion shall not entitle the officers concerned to claim any right for regular appointment or seniority for appointment to such or any other equivalent post and shall be liable to reversion without notice as soon as qualified men become available.”

8. At this juncture, learned counsel for the applicant drew our attention to Clause 5 of the DoP&T OM dated 14.09.1972 stating that where the disciplinary case/criminal prosecution against the government servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC, the appointing authority may review the case of government servant to

consider the desirability of giving him ad hoc promotion.

Clause 5 of the DoP&T OM reads as under:-

“5. In spite of the six monthly review referred to in para 4 above, there may be some cases, where the disciplinary case/criminal prosecution against the Government servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC, which keeps its findings in respect of the Government servant in a sealed cover. In such a situation the appointing authority may review the case of the Government servant, provided he is not under suspension, to consider the desirability of given him ad-hoc promotion keeping in view the following aspects:-

- a) Whether the promotion of the officer will be against the public interest;*
- b) Whether the charge are grave enough to warrant continued denial of promotion;*
- c) Whether there is any likelihood of the case coming to a conclusion in the near future;*
- d) Whether the delay in the finalization of proceedings, departmental or in a court of law, is not directly or indirectly attributable to the Government servant concerned; and*
- e) Whether there is any likelihood of misuse of official position which the Government servant may occupy after adhoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.*

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau.”

9. As is evident from the records that the case of the applicant for regular promotion to the higher post was initially considered by the DPC on 19.02.2010 but its findings were kept in sealed cover on account of pending criminal case. However, subsequent DPCs held on 10.02.2011, 29.09.2011, 07.01.2013, 26.09.2013 and

27.10.2014 reviewed his case and decided to keep their respective findings in sealed cover due to pendency of criminal case. It is also amply clear that a period of two years from the date of first DPC that being 19.02.2010 has already expired. It is also true that the name of the applicant does not exist on the promotion list D-1. It is also pertinent to note here that for regular promotion, one has to be fully exonerated from the criminal charges and only then the sealed cover can be directed to be opened. But, in the present case, prayer of the applicant is only to consider him for ad hoc promotion as per Clause-5 of the DoP&T OM dated 14.09.1972 by virtue of which he is entitled to be considered for the same in such special circumstances.

10. The issue that where there are no specific provisions on the statutes of Delhi Police but there exists specific provisions on the same issue in the DoP&T OM remains already settled, and the principle is that in terms of Rule 26(2) of Delhi Police Rules, 1980, provisions of such DoP&T OM will be adopted by Delhi Police. Now, here is an issue which deals with consideration of *ad hoc* promotion of an employee whose DPC recommendation is in sealed cover. Learned counsel for the respondents, during the oral submissions, stated that such a case is covered under Rule

19 (i) of Delhi Police Rules, 1980. However, if one makes a close reading of the provision of this Rule, it is clear that this is a provision which deals with the usual *ad hoc* promotions in special circumstances, particularly when there are no approved names on promotion list but vacancies exist. The situation of the applicant is not covered under this rule because here the case is not that the approved names are not on the promotion list or that vacancies exist but there are no employees available to fill these vacancies. The issue here is that the employee's *ad hoc* promotion is not being considered only because his case is under sealed cover. This situation is addressed by Clause-5 of DoP&T OM dated 14.09.1972 which has been reproduced in paragraph 8 above.

11. In our considered view, the situation that the applicant is faced with is not covered by Rule 19(i) of Delhi Police Rules, 1980 but under Clause-5 of DoP&T OM dated 14.09.1972. It is also clear that the statutes of the Delhi Police do not have any provision similar or analogous to Clause-5 above and, therefore, we have no hesitation in holding that the applicant's case is covered under Clause-5 of DoP&T OM dated 14.09.1972, which is applied in absence of such analogous and similar provisions in Delhi Police Rules, 1980.

12. In view of the above, we are convinced that end of justice will be met if the respondents are directed to consider the case of the applicant for *ad hoc* promotion taking into consideration the provisions of Clause-5 of the DoP&T OM dated 14.09.1972 subject to his eligibility otherwise. The OA is accordingly allowed with a direction to the respondents to do so by passing a speaking and reasoned order within a period of three months from the date of receipt of certified copy of this order. No costs.

(Uday Kumar Varma)
Member (A)

(Raj Vir Sharma)
Member (J)

/Ahuja/