

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

O.A. No. 3277/2013

Reserved on : 29.04.2016
Pronounced on : 17.05.2016

**HON'BLE MR. P.K. BASU, MEMBER (A)
HON'BLE DR. BRAHM AVTAR AGRAWAL, MEMBER (J)**

HC (Exe.) Shoba Ram,
Age 38 years,
S/o Shri Bihari Lal,
R/o Village – Nangla Chabbra,
Post-Sahera, Kawari (Tehsil),
Bharatpur, Rajasthan.

.. Applicant

(By Advocate: Shri Sachin Chauhan)

Versus

1. Govt. of NCTD through
The Commissioner of Police,
Police Headquarters,
MSO Building,
I.P. Estate, New Delhi.

2. The Dy. Commissioner of Police,
Traffic (HQ) through
The Commissioner of Police,
Police Headquarters,
MSO Building,
I.P. Estate, New Delhi.

.. Respondents

(By Advocate: Mrs. Harvinder Oberoi)

ORDER**By Hon'ble Mr. P.K. Basu**

The applicant was appointed as Constable in Delhi Police in the year 1996 under General category. In 2006, he appeared in 'A' List Test conducted under General category and the applicant was admitted to Promotion List 'A' – 2006 as Sl.No.919 for promotion as Head Constable.

2. In 2008, the respondents realised that the applicant had been wrongly considered under SC category in the 2006 'A' List Test, whereas he was actually General category candidate and based on this wrong categorisation, he was admitted in Promotion List 'A' vide notification dated 28.12.2006. Thereafter, the name of the applicant was removed vide order dated 19.11.2008 and he was reverted back to the post of Constable.

3. The short grievance of the applicant is that at no point of time, he has adopted any deceitful means nor has been negligent in providing any information to the Department or concealed any material fact in order to obtain promotion to List 'A' conducted in the year 2006. It was the respondents fault. However, since he was included in Promotion List 'A' in 2006, he missed the opportunity to participate in promotion examination of List 'A' conducted in the subsequent years 2007 and 2008. It is, therefore, his case that he cannot be penalised for the mistake of the department in which the

applicant had no hand, and being not able to appear in 2007 and 2008 examinations, has caused severe prejudice to him. He has, therefore, filed this O.A. with the following prayer :

“To set aside the SCN dated 28.12.06 and order dated 19.11.2008 whereby the name of applicant was removed from promotion list ‘A’ and applicant was reverted back to the post of Constable at A-1 and to further direct the respondent that applicant be treated as passed candidate in the examination to List ‘A’ Exam. in the year 2007 and further treated as last candidate in the promotion list ‘A’ of 2007 and seniority of applicant be fixed accordingly with all consequential benefits including seniority and promotion and pay and allowances.

Or/and

Any other relief which this Hon’ble court deems fit and proper may also be awarded to the applicant.”

4. The learned counsel for the applicant relies on the judgment dated 22.09.2007 of this Tribunal in O.A. No.88/2007 – Durgesh Kumar Vs. Union of India and Others. It is stated that in that case the applicant, Shri Durgesh Kumar, a Constable, had been wrongly promoted as Head Constable due to wrong classification of his caste and was, hence, reverted back as Constable. It is stated that the Tribunal went into the facts of the case and also earlier order of the Tribunal, and directed the respondents as follows:

“14. Having given our thoughtful consideration to the issue, we find the solution to the problem would lie in giving same treatment to the applicant as was thought proper even by the department in an absolutely identical case. That being so, while setting aside the impugned orders, we would order that the applicant be treated to have passed the examination required for promotion to the post Head Constable held immediately after the examination in which the applicant had appeared and passed the test, and he be treated as the last candidate having passed the said examination in the said year, and his seniority be accordingly fixed. The applicant shall also be entitled to consequential reliefs that may accrue to him on account of

fixation of his seniority in the manner referred to above. In view of the peculiar facts of this case, costs are made easy.”

The applicant states that since his case is exactly similar to that of Shri Durgesh Kumar, a similar direction may be given in his case also.

5. The respondents had approached the Hon’ble High Court in WPC No.394/2008 against the aforesaid judgment in the case of Shri Durgesh Kumar. This was dismissed by the Hon’ble High Court vide order dated 16.01.2008.

6. Learned counsel for the respondents stated that there is no parity between the case of Shri Durgesh Kumar and the applicant. It is pointed out that in the case of Shri Durgesh Kumar, the Tribunal noted the fact that reversion of Shri Durgesh Kumar to the post of Constable was after a period of 16 years of his promotion to the post of Head Constable, whereas in the case of the applicant the Department detected the mistake and reverted him within two years.

7. Similarly, it has been argued that Shri Durgesh Kumar was vigilant and immediately on receiving the show cause notice, he approached the Tribunal. In the case of the applicant, the show cause notice was issued in 2008, but the applicant chose to approach the Tribunal only in 2013, without assigning any reason for delay.

8. It is further pointed out that the judgment in the case of Shri Durgesh Kumar was dated 12.09.2007 and, therefore, the applicant could have approached the Tribunal immediately in 2008 on receiving the withdrawal order. Therefore, it is argued that this O.A. is also barred due to limitation.

9. Heard the learned counsel for the parties and perused the pleadings.

10. There is no dispute that the applicant, at no stage, had misled the respondents that he is not a General candidate and a SC candidate and thereby got himself included in List 'A' for promotion to Head Constable based on some falsehood. Admittedly, the fault was of the department. The department was also aware of the judgment of the Tribunal in Durgesh Kumar's case of 2007.

11. We do not quite accept the argument of the learned counsel for the respondents that there is no parity between Durgesh Kumar's case and the applicant's case herein. The similarity is that both were given a promotion based on wrong categorisation of caste done by the department. The candidates had no role to play. They did not deceive the department for giving the promotion and by giving them the promotion, in fact which was later withdrawn, they deprived the opportunity in 2007 and 2008 to the applicants to appear in these subsequent tests for promotion. No doubt this is a serious prejudice

caused to the candidates. Whether the period is 16 years or 2 years is not relevant, the question of prejudice is relevant. In fact, that's why this Tribunal took the view, as we have already cited above, so that the prejudice caused to the candidates would be rectified. This decision the respondents should have respected and made applicable to all similar cases instead of forcing them to approach the Tribunal individually.

12. The ground raised by the learned counsel for the respondents that this O.A. is hit by limitation is not acceptable. We have already noted that once the Tribunal in its order had shown a way out to the department to alleviate the prejudice caused in such cases, which was in fact upheld by the Hon'ble High Court, the department should have adopted the same policy. Constables are very low paid staff and may not always be aware of legal remedies available to them and even the question of limitation. Therefore, we do not find any merit in the argument of the respondents' counsel and this is a fit case where, even if there is a delay, it should be condoned.

13. In view of the above, the O.A. is allowed. The impugned order dated 19.11.2008 is set aside and the respondents are directed to treat the applicant to have passed the examination required for promotion to the post Head Constable held immediately after the examination in which the applicant had appeared and passed the

test, and he be treated as the last candidate having passed the said examination in the said year, and his seniority be accordingly fixed. The applicant shall also be entitled to consequential relief that may accrue to him on account of fixation of his seniority in the manner referred to above. In view of the peculiar facts of this case, costs are made easy.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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