

**Central Administrative Tribunal
Principal Bench**

OA No.4152/2013

Reserved on : 15.09.2015
Pronounced on : 23.09.2015

**Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Mr. P. K. Basu, Member (A)**

Constable Yogesh Kumar,
Aged 43 years,
S/o Sh. Sohan Lal
R/o E-II/196-A,
Shastri Nagar,
Sarai Rohilla,
New Delhi. Applicant.

(By Advocate : Shri Sachin Chauhan)

Versus

1. Government of NCTD
Through Commissioner of Police,
Police Headquarters, IP Estate,
MSO Building,
New Delhi.
2. The Dy. Commissioner of Police
Security through
Commissioner of Police,
Police Headquarters, IP Estate,
MSO Building,
New Delhi.
3. The Deputy Commissioner of Police
Establishment
MSO Building, IP Estate,
New Delhi.
4. The Deputy Commissioner of Police
Traffic (SR) through
Commissioner of Police
Police Headquarters, IP Estate,
MSO Building,
New Delhi. ... Respondents.

(By Advocate : Ms. Rashmi Chopra)

: O R D E R :

P. K. Basu, Member (A) :

The applicant's claim is that he has completed twenty years of service on 09.10.2010 and, therefore, the 2nd financial upgradation under the Modified Assured Career Progression Scheme should be given to him w.e.f. 09.10.2010, whereas the respondents have granted him upgradation from 16.04.2012 vide order dated 29.11.2012.

2. Learned counsel for the applicant states that there was a joint departmental enquiry against the applicant and one co-delinquent, namely, HC Manohar Singh. The allegations against them were relating to (a) corruption and (b) dereliction to duty. Initially, a major punishment of forfeiture of one year of service was passed. The applicant and the other co-delinquent approached this Tribunal in OA No.156/2008 which was disposed of vide order dated 09.01.2008 setting aside the order of punishment and reducing the punishment to that of "recordable warning". The respondents filed Writ Petition (C) No.11023/2009 in the Hon'ble High Court of Delhi, which was disposed of vide order dated 12.07.2010, which reads as under:-

"11. The OA filed by the respondents would be treated as having been allowed to the extent the penalty order and the order in appeal have been quashed. The matter stands remanded to the Disciplinary Authority of the petitioner to consider and impose the appropriate penalty for the part of the misdemeanour proved; the Disciplinary Authority would impose a penalty less than the one which has been set aside."

3. The Disciplinary Authority thereafter passed a fresh order imposing a punishment of withholding of one increment permanently for a period of one year and withholding of increment to have the effect of postponing the future increment. On appeal by the charged officers, the Appellate Authority modified the punishment to that of "Censure". A show cause notice dated 26.10.2012 was issued to Shri Manohar Lal as to why his name should not be removed from the promotion list w.e.f. 19.02.2010. This was in accordance with Rule 7 (2) of the Delhi Police (Punishment and Confirmation) Rules, 1980, which reads as under:-

"the conduct and efficiency of men on promotion list shall be, at all times, watched with special care. Any officer whose name exists on the promotion list, if found guilty of a misconduct of nature reflecting upon the character or fitness for responsibility or who shows either by specific acts or by his record as a whole that he is unfit for promotion to higher rank shall be reported to the Deputy Commissioner of Police, Head Quarters-(I), Delhi in respect of person on List 'A' to 'F' and to Additional Commissioner of Police (Administration) Delhi in respect of Officer on list 'F'. However, final decision regarding removal of name (s) from a promotion list shall be taken by the Appointing Authority only after giving show cause notice to the individual."

In the show cause notice it was mentioned that Shri Manohar Lal was awarded a punishment of "Censure" on corruption charges. Shri Manohar Lal approached this Tribunal in OA No.672/2013 and vide order dated 26.02.2013, this Tribunal set aside the impugned show cause notice in limine.

4. Learned counsel for the applicant explained that the date of 16.04.2007 has been worked out by the respondents on the ground that the punishment of "Censure" was because of charge of corruption and moral turpitude in which case an employee is debarred for promotion for five years and, since the first punishment order was dated 16.01.2007, the respondents have granted him second MACP w.e.f. 16.04.2012. It is pointed out from copy of the file noting that even in the file noting it has been recorded due to corruption charges as follows:-

"R/o with the remarks that as per order No.162-65/appl/Cell JTCP/See dt 30.10.2011 in which Censure was awarded to the said applicant. The contents of censure having involved in corruption, hence the punishment initially awarded vide order dated 16.04.2007 counted for deferment for five years from the date of initial punishment and for 2nd ACP Scheme granted accordingly i.e. from 16.04.2012. The applicant may be informed accordingly. The enclosure P.T.O."

Moreover, it is stated that even in their counter affidavit at page 43, the respondents have stated as follows:-

"The 2nd MACP Scheme was considered by the DPC of Security Unit and he was granted 2nd MACP Scheme w.e.f. 16.04.2012 vide order No.16201-80/CR-VIII/Sec. dated 2.11.2012 (Annexure-D) by deferring from 10.10.2010 due to the award of punishment of Censure having the allegations of corruption, hence the punishment initially awarded vide order dated 16.04.2007 counted for deferment for five years and after that 2nd MACP Scheme is granted w.e.f. 16.04.2012."

It is argued that this clearly shows that the respondents have debarred the applicant for promotion for five years on the presumption that the punishment of "Censure" had been awarded

based on allegation of corruption. It is argued that while disposing of OA No.156/2008, this Tribunal had held as follows:-

“4. In the above circumstances when it is expected that there should be sufficient evidence to establish the guilt against the delinquents and when it is admitted position that there was nothing evidencing acceptance of bribery, a punishment on that score may not be maintainable. But there are circumstances to show that the applicants were not available in the duty post. The lapse, therefore, is of a lesser degree alone.”

It is argued that this means that the impugned charge of corruption had collapsed and it is only dereliction of duty which was finally considered for imposing the penalty of censure.

5. In view of this, the applicant has prayed for the following relief:-

“8.1 To quash and set aside the order 29.11.12 issued by DCP (Security) to an extent that it grants the benefit of 2nd MACP Scheme to the applicant w.e.f. 16.4.12 instead of 9.10.2010 and to further direct the respondents that applicant be granted the given benefit of 2nd MACP Scheme w.e.f. 9.10.2010 with all consequential benefit including seniority & promotion and pay & allowance with arrears.”

6. Learned counsel for the respondents drew our attention to Annexure A-10 which is a circular providing for criteria to be observed while holding departmental promotion committee for assessment of names of police personnel for the purpose of promotions lists and grant of ACP. Specific attention was drawn to para 3 which provides as under:-

“3. Officers who have been awarded any minor punishment in preceding 05 years on charges of corruption, moral turpitude etc. consequent upon conducting D.E. proceedings for the award of major punishment in which the charges have been found proved, may not be empanelled.”

It is argued that while charges of corruption and moral turpitude are specifically mentioned, these are not exhaustive as the expression used is "**charge of corruption, moral turpitude etc.**", and, therefore, gross dereliction of duty can very much be a ground on which the promotion can be debarred and it is not that only if the punishment is on the ground of moral turpitude or corruption, the debarment will operate.

7. In reply, learned counsel for the applicant cited para 2 of the same circular which reads as under:-

"2. Officers who have been awarded any major punishment in the preceding 05 years on the charges of corruption, moral turpitude and gross dereliction in discharge of duty or major punishment within 02 years on charges of administrative lapses misconduct, negligence, inefficient performance from the date of consideration may not be empanelled."

8. It is argued that it is only in major punishment case that dereliction of duty has been specifically mentioned. In minor punishment case, it is not specifically mentioned.

9. On careful reading of the circular pointed out by both sides, it would be clear that it is not true that only when charges of corruption and moral turpitude are proved the employee could be debarred for promotion for five years. 'Dereliction of duty' as a cause is not ruled out. Also, on going through the narration of facts, it will appear that the misconduct of the applicant was serious though this Tribunal held that bribery was perhaps not established whereas there were circumstances to show that the

applicant was not available at the duty post. We are aware of several cases where, because of dereliction of duty, vehicles with dark tinted glasses go unnoticed resulting in criminals using such vehicles and succeeding in their criminal motives (**e.g. Nirbhaya case**). Had the Traffic Police been more alert in those cases such heinous crime could have been even avoided.

10. Besides, as already noted, the provision contained in clause 3 of the circular, if carefully read, is not exhaustive, it is rather illustrative. Therefore, in our view the dereliction of duty of this kind cannot be taken lightly and in view of clause 3 of the said circular, which squarely applies in the instant case, the promotion or upgradation cannot be claimed as a matter of right. In the instant case, the Screening Committee having examined the service record, including the punishment of Censure, did not recommend the applicant's name for grant of financial upgradation under the MACP Scheme. We do not have any reason to differ with the view taken by the Screening Committee and as such the impugned order does not suffer from any illegality or irregularity calling for our interference under Section 19 of the Administrative Tribunals Act, 1985.

11. The OA is, therefore, dismissed. No costs.

(P. K. Basu)
Member (A)

/pj/

(Syed Rafat Alam)
Chairman