

**Central Administrative Tribunal
Principal Bench
New Delhi**

**OA No.2404/2012
with
OA No.4349/2012**

This the 9th day of August, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

H. S. Gill S/o Jawahar Singh,
Assistant Commissioner of Police,
R/o House No.23, I-Block,
Lajpat Nagar-III, New Delhi-24.

... Applicant

(In person)

Versus

1. Chief Secretary,
Government of NCT of Delhi,
Delhi Secretariat, I.P. Estate
New Delhi.
2. Joint Secretary (UT),
MHA, North Block,
New Delhi.
3. Commissioner of Police,
PHQ, I.P. Estate,
ITO, New Delhi.
4. Deputy Commissioner of Police,
Special Branch, Police Bhawan,
Asaf Ali Road, Delhi-110006.

... Respondents

(By Ms. Harvinder Oberoi, Advocate)

ORDER

Justice L. Narasimha Reddy, Chairman :

The applicant is working in the Delhi Police. He became eligible to be considered for the entry grade of NCT of Delhi, Andaman and Nicobar Islands, Daman & Diu, Dadra and Nagar Haveli Police Service (DANIPS) in the year 2009. The DPC for that purpose met on 19.02.2009. The applicant was within the zone of consideration. However, the DPC kept the evaluation pertaining to the applicant in a sealed cover on the ground that a criminal case was pending against him. He was acquitted by the criminal court on 22.10.2011. Since the sealed cover maintained by the DPC, which met in 2009, was not opened, he filed OA No.2239/2011 claiming the relief of promotion to the post of Assistant Commissioner of Police from the date his immediate junior Shri Ramesh Chand was promoted. The OA was disposed of directing the respondents to open the sealed cover, and to consider the case of the applicant for promotion. Alleging that the order passed in the OA was not complied with, the applicant filed CP No.72/2012. It is in that context that the respondents passed an order dated 14.03.2012 promoting the applicant to the post of Assistant Commissioner of Police w.e.f. 19.01.2010.

2. OA No.4349/2012 is filed with a prayer to direct the respondents to promote the applicant w.e.f. 06.02.2009, the date on which the DPC met, instead of 19.01.2010, and for other consequential reliefs. OA No.2404/2012 is filed in relation to that very cause of action, but confined to the relief of payment of back wages w.e.f. 19.01.2010.

3. The applicant contends that once, the DPC met on 06.02.2009 and considered his case, he is entitled to be promoted with effect from the date on which the DPC met, though the result thereof was kept in a sealed cover. He submits that even though the promotion was granted w.e.f. 19.01.2010, it was only on notional basis, and the actual benefit was denied to him.

4. The respondents filed counter affidavits in both the OAs. It is stated that the DPC considered the case of the applicant and various other officers in the year 2009, and the result of the consideration of the case of the applicant was kept in a sealed cover, in view of the pendency of the criminal case. It is also stated that such of the officers who were found eligible to be promoted, have been issued orders of promotion on 19.01.2010, and in respect of the applicant also the promotion

was effected from the same date. As regards the back wages, it is stated that an employee can get wages attached to a post only when he works on it, and not otherwise.

5. We heard the applicant who appeared in person, and Ms. Harvinder Oberoi, learned counsel for the respondents.

6. Two aspects arise for consideration in these OAs. The first is about the claim of the applicant to be promoted w.e.f. 06.02.2009, and the other is about his entitlement to be paid the back wages covering the period of notional promotion.

7. The respondents nowhere exhibited any discrimination against the applicant. In fact, he was considered by the DPC that met on 06.02.2009. The result of his consideration was kept in a sealed cover, in view of the pendency of a criminal case. It may be true that there was some delay in opening the sealed cover, after the applicant was acquitted in the criminal case. As a result of the direction issued in OA No.2239/2011, the sealed cover was opened and the applicant was promoted w.e.f. 19.01.2010.

8. The applicant is under an impression that any promotion on the basis of selection must be with effect from the date on which the DPC meets. Such an impression does not have any legal or factual basis. The function of the DPC is only to examine the fitness of the candidates, who are within the zone of consideration, and make recommendations. The promotions as such, take place when the appointing authority takes a decision and issues orders.

9. On the basis of the recommendations made by the DPC, appointments to the post of ACP were made through order dated 19.01.2010. The name of the applicant did not figure in the list of promoted officers, because it was kept in the sealed cover. Once, he was acquitted in the criminal case, the applicant moved this Tribunal by filing OA No.2239/2011. The relief claimed therein is that he be promoted with effect from the date on which his immediate junior Shri Ramesh Chand was promoted. In the body of both the OAs, this aspect is made very clear. Ramesh Chand was promoted vide order dated 19.01.2010. The applicant was promoted through the impugned order with effect from the date on which Ramesh Chand was promoted, i.e., 19.01.2010.

10. The very fact that Ramesh Chand was promoted w.e.f. 19.01.2010 discloses that though the DPC met on 06.02.2009, the consequential promotions were effected only from 19.01.2010, and as many as four persons were promoted. The applicant cannot be extended a preferential treatment by promoting him w.e.f. 06.02.2009. Therefore, no exception can be taken to the impugned order dated 14.03.2012.

11. Another facet of the grievance of the applicant is that the promotion was effected on notional basis. That, in fact, accords with the settled practice and principles. The actual promotion can be only with effect from the date on which the concerned employee joins the post, and promotion with effect from any date anterior to that, is bound to be notional. In the context of the back-wages, much would depend upon the reason for deferring the promotion. If it is on account of fault or mistake on the part of the appointing authority, the concerned employee would be entitled for the wages representing the period of notional promotion. If, on the other hand, there exists any valid ground for deferring the promotion, the employee may not be entitled to back-wages. In the instant case, the promotion was deferred on account of the

pendency of a criminal case. The applicant is not able to place any provision of law or a precedent to support the plea that even in such cases, he is entitled to be paid back wages.

12. Even while denying the claim for back wages, we are of the clear view that the applicant is entitled to count the promotion w.e.f. 19.01.2010 for all purposes, including those for seniority, increments, and pension.

13. We, therefore, dismiss OA No.4349/2012, and partly allow OA No.2404/2012, holding that the notional promotion given to the applicant w.e.f. 19.01.2010 shall hold good for the purpose of seniority, increments and pension. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/as/