

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

O.A. No. 577/2018

The 28th day of February, 2019

HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MR. A.K. BISHNOI, MEMBER (A)

HC (Exe.) Virender Singh Sirohi
Belt No. 747/PCR, PIS, PIS-28990615
S/o Sh. Rohtag Singh
R/o H. No. 59, Gali No. 5,
Garhi Mandu, Bhajanpura,
Delhi-110053.

Presently posted at:-
PCR-North East Zone
Group C', Aged 38 years

.. Applicant

(By Advocate: Shri Sourabh Ahuja)

Versus

1. GNCT of Delhi
Through Commissioner of Police (Delhi Police)
Police Head Quarters, I.P. Estate
MSO Building, New Delhi.

2. Deputy Commissioner of Police
(Establishment), PHQ, I.P. Estate
MSO Building, New Delhi.

.. Respondents

(By Advocate: Mrs. Harvinder Oberoi)

ORDER (ORAL)

By Shri V. Ajay Kumar, Member (J)

Heard both the sides.

2. The present O.A. has been filed questioning the action of the respondents in not fixing the seniority of the applicant, in

terms of the law laid down by the Larger Bench of this Tribunal in **Abdul Nazeer Kunju's** case.

3. The learned counsel for the applicant submits that the subject matter of this O.A. is relating to interpretation of Rule 19(ii) of Delhi Police (Promotion & Confirmation) Rules, 1980 and are squarely covered by a Larger Bench Judgement of this Tribunal in O.A. No.2047/2006 and batch in **Abdul Nazeer Kunju v. Union of India & Others**, and that the said Judgement was upheld by the Hon'ble High Court of Delhi in WP(C) No.2414/2012 and batch dated 06.05.2013.

4. Rule 19(ii) of Delhi Police (Promotion & Confirmation) Rules, 1980 reads as under:

"(ii) To encourage outstanding sportsmen, marksmen, officers 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 per cent 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 regularised when the persons so promoted have successfully completed the training course prescribed (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."

5. The Larger Bench of this Tribunal in OA No.2047/2006 and batch (supra), after discussing the entire subject, held as under:

"10. In the light of the above discussion we are of the view that the correct interpretation of Rule 19 (ii) of the

Delhi Police (Promotion and Confirmation) Rules, 1980 is that the official(s) promoted out of turn in any year shall be placed, for the purpose of seniority, at the bottom of the Promotion List of the year in which out of turn promotion is given. The judgement of the Full Bench in Sub-Inspector Yash Pal Singh is overruled.”

6. The Hon’ble High Court of Delhi in WP(C) No.2414/2012 (supra) in its judgement dated 06.05.2013, while upholding the aforesaid Larger Bench Judgement, held as under:

“13. The issue which all respondents raised firstly before the Department and because their claims were rejected, before the Central Administrative Tribunal, was the issue of the date with effect where from seniority had to be assigned to them as and when they earned a promotion under Rule 19(ii) of the *‘Delhi Police (Promotion & Confirmation) Rules, 1980’*.

14. As per the department the seniority had to be accorded when they completed the probation. As per the respondents seniority was governed by Rule 22 of the *‘Delhi Police (Appointment & Recruitment) Rules, 1980’* which meant from the date of first appointment to the post in question.

15. The view taken by the Tribunal is that the words *‘that year’* in sub Rule (ii) made it amply clear that for purposes of seniority of promotees who earned promotion under Rule 19(ii) of the *‘Delhi Police (Promotion & Confirmation) Rules, 1980’* seniority would be by placing their names at the bottom of the promotion list drawn up for that year.

16. We have already indicated above that keeping in view the anticipated vacancies which would ensue in the future, the Delhi Police so organizes sending Constables, Head Constables and Assistant Sub Inspectors to undertake the Lower School Course, Intermediate School Course and Upper School Course respectively so that as and when, based upon seniority and upon suitability being determined, these subordinate officers earn a promotion. In other words promotions are earned in the year when vacancies accrue. We have already opined that the reason why out of turn promotees who earn a promotion under Rule 19(ii) of the *‘Delhi Police (Promotion & Confirmation) Rules, 1980’* are firstly given ad-hoc promotion is because an act of bravery, gallantry and devotion to duty may be an unexpected event and the officer concerned may not have been deputed to undergo the promotional course. That is why the Rule states: *‘Such promotions shall be treated as ad-hoc and will be*

regularize when the persons so promoted have successfully completed the training course prescribed'. But, for purposes of seniority, the last sentence of the Rule provides: 'For purposes of seniority such promotees shall be placed at the bottom of the promotion list drawn up for that year'.

17. Plain and simple English language guides us that in the promotion list drawn up for that year i.e. the year of promotion, the names of these subordinate officers have to be entered and for purposes of seniority to be placed at the bottom of the promotion list drawn up for that year, meaning thereby the year of the promotion and not any other year.

18. The Tribunal has reached the right destination.

19. We concur with the reasoning of the Tribunal.

20. It assumes importance to note that Sub Inspectors who earned promotion as Inspectors under Rule 19(ii) of the *'Delhi Police (Promotion & Confirmation) Rules, 1980'* need not clear any promotional course for the reason the *'Delhi Police (Promotion & Confirmation) Rules, 1980'* do not envisage any promotion course to be successfully cleared for Sub Inspectors to be promoted as Inspectors. In any case, pertaining to respondent Brahm Jeet Singh there is not even an issue on fact because the year in which he earned promotion under Rule 19(ii) of the *'Delhi Police (Promotion & Confirmation) Rules, 1980'* vacancies existed and his promotion could not be contingent upon he successfully clearing any promotion course.

21. We give one more additional reason. If we look at sub Rule (i) of Rule 19 of the "Delhi Police (Promotion & Confirmation) Rules, 1980" we find that if no approved names are on the promotion lists and vacancies exist, as a special circumstance the Commissioner of Police may promote suitable officers in order of seniority to the next higher rank temporarily and these officers are not entitled to claim right for regular promotion or seniority. Meaning thereby, the Draftsman was conscious of temporary promotions and the consequence thereof as envisaged by sub Rule (i) and promotions with consequences thereof as envisaged by sub Rule (ii) of Rule 19 of the *'Delhi Police (Promotion & Confirmation) Rules, 1980'*.

22. We accordingly dismiss the writ petitions affirming the view taken by the Tribunal in the impugned decisions, but without any order as to costs."

7. The respondents in respect of one Shri Brahm Jeet Singh [who was a party to both the aforesaid Larger Bench

Judgement (OA No.2612/2005) and of the Hon'ble High Court of Delhi Judgment WP(C) No.6626/2011)], have complied with the said orders vide proceedings dated 16.04.2014, however, subject to the outcome of the SLP No.4929/2014 (sic. SLP No.11470/2014) pending before the Hon'ble Supreme Court.

8. Accordingly, the learned counsel for the applicant submits that this O.A. may be disposed of in terms of the said Larger Bench Judgment.

9. The learned counsel for the respondents, while not disputing the aforesaid facts and position of law, however, submits that since the applicant is not party before the Larger Bench and in view of pendency of the Civil Appeal No.6281/2015, the O.A. may be dismissed.

10. In **State of Karnataka & Ors. vs. C. Lalitha**, (2006) 2 SCC 747, it was held "Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently." (Also see, **Inder Pal Yadav & Ors. vs. Union of India & Ors.**, 1985 (2) SLR 248; **K.T. Veerappa and Others vs. State of Karnataka and Others**, (2006) 9 SCC 406 and **K.I. Shephard & Ors. vs. Union of India & Ors.**, AIR 1988 SC 686). In view of the

settled principle of law and in the circumstances, we are of the view that if the applicant is identically placed like the applicants in **Abdul Nazeer Kunju** (supra), the applicant is entitled for extension of the benefits of the said judgment.

11. In view of the aforesaid detailed judgements of the Larger Bench of this Tribunal and of the Hon'ble High Court of Delhi, and also in view of the compliance of the said decisions by the respondents, though subject to the result of the SLP, we are of the considered view that the present O.A. is also liable to be allowed, for parity of reasons. Accordingly, the instant O.A. is allowed and the impugned orders are set aside, and consequently, the respondents are directed to extend the benefit of the Larger Bench Judgment in **Abdul Nazeer Kunju's** case to the applicant, with all consequential benefits, if he is identically placed, however, subject to the result of the SLP pending before the Hon'ble Apex Court. This exercise shall be completed within three months from the date of receipt of a certified copy of this order. No order as to costs.

(A.K. BISHNOI)
Member (A)

(V. AJAY KUMAR)
Member (J)

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