

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.668 OF 2003

New Delhi, this the 10th day of October, 2003

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

Ved Singh
S/o Shri Bharat Singh
R/II-1329, Jahangirpuri,
Delhi

(By Advocate : Shri Shyam Babu)

....Applicant

Versus

1. Govt. of NCT of Delhi
Through its Secretary
5, Sham Nath Marg,
Delhi.
2. Commissioner of Police
Police Headquarters,
I.P. Estate,
New Delhi.
3. Dy. Commissioner of Police
[HQ] [Estt.],
Police Headquarters,
I.P. Estate,
New Delhi.
4. Jt. Commissioner of Police (HQ),
Police Headquarters,
I.P. Estate,
New Delhi.

....Respondents

(By Advocate : Shri Ajesh Luthra)

O R D E R

SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER:-

By this application under Section 19 of the
Administrative Tribunals Act, 1985, the applicant has
requested for the following reliefs:-

"a) call for the records of the case and in view of the judgement given by this Tribunal on 26.11.2001, give a declaration that the proceedings of the review DPC held on 17.05.2001 which considered the suitability of the petitioner for list E-1 [Executive] for the post of SI [Executive] w.e.f. 25.09.1992, 25.11.1994,

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16.01.1997, 02.12.1998 and 01.09.2000 are rejected / overruled and become ineffective by the aforesaid judgement;

- b) give benefit of the Judgement dated 26.11.2001 and promote the applicant as SI [Executive] w.e.f. 25.09.92 or in any case w.e.f. 25.11.1994, 16.01.1997, 02.12.1998 and 01.09.2000 and on subsequent days;
- c) grant all consequential benefits as given by this Tribunal in Order dated 26.11.2001;
- d) in any case and as an alternative, give directions to the respondents to hold another review DPC for consideration of applicant's case for list E-1 [Executive] for the post of SI [Executive] w.e.f. 25.09.1992, 25.11.1994, 16.01.1997, 02.12.1998, 01.09.2000 and 15.03.2002 and further declare that the proceedings of the review DPC dated 17.05.2001 as well as March 2002 have been vitiated quashing/setting aside the Order dated 20.03.2002 [Annexure "A"];
- e) grant all consequential relief / benefit to which the applicant is entitled in view of the above prayer;
- f) pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case; and
- g) award costs in favour of the applicant and against the respondents."

2. It is stated by the applicant that he was promoted to the post of Assistant Sub Inspector ('ASI' for short) (Executive) in Delhi Police in the year 1984. The applicant states that alleged adverse remarks in the Annual Confidential Report ('ACR' for short) for the period from 1.4.1988 to 06.02.1989 has never been communicated to the applicant. Therefore, any adverse decision in the case of the applicant based on that adverse ACR is bad in law.



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3. It is also stated that by an order dated 21.3.1989, departmental inquiry was initiated against the applicant. In pursuance to this inquiry, he was dismissed from service. But the applicant had approached this Tribunal in OA 2761/1993 and the punishment was quashed. In view of the liberty given to the Deputy Commissioner of Police, inquiry was also initiated and the inquiry officer by his report dated 12.6.1995 held that the charges against the applicant were proved. Therefore, the applicant was again dismissed from service by order dated 28.10.1995. When the appeal against that order was rejected, the applicant filed another application bearing OA No.2125/1996. It appears that this Tribunal allowed the OA No.2125/1996 but further inquiry was to be held by some other person from the stage the inquiry was held vitiated. Against this directions of this Tribunal, the applicant filed CWP No.5465/1999 in the Hon'ble Delhi High Court which was dismissed by an order dated 9.9.1999. It is stated by the applicant that thereafter the disciplinary authority reinstated the applicant on 15.10.1999. The inquiry officer also gave a supplementary report holding the charges not proved. Thereafter the disciplinary authority exonerated the applicant on 21.12.1999. The applicant was recommended for consequential benefits including promotion. ON 26.2.2000, the applicant was declared to have completed his probationary period after extending the same for one year due to adverse remarks in his ACR for the period from 1.4.1988 to 6.2.1989.

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It is also stated that several ASIs junior to the applicant were promoted as per order dated 5.9.2000. In view of this, the applicant filed OA No.917/2001. One of the prayers in this application was for promotion w.e.f. 19.9.1992 when his juniors were so promoted. This Tribunal vide order dated 26.11.2001 disposed of the OA No.917/2001 with the following directions:-

"Having regard to the reasons recorded and discussions made above, Annexure -A and Annexure -B, orders are quashed and set aside and the applicant is deemed to have been confirmed as ASI [Exe] w.e.f. 09.05.1989 when his batchmates were so confirmed. He shall also be entitled to all consequential benefits including pay and allowances, promotion etc."

4. The grievance of the applicant is that he was not given due benefit of promotion in the light of order of this Tribunal dated 26.11.2001. When the review DPCs were held in March 2002 it was held that the applicant having not achieved the benchmark was not eligible for promotion.

5. The applicant states that no adverse remark for the period from 1.4.1988 to 6.2.1989 was communicated to him. Therefore, the same should not have been taken into account by the review DPC. Learned counsel of the applicant has also questioned the criteria followed by the review DPC. In the counter reply filed by the respondents in OA No.917/2001, the respondents have admitted that review DPC followed certain criteria as devised by the

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Commissioner of Police. In this connection, the learned counsel of the applicant invited attention to the decision of the Hon'ble Supreme Court in the case of Dr. Krushna Chandra Sahu and others Vs. State of Orissa and others, (1995) 6 Supreme Court Cases 1, wherein the Hon'ble Supreme Court has held as follows:-

"31. Now, power to make rules regulating the conditions of service of persons appointed on Government posts is available to the Governor of the State under the proviso to Article 309 and it was in exercise of this power that the present rules were made. If the statutory rules, in a given case, have not been made, either by Parliament or the State Legislature, or, for that matter, by the Governor of the State, it would be open to the appropriate Government (the Central Government under Article 73 and the State Government under Article 162) to issue executive instructions. However, if the rules have been made but they are silent on any subject or point in issue, the omission can be supplied and the rules can be supplemented by executive instructions (See: Sant Ram Sharma v. State of Rajasthan2.)"

6. According to the learned counsel though the review DPC could regulate its procedure but they are not entitled to follow the criteria prescribed by the Commissioner of Police for assessing the suitability of the candidate for promotion to the post of Sub Inspector. Criteria for promotion is to be prescribed by rules and not by the executive instructions issued by the Commissioner of Police.

7. The learned counsel also stated that the applicant has been given the benefit of successful completion of probation. He has also been confirmed

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on the basis of the same records. But he has been declared unfit by the review DPC. Non-promotion of the applicant from due date is bad in law and the reliefs claimed in this OA be allowed.

The respondents have opposed this OA. In view of the fact that the applicant was ultimately exonerated from the charges levelled against him and his junior ASIs were promoted, he was also considered by the review DPC for promotion to the post of SI w.e.f. 25.9.1992. The review DPC was held on 17.5.2001 but he was graded unfit for promotion not only w.e.f. 25.9.1992 but also on the subsequent dates, i.e., from 25.11.1994, 16.1.1997, 2.12.1998 and 1.9.2000 due to his indifferent service record, i.e., adverse ACR for the period from 1.4.1988 to 6.2.1989 and censure on 3.4.1989 and 18.2.1994. The regular DPC held on 15.3.2002 had also considered the name of the applicant for promotion along with other ASIs and graded him unfit for the same. The respondents have stated that the adverse remarks in the ACR for the period of 1.4.1988 to 6.2.1989 were communicated to the applicant vide DCP West District, Memorandum dated 14.8.1989 and the same was received by the applicant on 16.8.1989. The applicant had also made a representation on 14.9.1989 against the adverse ACR. He was also informed to represent against the adverse remarks in his ACR after the finalisation of the departmental inquiry pending against him but the applicant did not make any representation. It was,

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therefore, stated by the learned counsel of the respondents that the grievance made by the applicant for non-communication of the adverse remarks is unfounded and against the facts on the record.

9. The respondents have further pointed out that the review DPC held on 17.5.2001 considering the name of the applicant for promotion w.e.f.25.9.1992. Since the ACRs of last five years were to be considered and there was adverse remarks in his ACR for the period from 1.4.1988 to 6.2.1989, the DPC had graded him unfit on the basis of instructions on the subject. As regards subsequent DPCs held on 25.11.1994, 16.1.1997, 2.12.1998 and 1.2.2000 as per para 6 (ii) (i) (c) under head Evaluation of Confidential Report of G.O.I's O.M. No.22011/5/86/Estt./D dated 20.6.1989, where one or more CRs have not been written for any reasons dealing the relevant period, the DPC should consider the CRs of the years preceding the period in question and if in any case even these are not available the DPC should take the CR of the lower grade into account to complete the number of CRs required to be considered. As per this instruction, the DPC had taken into account the available five years preceding ACRs as the applicant remained dismissed during the period from 19.9.1990 to 9.6.1993 and from 28.10.1995 to 14.10.1999.

10. In the rejoinder filed by the applicant, it has been stated that the adverse remarks in the ACR

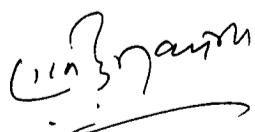
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for the period from 1.4.1988 to 6.2.1989 was struck down by the Tribunal vide judgment dated 26.11.2001 in OA 917/2001. According to the applicant, he should not have been found unfit for promotion.

11. We have considered the arguments of the learned counsel of the parties and have also perused the materials available on record.

12. As pointed by the respondents, the adverse remarks for the period from 1.4.1988 to 6.2.1989 was communicated to the applicant. The applicant had also made a representation against this adverse remarks. However, he was advised to represent after the conclusion of the disciplinary proceedings. There is nothing on record to suggest that the applicant did pursue his representation after conclusion of the disciplinary proceedings. We also do not find that the adverse remarks were expunged by the order of this Tribunal in OA No.917/2001 dated 26.11.2001 as claimed by the applicant. The relevant para where this aspect has been considered by the Tribunal in OA NO.917/2001 is to the following effect:-

"6. The learned counsel of the applicant stated in regard to the adverse remarks in the applicant's ACR for the period 1.4.1988 to 6.2.1989 that the applicant was never communicated the adverse remarks. In this behalf, the learned counsel of the respondents brought to our notice on the basis of the record that the adverse remarks for the aforesaid period were communicated to the applicant on 16.8.1989. Thus, the contention of the applicant that adverse remarks for the said

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period were not communicated, is unacceptable. However, for purposes of further promotion, ACRS for a further period of five years fro 6.2.1989 to 6.2.1994 have to be taken into consideration and the adverse remarks prior to 6.2.1989 cannot come in the way of consideration of the applicant's case for further promotion."

The reading of the above indicates that there is no definite order of expunction of the adverse remarks. The main grievance which was agitated in OA NO.917/2001 was regarding completion of probation period w.e.f. 9.5.1990 instead of 9.5.1989. The applicant had also challenged the order of appointment dated 27.4.2000. Therefore, there was no occasion for consideration of this Tribunal regarding promotion of the applicant. On these facts, the applicant again claims that this Tribunal had already ordered the promotion of the applicant.

13. The contention of the learned counsel of the applicant that the review DPC proceedings are vitiated is also not acceptable. The DPC can lay down its own criteria for regulating its business. In any case, this Tribunal cannot act as an appellate authority against the decision of the DPC regarding evaluation of performance of an employee for the purpose of promotion.

14. The applicant has retired on superannuation on 31.12.2002. The only question for consideration is whether he can be given promotion for the purpose of pensionary benefits and retiral dues. We have noticed earlier that he was dismissed firstly on 19.9.1990.

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He was reinstated on 17.2.1993. Subsequently, he was again dismissed by subsequent order which was quashed by this Tribunal. Therefore, he remained dismissed for the period from 19.9.1990 to 9.6.1993 and from 28.10.1995 to 14.10.1999. For the purpose of promotion, there is no ACR during these periods. Therefore, as per the existing instructions on the subject the ACRs of earlier five years have to be looked into for the purpose of consideration of his promotion. The records for the period in which the applicant was in service are also not free from unfavourable remarks. For example, he has been awarded censure in the year 1989 and again in 1994. Based on the performance of the applicant, the DPC has evaluated his suitability for promotion and has found 'unfit'. We do not find any justification to interfere with the decision of the DPC in this regard. Therefore, the relief claimed by the applicant cannot be allowed.

15. Accordingly this OA is dismissed without any order as to costs.

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(R.K. UPADHYAYA)

ADMINISTRATIVE MEMBER

V.S. Aggarwal
(V.S. AGGARWAL)

CHAIRMAN

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