

Central Administrative Tribunal, Principal Bench
Original Application No.669 of 2003

New Delhi, this the 7th day of November, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member (A)

Ashok Singh (D-2021)
S/o Shri Mohinder Singh,
R/o House No.437, Khera Garhi
Delhi

.... Applicant

(By Advocate: Shri Shyam Babu)

Versus

1. Govt. of NCT of Delhi,
Through its Chief Secretary,
Players Building,
I.P.Estate, New Delhi.
2. Jt. Commissioner of Police (HQ)
Police Head Quarters,
I.P.Estate, New Delhi

.... Respondents

(By Advocate: Shri Ajesh Luthra)

O R D E R

By Justice V.S. Aggarwal, Chairman

Applicant Ashok Singh had joined the Delhi Police as a Sub-Inspector (Executive) with effect from 5.12.83. By virtue of the present application, he seeks setting aside of the order of 5.9.2002 passed by the Joint Commissioner of Police, Headquarters Delhi with a direction to the respondents to hold another review DPC for considering his claim for promotion to list 'F' with effect from 12.8.94, treating the confidential reports for the period 8.10.92 to 31.3.93 as Good.

2. The impugned order dated 5.9.2002 whereby the claim of the applicant seeking review DPC and for inclusion of his name in promotion list 'F' from 12.8.94 has been rejected, reads:

"In pursuance of judgement dated 6.5.2002
in O.A.No.2010/2001-Ashok Singh Vs. U.O.I. a

(Signature)

review D.P.C. to consider the merit and suitability of S.I.(Exe.) Ashok Singh, No.D-2021 (now Insp.) for admission of his name to Promotion List-'F'(Exe) w.e.f. 12.8.94 met on 20.8.2002. The review D.P.C. has found S.I. (Exe.) Ashok Singh, No.D-2021 'UNFIT' for inclusion of his name to Promotion List-'F'(Exe.) w.e.f. 12.8.94 due to adverse A.C.R. for the period from 8.10.92 to 31.3.93.

He may be informed accordingly."

3. The precise grievance of the applicant is that his confidential report from 8.10.92 to 31.3.93 wherein he has been assessed as Below Average, in fact should be read as Good in accordance with the rules and instructions and also the earlier decision of this Tribunal. To keep the record straight, at this stage it becomes necessary to mention that the said remarks had been communicated to the applicant in the following words:

"In the Annual Confidential Report of S.I. Ashok Singh No.D/2021 for the period 8.10.92 to 31.3.93, it has been mentioned that there is no complaint against his honesty, his moral character, dealing with the public and accessibility to the public, impartiality/objectivity, attitude towards weaker section of society, devotion to duty, general power of control and organising ability, personality and initiative, power of command, attitude to modernisation techniques of investigation and in modern police methods generally, preventive and detective ability, working experience of criminal law and procedure are average.

It is further mentioned that he has been found to be not keeping senior officers informed about the developments in the investigation of cases with him. He is an average kind. Inspite of repeated instructions and advise, he had been slow in disposal of cases pending with him. He did not improve inspite of repeated advice."

4. The petition has been contested. The respondents contend that the departmental promotion committee meeting in July-August, 1994 had selected Sub-Inspectors for

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admission to promotion list 'F'. They had adopted a criteria for making the selection. Officers having at least three Good or above reports without any Below Average or Adverse reports were recommended in General category for promotion. So far as the applicant is concerned, he was having requisite gradings of ACRs but having regard to the fact that an adverse ACR from 8.10.92 to 31.3.93 was falling within the vital period of consideration, therefore he was ignored.

5. In exercise of the powers conferred by sub-section (1) of Section 147 of the Delhi Police Act, the Delhi Police (Promotion and Confirmation) Rules, 1980 have been framed. Under sub-section (i) to rule 5 of the abovesaid Rules, promotion from one rank to another and from lower grade to the higher grade in the same rank has to be made by selection tempered by seniority. Efficiency and honesty have to remain as main factors governing the selection. Zone of consideration has to be determined in accordance with the rules/instructions issued by the Government from time to time. Rule 8 of the rules refer to constitution of departmental promotion committee meetings. Fitness of personnel for promotion to various ranks has to be judged by the DPC which has been provided in the said rule. Sub-rule (i) to Rule 17 refers to promotion to list 'F' (Executive) from the post of Sub-Inspector and the same reads:

"17. List 'F'(i) List-F(Executive)

Confirmed Sub-Inspector (Executive), who have put in a minimum of 6 years service in the rank of Sub-Inspector, shall be eligible. The selection shall be made on the

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recommendations of the Departmental Promotion Committee. The names of selected Sub-Inspector shall be admitted to List-F (Executive) on the basis of their respective seniority, keeping in view the number of vacancies likely to occur in the following one year, and promotion made to the rank of Inspector from this list as and when vacancies become available."

6. These provisions clearly show that for promotion from one rank to another, efficiency and honesty are the main factors and promotion has to be made on the recommendations of the DPC. The seniority is one of the factors.

7. The departmental promotion committees can always draw the method and the procedure for considering persons for promotion.

8. On an earlier occasion, the applicant had preferred O.A.2010/2001 which was decided on 6.5.2002. At that time also, the applicant had prayed for a similar relief. Pertaining to the period 8.10.92 to 31.3.93, he had prayed that the circular of 23.9.92 should be declared as illegal and contrary to law. On basis of the findings arrived in the earlier O.A., it was contended that it has been held that applicant is eligible and there is no adverse entry against him. We find it difficult to subscribe to this view-point. In paragraph 11 of the order, this Tribunal recorded:

"11. However, as regards his juniors being promoted over and above him are concerned, the applicant submitted that as he has got more than 3 'good' ACRs during his last 5 years of service, so he should also have been promoted. We have also seen the record of the DPC and his ACRs for the relevant 5 years. Though the ACR for the period 8.10.1992 to 31.3.1993 is recorded as

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'below average' and the representation against the same has been rejected but the ACR for the next year shows that the reporting officer had assessed the applicant in individual columns as 'good officer' but graded him as 'average officer' in the final assessment. To that extent the applicant has submitted that the proforma of the ACR in the conclusion have the grading only of Outstanding/Very Good/Average/Below Average and it has no column for 'good' and since the ACR shows that in an individual column the reporting officer has assessed him good, so he would have ticked 'good' column had it been provided in the ACR form and for illustration purpose the applicant has also annexed the blank proforma as Annexure A-11 along with the OA."

9. The plain language used by this Tribunal indicates that so far as the period 8.10.92 to 31.3.93 is concerned, this Tribunal specifically recorded that applicant has been assessed as Below Average and representation has been rejected. This Tribunal had not directed that for this period, the confidential reports should be read as Good. It is for the subsequent year that this Tribunal had opined that the report has to be assessed as Good. Keeping in view the same, it was found that the applicant had three Good reports out of five years and consequently a direction was given to consider the claim of the applicant and if he is found fit, he should be promoted in accordance with the guidelines. Consequently, it cannot be termed that so far as the period October '92 to 31.3.93 is concerned, there was any finding by this Tribunal favourable to the applicant.

10. The applicant had prayed for setting aside of the guidelines of 23.9.92. In the absence of any such specific finding, it must be taken that the applicant's claim is deemed to have been refused. This is for the reason that we have already referred to above that this Tribunal while

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deciding the dispute between the parties had concluded that the claim of the applicant had to be considered in accordance with the guidelines.

11. The circular of 23.9.92 reads:

"The following principles should be observed in future while holding Departmental Promotion Committee for admission of names to promotion lists:-

i) Officers having at least 3 'good' or above reports and without any 'below average' or adverse report during the last 5 years may be considered.

ii) The total record of the officer in that particular rank shall be taken into view with particular reference to the gravity and continuity of punishments till date. Punishments on counts of Corruption and moral turpitude are to be viewed seriously.

iii) Officers who have been awarded any major/minor punishment in the preceding 5 years on charge of corruption, moral turpitude and gross dereliction of duty to protect government property, or major punishment within 2 years on charge of administrative lapses, from the date of consideration may not be empanelled.

iv) Officers whose names stand on Secret List shall not be considered fit as per S.O. No.265/89.

v) Officers who have been awarded censures during the last 6 months with no other punishment may also be allowed to be brought on promotion list provided they do not have any other major punishment. However, the effect of censure by debarring the official for promotion by six months shall continue.

vi) Result of Officers, who are under suspension or facing D.E. or involved in criminal cases, shall be kept in sealed covers.

vii) In cases where vigilance enquiries are pending against an officer and the allegations are specific and serious in nature, results may be withheld till the

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finalisation of the enquiry.

Sd/-

(U.N.B. RAO) DCP/HQ(I)
for COMMISSIONER OF POLICE:DELHI."

12. It clearly shows that those officers who had three Good reports or above but without any Below Average or Adverse entry in the last five years, can be considered. The respondents have also pointed that similar guidelines were adopted by the departmental promotion committee. In such a situation the applicant, who for part of the year had suffered Below Average entry which had been communicated and the said entry has not been held to be better than Below Average in the earlier litigation, we find no reason to accept the plea of the applicant.

13. It is true that the said entry is for part of the year but so long as it remains and the earlier petition was dismissed, it cannot be termed that it should be read anyway better than Below Average for the period in question.

14. Another limb of the argument advanced was that such guidelines as such cannot be issued. We are not dwelling into this controversy because in O.A.1415/96 decided on 25.5.2000, the Tribunal had considered this question and held:

"7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. As the learned counsel for the applicants had heavily relied on the judgement of the Hon'ble Supreme Court in Dr. K C Sahu's case (supra), we think it appropriate to deal with this case first. In that case, it has been held as follows:

"Power to make rules regulating the

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conditions 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 Vs. State of Rajasthan (AIR 1967 SC 1910)).

In the instant case, the Government did neither issue any administrative instruction nor did it supply the omission with regard to the criteria on the basis of which suitability of the candidates was to be determined...."

(Emphasis added)

Learned counsel had submitted that on the basis of the above judgement, the executive instructions can only be laid down either by the Central government under Article 73 or the State Government under Article 162 of the Constitution and none else. That is so, as seen from the earlier part of the judgement where it is held that "if the statutory rules in a given case have not been made." That is not the position in the present case as Parliament has enacted the Delhi Police Act, 1978, for regulation of the Police in Union Territory of Delhi under which the Rules of 1980 have also been made. In the O.M. dated 10.3.1989 issued by the GOI, DOP&T, it has been laid down that each Departmental Promotion Committee can decide its own method and procedure for objective assessment of the suitability of the candidates. Shri Shyam Babu, learned counsel, has contended that the Circular issued by the CP dated 23.9.1992 has not been issued by the competent authority and cannot be relied upon by the respondents. On perusal of the DPC Minutes held on 26.8.1992 to select Sub-Inspectors (Exec.) for appointment to promotion list 'F' (Exec.), it is seen that the DPC has considered the eligible officers falling within the zone of consideration and graded the officers as fit or otherwise after scrutinising the total service record in the rank of Sub-Inspector and ACRs for the last five years. They had also laid down the guidelines in declaring the candidates fit or otherwise which in substance, no doubt, coincides with the criteria laid down in the impugned

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circular/order dated 23.9.1992. In Ranjit Singh's case (supra) (in which one of us, Smt. Lakshmi Swaminathan, Member (J) was also a Member), the similar procedure adopted by the DPC in making assessment of the eligible officers has been upheld where, like in the present case, no reference has been made to the CP's impugned Standing Order dated 23.9.1992. The mere fact that the basis of assessment made by the DPC coincides with the order passed by CP on 23.9.1992 cannot vitiate the procedure adopted by the DPC. The respondents have stated that this has been issued for information of the concerned officers.

8. Rule 5 of the Rules provides that promotion is to be made by "selection tempered by seniority". Rule 8 which gives the constitution of the DPC provides that fitness of personnel for promotion to various ranks in different grades/cadres shall be judged by a Departmental Promotion Committee, which shall be constituted by the CP. Rule 17(iii) provides that confirmed Sub-Inspectors with 6 years service shall be eligible for consideration by the DPC and selection shall be made on the recommendations of the Committee. It is further provided that "the names of Sub Insp. (Min.)...so selected shall be brought on list 'F' (Min.) in order of their respective seniority, keeping in view the number of vacancies likely to occur in the following one year, and promotions made to the rank of Insp. (Min.) from this list as and when vacancies become available." We see force in the submissions made by the learned counsel for the respondents that the promotion is not to be made only on the basis of seniority, but keeping in view the respective seniority after the selection is made by the DPC. The Supreme Court in Sant Ram Sharma's case (supra) has held:

"In our opinion, the respondents are right in their contention that the ranking or position in the Gradation List does not confer any right on the petitioner to be promoted to selection post and that it is a well established rule that promotion to selection grades or selection posts is to be based primarily on merit and not on seniority alone. The principle is that when the claims of officers to selection posts is under consideration, seniority should be regarded except where the merit of the officers is judged to be equal..."

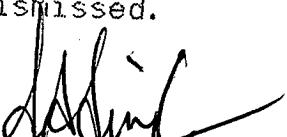
Therefore, having regard to the provisions of the relevant Rules referred to above, we are unable to agree with the contentions of the learned counsel for the applicants that the selection for promotion is

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based only on seniority or that the DPC has followed an erroneous procedure. As laid down in Rule 17(iii), the selection is to be made on the recommendations of the DPC and the names of the selected candidates are to be brought on list 'F' (Min.) in order of their respective seniority and this, therefore, involves a selection process."

15. We find ourselves in respectful agreement with the same. From the aforesaid, it is obvious that the applicant cannot claim the relief prayed because his claim had been ignored in accordance with the guidelines and principles which are as per the law.

16. Resultantly, the O.A. must fail and is dismissed.


(S.A. Singh)
Member (A).


(V.S. Aggarwal)
Chairman.

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