

Central Administrative Tribunal, Principal Bench, New Delhi

R.A.No.278/2004 In
O.A.No.2713/2003
M.A.No.2040/2004

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

New Delhi, this the 17th day of January, 2005

1. Commissioner of Police, Delhi
Police Hqrs., I.P. Estate,
New Delhi-110 001
2. Joint Commissioner of Police,
Headquarters, Delhi (Estt),
Police Headquarters, I.P. Estate,
New Delhi-110 001
3. Deputy Commissioner of Police,
Police Headquarters (Estt), I.P. Estate,
New Delhi-1

....Review Applicants

(By Advocate: Shri George Paracken)

Versus

ASI Om Prakash,
S/o Shri Ratan Singh,
R/o H.No.124, Village Neb Sari,
P.O. IGNOU, New Delhi-68

.... Review Respondent

(By Advocate: Shri Ashwani Bhardwaj)

Order(Oral)

Justice V.S. Aggarwal, Chairman

The review respondent had filed O.A.2713/2003. He was seeking quashing of the orders passed by the respondents and a direction to appoint him



as Sub-Inspector with monetary/consequential benefits in terms of his seniority, pay and allowances.

2. The matter came up and was disposed of on 6.5.2004. It was recorded:

"4. The applicant had preferred a Writ Petition No.3111/1982 which was disposed of by the Delhi High Court on 1-8-1984. The petition had been allowed. The said order of the Delhi High Court had been complied with by the respondents, copy of which is at Annexure A-4 and it was directed that the applicant along with others would be deemed to have continued in the service from the date of their initial appointment. It was followed by an order of 4-5-1988 and the applicant was confirmed as Constable w.e.f. 9-7-1970 which reads as below :-

"In consequence of his reinstatement in service from the date of termination i.e. 12-6-1968, and restoration of his seniority, the order of confirmation of Constable Om Parkash No.1650/N as Constable Time Scale w.e.f. 1-7-1974 is hereby cancelled. Constable Om Parkash No.1650/N is confirmed as Constable Time Scale w.e.f. 9-7-1970 against an existing vacancy."

On the strength of these facts, learned counsel for the applicant has urged that the applicant was not allowed to take relevant tests for promotion. He took the same afterwards and passed them in first attempt and, therefore, he is entitled to be promoted from the date his juniors had been promoted in Delhi Police.

5. The petition has been contested.

6. The settled principle in law that cannot be disputed is that a person cannot, in service jurisprudence, lose his right if he is not at fault. If the said person is eligible and has taken the test when called upon to do so, in that event, his career cannot be put at jeopardy and juniors promoted earlier to him. What is the position in the present case? The sequence of events clearly shows that applicant when allowed, passed the necessary examinations/tests. If on earlier occasion, he was not allowed to do so, it was not his fault in this regard. Necessarily, the applicant therefore, is entitled to be

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considered for promotion from the date his juniors had been so promoted, keeping in view certain facts which we have already delineated above. The applicant has been given the benefit of seniority but he has not been granted promotion from the date his juniors were so appointed. The applicant indeed in the facts is entitled to be considered to that extent.

7. Resultantly, we dispose of the present petition directing :-

- (a) Impugned orders are quashed.
- (b) Applicant should be considered for promotion, for the reasons recorded by us above, to the post of Sub-Inspector from the date his juniors had been so promoted.
- (c) If the applicant is found suitable, he would be entitled for all the monetary/consequential benefits in pay and allowances.

8. The said exercise should preferably be completed within three months from the date of receipt of certified copy of this order."

3. The review applicants seek review of the said order pointing out that in the order passed by this Tribunal which we have reproduced above, it has been recorded that the review respondent had taken the test and had passed in the first attempt. Earlier he was not allowed to take the test. According to the review applicants, the factual position is that the review respondent had taken the tests on 20.4.75 and 24.8.75 but had failed to qualify the same. Accordingly, keeping in view this mistake, it is claimed that order may be reviewed.

4. Needless to state that in the counter reply, even this fact had not been mentioned nor in the appellate order which was subject matter of the dispute, this fact had been noticed.

5. Learned counsel for review applicants fairly concedes that these facts came to their notice only when they were examining the files to comply



with the directions of this Tribunal. In this backdrop, review of the said order has been claimed. Notice had been issued to the review respondent.

6. Learned counsel for review applicants had brought the personal file of the review respondent. The review respondent and his counsel even had been allowed to examine the same before the Bench. It transpired that the review respondent had been allowed to take the test (B-I) and his name did not appear in the list of successful candidates. Though the mistake may be in the counter reply filed and correct facts were not brought to the notice of this Tribunal but when rights of the parties have to be adjudicated, we find little reason to deviate from the path that they have to be adjudicated properly. Resultantly, when the correct facts have been brought to our notice, we find little hesitation in recalling the order. Accordingly, we review our order which we have referred to above.

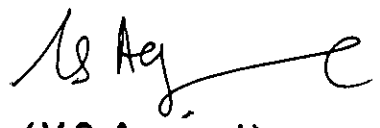
7. However, it was pointed that the review respondent is superannuating shortly i.e. within two years. In such a situation when he is seeking promotion to the rank of S.I., we had drawn the attention of the parties towards Annexure A-2 which is the order passed by the appellate authority. In the said order, there is no reference of the review respondent having taken the test earlier and failed to qualify the same. There is no reference even to the fact that thereafter he was under suspension from 28.8.76 to 28.8.86 and, therefore, these facts must also be considered by the appellate authority as to how he could take the test thereafter and the result of his having passed the test in 1987. The abovesaid period during which the



applicant remained under suspension has been taken to have been spent on duty.

8. In this backdrop after reviewing the order, it is felt and accordingly we quash the order Annexure A-2 directing the appellate authority to pass a fresh order in the light of the observations made in the preceding paragraphs, preferably within 45 days from today. R.A. is disposed of.


(S.A. Singh)
Member(A)


(V.S. Aggarwal)
Chairman

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