

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.7522/2009**

% **Judgment Reserved On: 17.08.2010**
Judgment Delivered On: 18.08.2010

BADRUDDIN Petitioner
Through: Mr. Shyam Babu, Adv.

Versus

GOVT. OF NCT OF DELHI Respondent
Through: Mr. Salim Ahmed, Standing Counsel
with Mr. Habibur Rahman, Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

MOOL CHAND GARG, J.

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1. Badruddin, Sub Inspector (Exe.) in Delhi Police, the petitioner before us filed O.A. under Section 19 of the Administrative Tribunals Act, 1985 being O.A.No.2640/2008 for setting aside the order dated 29.05.2008 vide which his case for admission of his name to Promotion List 'F' (Exe.) has been rejected. The Tribunal vide impugned order dated 10.12.2008 has not found merit in the Original Application. The relevant observations made by the Tribunal in this regard in para 10 & 11 of the order are reproduced for the sake of reference:

10. Perusal of the order, reproduced above, would manifest that the applicant has been overlooked in the matter of promotion for variety of reasons. His service record during preceding ten years was examined and it was found that he had continued punishments to his credit. His name also existed in the secret list of doubtful integrity. It has also been mentioned in the earlier part of the order that service

record of the applicant is indifferent. In the first censure against the applicant dated 30.05.2003, the applicant has been held to be grossly negligent. In the censure order dated 09.07.2003, the allegation against the applicant, inter alia, was of demanding Rs. 20,000/- from a person to set him free. Whereas three censures may not touch upon corruption or moral turpitude, but the two, as mentioned above, would show that the allegations against the applicant were of corruption also, which would also reflect moral turpitude. One censure, in any case, is with regard to corruption. That apart, as referred to above, sequel to departmental enquiry the applicant was punished on the charge of accepting bribe on the basis of which, his name was also brought on the secret list of doubtful integrity. Even though, the said order might have been set aside by this Tribunal in the OA filed by him, it cannot be forgotten that the order setting aside the order of punishment was on a technical flaw in conduct of proceedings and, therefore, the respondents had been given liberty to proceed against him. These proceedings, it is admitted during the course of arguments, are still pending. The order of punishment as such may not stand, but the allegations subject matter of enquiry do stand till such time the applicant may not be exonerated.

11. In the circumstances fully detailed above, we do not find any illegality or impropriety in the impugned orders declining promotion to the applicant at this stage.

2. Briefly stating the facts of this case are that besides suffering punishment of four censures, SI Badruddin was again proceeded departmentally for a major penalty which resulted in awarding a punishment of withholding of next increment temporarily for a period of one year, vide orders dated 23.06.2005 passed by Deputy Commissioner of Police (East District), Delhi. This punishment was imposed upon the petitioner after holding a departmental inquiry. By the same order, period of suspension was decided as not spent on duty for all intents and purposes. On 15.09.2005, Additional Commissioner of Police, Delhi brought the name of the applicant on

secret list of persons of doubtful integrity w.e.f. 23.06.2005 for a period of three years on the basis of allegation, as mentioned below:

“While posted at P.S. Mandawali and acting as a special staff of P.S. Mandawali went at the shop of Mohd. Shahid r/o H. No. 1216, Gali No. 48, Jafrabad, Delhi along with two informers Guddu & Pappu. They brought Mohd. Shahid and his employee Banwari Lal at P.S. Mandawali on 11.01.2003 and had beaten them mercilessly. They took Rs. 10,000/- as a bribe and relieved them in midnight of 12.01.2003.”

3. The petitioner preferred an appeal before the Joint Commissioner of Police, New Delhi against the aforesaid order which was rejected vide order dated 30.01.2006. Being aggrieved of the orders dated 23.06.2005, 15.09.2005 and 30.01.2006 which was rejected vide order dated 30.01.2006, the petitioner filed OA No. 1826/2006 before Central Administrative Tribunal, which was partly allowed on 25.09.2007. Operative part of the order reads thus:

“Since admittedly no prior approval was obtained as required by Rule 15(2) of Delhi Police (Punishment & Appeal) Rules, 1980 the order of punishment dated 23.06.2005 and appellate order dated 30.01.2006 are quashed and set aside. However, liberty is granted to the respondents to start the proceedings from the stage of obtaining prior approval of the Additional Commissioner of Police.”

4. The names of batch-mates of the petitioner, in the meanwhile, were brought on Promotion List 'F' (Exe.). However, in respect of the petitioner, it was stated that he failed to achieve the benchmark due to his indifferent service record and, as such, was assessed as 'unfit'.

5. Being aggrieved by order dated 01.12.2007, the petitioner made representation on 07.12.2007 to the Commissioner of Police, Delhi. In February, 2008, particulars for Promotion List 'F' (Exe.) were called by Police Headquarters. The name of the petitioner was at

serial No. 36 of the list. In February, 2008 itself, the respondents quashed/set aside orders dated 23.06.2005 and 30.01.2006 on account of pronouncement of judgment dated 25.09.2007. On 29.04.2008, a review DPC met to consider the name of the petitioner for Promotion List 'F' (Exe.) w.e.f. 30.11.2007 but he was found unfit for the said promotion. On 29.05.2008, an order came to be issued on behalf of Commissioner of Police, Delhi stating that the representation submitted by the petitioner has been considered and it has been found that he, along with his counterparts, was considered for Promotion List 'F' (Exe.) w.e.f. 30.11.2007 and after evaluation of his service record, he was found unfit by the DPC for admission of his name to Promotion List 'F' (Exe.) w.e.f. 30.11.2007 on account of his indifferent service record and also on account of existence of his name in the secret list of doubtful integrity. Against this order the petitioner filed O.A.No.2640/2008 which is the subject matter of the present writ petition.

6. We need not narrate the facts which led to awarding of punishment of censure four times which have been taken note by the Tribunal in paragraph 7 of the order. We may, however, mention that subsequently the petitioner was proceeded departmentally on the allegations that he and his co-delinquent posted at P.S. Mandwali, acting as special staff of P.S. Mandwali went to the shop of Mohd. Shahid along with two informers named Guddu and Pappu. They brought Mohd. Shahid and his employee at P.S. Mandawali on 11.01.2003 and had beaten them mercilessly. They took Rs. 10,000/- as bribe and relieved them in midnight of 12.01.2003. They had also

not made any D.D. entry in the Roznamcha of P.S. Mandawali in this regard. This departmental enquiry, it appears, resulted into punishment which became subject matter of decision by the Tribunal in OA No. 1826/2006. The proceedings held against the petitioner culminated into order of punishment which, it would be seen, was set aside for violation of provisions contained in Rule 15(2) of Delhi Police (Punishment & Appeal) Rules, 1980. Outcome of fresh proceedings, which have been initiated against the petitioner pursuant to orders passed by this Tribunal in OA No. 1826/2006, are still awaited.

7. Learned counsel for the petitioner has contended that till the date of passing of the impugned order, the proceedings against the petitioner had not started with respect to the misconduct for which earlier proceedings were initiated. Thus, merely on the basis of awarding of censure, the petitioner could not have been declared unfit. Thus, the order of the respondent in not promoting the petitioner is vitiated and is liable to be set aside.

8. It has been informed by the learned counsel for the respondent that the departmental inquiry against the petitioner has already been initiated vide order No.2446-81/HAP-VII Bn., DAP dated 09.04.2009 after obtaining due procedure and obtaining prior approval of the competent authority under Rule 15(2) of Delhi Police (Punishment & Appeal) Rules, 1980.

9. We may observe here that the permission of the ACP for initiating inquiry against the petitioner would relate back to the date when decision was taken to start disciplinary proceedings against the petitioner. In this regard, we can rely upon the judgment delivered by

this Court in the case of Ranjit Singh Tomar Vs. Hindustan Export & Import etc. ILR 1983 Delhi 802 wherein Principle of the Doctrine of Relation Back has been considered. *"It means where the employer passes an order of termination whether without holding an enquiry or after holding an inquiry which is found to be defective, the order of termination would be effective from the date it was passed by the employer if it is held to be justified by the Tribunal on the evidence produced before it"*.

10. Similar view was taken by another Division Bench judgment of this Court in Commissioner of Income Tax Vs. Haryana Sheet Glass Ltd. (2009) 138 ITR 173 (Delhi.). The relevant observation are reproduced hereunder:

4. It is trite law that if an act is invalid, it may not be cured and in these circumstances, the doctrine of relation back was not applied in the said case. Therefore, a fine distinction is to be drawn and understood. If the irregularity in the original return is curable, then the doctrine of relation back would apply, on the other hand, if there is a fundamental defect in the original return, which cannot be cured, then such a doctrine cannot be applied. It is clear that the Secretary has signed the return who is otherwise, as per the provisions of the Company Act, is competent to sign. Provision of Section 140 of the Income Tax mandates that the Managing Director or some other responsible officers can sign. Because of this reason, we are of the opinion that in a case like this, the irregularity was curable and the doctrine of relation back was rightly applied.

11. In view of the above it is apparent that when a decision was taken for declaring the petitioner unfit for further promotion, it was not only on account of the punishment of censure but also because he was undergoing departmental proceedings for a serious cognizable offence for which the department instead of lodging an FIR thought it appropriate to initiate fresh departmental proceedings for imposition

of major penalty. The Tribunal has dealt with the matter in detail as observed earlier, we therefore find no reason to interfere with the impugned order of the Tribunal.

12. The writ petition is, therefore, dismissed with no order as to costs.

MOOL CHAND GARG, J.

AUGUST 18, 2010
'anb'

PRADEEP NANDRAJOG, J.