

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

+ **WP(C) No.1982/2010**

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Date of Decision: 22.03.2010

Govt. of NCT of Delhi & Ors Petitioners
Through Mr.Rattan Lal, Advocate

Versus

Sh.Jagmohan Respondent
Through Nemo.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner Government of NCT of Delhi and ors have challenged the order dated 13th August, 2009 passed by the Central Administrative Tribunal, Principal Bench in O.A No.1101/2008 titled Sh.Jagmohan v. Government of NCT of Delhi and Ors, allowing the original application of the respondent holding that the respondent is entitled for all benefits admissible as if the original promotion order was in order and he be deputed for training as early as possible.

The respondent is a highly decorated officer of Delhi Police and on 17th March, 1999 he was conferred Asadharan Karya Puruskar for his extraordinary performance and devotion to duty. He was recommended for out of turn promotion by the SHO Defence Colony Police Station on 5th April, 1996 and thereafter by the Deputy Commissioner (South) District on 5th February, 2001. The streak of outstanding performance and devotion to duty continued in case of the respondent and he was recommended again during 2005 and Asadharan Karya Puruskar and cash awards were again given to him on 16th June, 2005.

Under Rule 19(ii) of Delhi Police (Promotion and Confirmation) Rules, respondent was given out of turn promotion in the rank of Head Constable by order dated 31st August, 2006 pursuant to his name shown in the list of the promotees dated 28th December, 1996. The list of the promotees also showed details of constables whose names were kept in a sealed cover, however, there was no caveat or restriction or exception carved out or the promotion was subjected to any condition in the case of respondent.

According to the respondent on 19th May, 2007 pursuant to a case registered by CBI on 3rd April, 2003 the respondent along with others was placed under suspension. Though pursuant to another order dated 23rd August, 2007 he was to be sent for training in Lower School Course commencing from 20th August, 2007, however, request

by the respondent for deputation for training was rejected by the Deputy Commissioner on 29th August, 2007.

The respondent therefore, challenged the order dated 29th August, 2007 declining to send him for course and the order dated 11th March, 2008 withdrawing his promotion which was granted to him by the order dated 31st August, 2006 before the Administrative Tribunal. The respondent contended that a writ petition was filed by Ms.Sonia before the High Court alleging that her husband had died not in an encounter but was killed and consequently the entire team including the respondent was implicated on 5th March, 2003. The writ petition was disposed of with direction to CBI to investigate into the matter. The contention on behalf of the respondent inter-alia was that the alleged disability on account of the case initiated by the investigating agency was much after the promotion was granted by the order dated 31st August, 2006 and so it could not be annulled or withdrawn. It was categorically contended that even suspension order passed against him was revoked on 6th June, 2007 by the High Court and consequently the promotion order dated 31st August, 2006 could not be revoked by order dated 11th March, 2008. In any case it is contended that the said order has been passed in denial of principles of natural justice as no notice had been given nor any opportunity was given to the respondent to show that the promotion granted to him on 31st August, 2006 could not be withdrawn. Even in the case which was registered, the chargesheet

has not been filed and no departmental proceedings have been conducted against the respondent so as to entail any consequences for cancellation of the promotion order. Merely on the basis of the criminal case filed against the respondent later on, the promotion granted earlier could not be revoked.

The original application filed by the respondent was contested by the petitioners contending inter-alia that an officer under the cloud of criminal proceedings was not to be promoted and if promotion was erroneously granted there was nothing illegal in bringing status quo ante. The petitioners also contended that the promotion conferred by the notification dated 31st August, 2006 was adhoc and consequently conferred no right on the respondent and it could always be reviewed. Reliance had also been placed on the standing order No.91 of 2007.

The Tribunal has noted considering the stage of the criminal case and the fact that even chargesheet has not been filed and also revocation of suspension order by the High Court by order dated 6th June, 2007 that apparently, the criminal case was filed more with a view not to displease the authorities concerned. Referring to the standing order it was held that the said order No.91 of 2007 does not govern the case of a promotion already granted as the officer could face the trial even while working from the promoted post and, therefore, declining to send the respondent to the Lower School Training was also

not justifiable. The tribunal also referred to an order passed in O.A No.1931/2008, where a similarly situated officer's case was considered and his result was placed in a sealed cover. Later on, it was held that on the date of consideration by DPC there was no disabling circumstances in case of another officer and it was held that the promotion already granted or considered could not be annulled on the basis of future excess use of force. The Tribunal thus set aside the order of the petitioners dated 11th March, 2008 reviewing the promotion granted to the respondent as Head Constable by the order dated 31st August, 2006.

We have heard the learned counsel for the petitioner, Mr.Rattan Lal who has contended that the promotion of the petitioner was adhoc by order dated 31st August, 2006. Even if it was an adhoc promotion the same could not be withdrawn without giving cogent reasons and a reasonable opportunity to the respondents. This is not disputed that the sealed cover procedure was not resorted to in case of the respondent. In fact since the promotion had already been granted by the order dated 31st August, 2006 and the alleged incident had taken place almost after an year, why the sealed cover procedure could not be resorted to and there could not be any ground to recall the order of promotion especially since even the suspension order has also been revoked by the High Court by order dated 6th June, 2007. The learned counsel for the petitioner is also unable to show any standing order or

any other rule under which the promotion already granted could be revoked without giving a due opportunity to the officers to be promoted and in violation of principles of natural justice.

In the totality of facts and circumstances and for the foregoing reasons, we do not find any such illegality or irregularity in the order of the Tribunal dated 13th August, 2009 which will necessitate any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition therefore, in the facts and circumstances, is without any merit and is liable to be dismissed. The writ petition is, therefore, dismissed and the petitioners are directed to implement the order of the Tribunal dated 13th August, 2009 expeditiously without any further delay.

ANIL KUMAR, J.

MARCH 22nd , 2010
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MOOL CHAND GARG, J.