

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

% *Judgment Reserved On: 1st July, 2010*
Judgment Delivered On: 7th July, 2010

+ **W.P.(C) NO.13182/2009**

JOGINDER SINGH Petitioner
Through: Mr.Pardeep Dahiya, Advocate

versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Through: Mr.Amiet Andlay, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. The petitioner desires that the judgment and order dated 8.5.2009 as also the order dated 9.7.2009 passed by the Central Administrative Tribunal dismissing O.A.No.1590/2008 and RA No.106/2009 respectively, be set aside and as a consequence O.A.No.1590/2008 be allowed. It is further prayed that as a consequence of allowing O.A.No.1590/2008, order dated 29.5.2008 passed by the first respondent be set aside and a direction be issued to said respondent to include the name of the petitioner in Promotion List 'F' (Exe.) with effect from 30.11.2007 with all consequential benefits including seniority, pay and allowances.

2. Briefly noted, the relevant facts, giving rise to the claim of the petitioner are that he joined service under the first respondent in the police department and as of the year 2007 was functioning as a Sub-Inspector.

3. Rule 5 (iii) of the Delhi Police (Promotion and Confirmation) Rules 1980 envisages promotion of Sub-Inspector to the post of Inspector. Claim of the petitioner matured, to be considered, for promotion to the post of Inspector in the year 2007 and processing the claim, the Departmental Promotion Committee constituted by the first respondent duly considered the case of the petitioner, but since a departmental inquiry was pending against him, the recommendations of the Departmental Promotion Committee were kept in a sealed cover.

4. The result of the departmental proceedings was a finding of not guilty and thus on 11.3.2008, the competent authority of the first respondent exonerated the petitioner. As a result, the sealed cover in which recommendation pertaining to the petitioner was sealed required to be opened and recommendation required to be implemented.

5. The first respondent proceeded to do so. The sealed cover was opened. Recommendation of the Departmental Promotion Committee was that the petitioner was unfit to be brought to list 'F' i.e. entitled to be promoted. By way of abundant precaution, the first respondent even convened a review DPC which met on 29.4.2008 and the findings of the said Review Departmental Promotion Committee was to reiterate the unfitness of the petitioner to be promoted as an Inspector.

6. Reason why the two Departmental Promotion Committees found petitioner unfit to be promoted was the fact that in the preceding 10 years of his service under the first respondent; the preceding years reckoned with effect from and proceeding backwards when the Departmental Promotions Committees met, evidenced that the petitioner had been visited with as many as 5 penalties of censure.

7. The nature of the censures with which the petitioner was visited with were as under:-

“1. Censure dated 5.3.99 for not filing the challan in

case FIR No.160/97 US/ 279/337 IPC within the stipulated period.

2. Censure dated 1.2.99 for not registering a case of an accident and filing the complaint with ulterior motive.

3. Censure dated 30.11.2004 for his failure to collect the sufficient evidence against the accused to frame the charge in case FIR No.209/98 U/S 420/468/471/411 IPC PS Chanakya Puri.

4. Censure dated 28.3.2005 for keeping the complaint of Shri Bansi Lal pending for three months without any reason.

5. Censure dated 29.09.2005 for not attending the court in case FIR No.119/98 U/S 307/34 IPC PS Pt. Street."

8. There exists an office order dated 7.02.2005 which lays down the policy framed by the first respondent, to be followed by the Departmental Promotion Committees, while considering and assessing the suitability of the employees of the first respondent in its police department for promotion on the basis of their service records and confidential reports.

9. The said office order dated 7.02.2005 reads as under:-

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

- i) The DPC should assess the suitability of the employees for promotion on the basis of their Service records with particular reference to the Confidential Reports for five preceding years irrespective of the qualifying service prescribed in the Service/Recruitment rules. Officers having at least three 'good and above' reports without any 'below average' or 'adverse' report, even for a small period during last five years may be empanelled. (If more than one CR has been written for a particular year, all the CRs for relevant year shall be considered together as the CR for one year).

- ii) The service record of the officer during preceding 10 years in that particular rank shall be taken into account with particular reference to the gravity and continuity of punishment till date. Punishment on counts of corruption and moral turpitude are to be viewed seriously.
- iii) Offices who have been awarded any major/minor punishment in the preceding 5 years on charges of corruption, moral turpitude and gross dereliction of duty to protect government property or major punishment within 2 years on charges 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 on the subject.
- v) Officers who have been awarded censure(s) during the last 6 months can (not?) be allowed to be brought on promotion list. However, the effect of censure debarring the official for promotion for six months from the date of award, shall continue.
- vi) Result of officers, who are under suspension or facing DE or involved in Criminal Cases shall be kept in sealed covers.

This supersedes earlier circular, issued vide this Hdqrs. Order No.83135-234/CB-1, dated 03.12.1998."

10. As per the petitioner the effect of each censure awarded against him was to postpone his promotion by 6 months each and cumulatively this would mean that when the DPC met in the year 2007 his fitness had to be determined after ignoring the censures imposed. For this, the petitioner relied upon clause (v) of the office order dated 7.02.2005. The first respondent took the stand that the DPC had to consider the 10 years' service record of the petitioner and that under clause (ii) of the office order dated 7.02.2005 the DPC had to consider the

cumulative effect of the punishments imposed upon the petitioner.

11. Many such issues were pending before the Central Administrative Tribunal with different Benches taking somewhat different views and thus the matter was referred to a 3 Member Bench of the Tribunal and speaking through its Vice-Chairman Justice M.Ramachandran with a concurring opinion of its Chairman Justice V.K.Bali, the Tribunal held as under:-

“On this basis, it would be safe to assume that if an officer at some point of his career had occasion to receive censure that alone should not, for all time, block his promotional opportunities. The effect of a minor penalty of censure would operate to deny him promotion, even if adjudged as fit, for a period of six months. But if the censure was required to be administered for a conduct involving corruption, moral turpitude, violence, defiance and the like, the benefit of six months period may not be claimable, even if technically he may be in a position to assume promotability after the six months period as appearing in the circular. The regularity spoken to by the circular also could be applied only subject to the above position, namely, that the proceedings leading thereto should have traits of moral turpitude. On the issue of regularity, we have been constrained to express our view as above, since as of now it is an appendage to clause (ii) of the circular. It may be within the powers of Administration to prescribe that an officer, who receives censures for whatever reasons regularly could be considered as ineligible for getting a clearance by the DPC by incorporating changes in the circular.”

12. Accordingly, the petitioner projected his view that clause (ii) of the office order dated 7.02.2005 having been interpreted to mean that unless there was a trait of moral turpitude the imposition of the penalty of censure was inconsequential and had to be ignored. The first respondent interpreted the decision of the Full Bench as propounding the view that penalty of censure based on counts of corruption or moral turpitude were required to be viewed very seriously as per

clause (ii) of the office order dated 7.02.2005 but that did not mean that penalties of censure based on other counts were totally irrelevant.

13. The Division Bench of the Tribunal which decided the claim of the petitioner, speaking through its Vice-Chairman Mr. Justice M. Ramachandran (who is the author of the decision of the Full Bench) has found favour with the view propounded by the Department and vide order dated 8.5.2009, while dismissing the OA filed by the petitioner, has held as under:-

"Taken individually perhaps the punishment of censure in the case of the applicant would have the effect of debarring promotion for a period of six months from the respective date of issue of the orders, but when we are told that in regular sequence such orders were coming, the situation is different. As per the norms, which are agreed upon to be followed by the DPC, it may be possible for them to make assessments about the final acceptability of the candidate for promotion. Records indicate that this alone had been done. The contention of the learned counsel for the applicant that so long as the punishments are minor, they may not be considered as stigmatic, or they cannot be considered as hurdles, cannot be accepted straightaway. This is because where there is regularity of punishment, it cannot be wished away. The mindset of the officer requires to be specifically commented upon as otherwise the exercise becomes mechanical and unrealistic. That is not what the exercise is designed at. An officer, who is constantly required to be picked up, should understand that in the long run, it will be self destructive."

14. Review sought, as noted hereinabove has been dismissed by an order dated 9.7.2009 holding that no case was made out for review of the order dated 8.5.2009.

15. Arguing the writ petition, learned counsel for the petitioner reiterated the plea urged before the Tribunal and in addition submitted that on 29.12.2008 the first respondent has issued another office order superseding the office order dated 7.02.2005 and the office order dated 29.12.2008 now requires

that for each penalty of censure two negative points be awarded. Thus, it was urged that at best, the petitioner can be awarded 10 negative points while considering his ACRs at the Departmental Promotion Committee meeting.

16. These were the only 2 points urged at the hearing of the writ petition.

17. As regards the second point urged, it need only be said that the office order dated 29.12.2008 superseded the office order dated 7.02.2005 only when it was promulgated and the same has no retrospective operation. Thus, empanelments in the year 2007 have to be considered as per the office order dated 7.02.2005.

18. As regards the first plea, it assumes importance that the author of the Full Bench decision of the Tribunal also happens to be the author of the impugned order passed against the petitioner. The learned Judge was thus fully conscious of his view expressed when he penned the decision of the Full Bench.

19. We have noted hereinabove the reasoning of the decision dated 8.5.2009 and fully agree with the same and adopt the same as our reasoning. The view is in consonance with the law laid down by the Supreme Court in the decision reported as (1993) Supp 4 SCC 441 S.L.Chhabra VSM (Retd.) Air Vice Marshal Vs. UOI where it was held that while considering the suitability of an officer for promotion to a higher post or rank the Selection Board is fully justified in taking into consideration several factors and it is not solely on the appraisal of the ACRs. Public interest was held to be a relevant consideration in the selection of candidates for promotion. In the decision reported as AIR 1993 SC 981 State of TN Vs. P.Bose, pertaining to the post of Inspector of Police it was held that when the question of considering whether or not respondent was fit for promotion to the next higher post came up for consideration in 1988, on account of the punishments with which he was visited in the

year 1987 for acts of misconduct/misdemeanour during the months of April and May 1987 the authorities did not consider him fit for inclusion in the panel for promotion. Failure to attend to duty to restore law and order, failure to promptly register a serious offence and refusal to carry out or obey instructions of a superior, though visited with minor penalties are not matters which are not germane to the selection process. The next higher post of Inspector of Police being a very responsible post a person with a weak record with three punishments in the immediately preceding year if not selected could not be heard to say that though fit for promotion to the next higher post he was wrongly ignored. The post of Inspector of Police being a pivotal post in a uniformed service must be filled in by person of integrity and devotion to duty and internal discipline and anyone who has betrayed a tendency to ignore the same in the immediate past cannot aspire for promotion.

20. Keeping in view the circumstances and the nature of misconduct in relation where to 5 penalties of censure were imposed upon the petitioner, we see no scope to interfere with the impugned decisions.

21. The writ petition is dismissed. However, we refrain from imposing any costs.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

JULY 07, 2010
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