

THE HIGH COURT OF DELHI AT NEW DELHI

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+ **W.P.(C) 17642/2006**

Judgment delivered on: 13.09.2012

ASI OM PRAKASH

... Petitioners

versus

COMMISSIONER OF POLICE, DELHI & ORS

... Respondents

Advocates who appeared in this case:

For the Petitioner	: Mr P.S. Bindra with Mr Ketan Madan
For the Respondent	: Ms Ruchi Sindhwani with Ms Megha Bharara and Ms Bandana Shukla

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

BADAR DURREZ AHMED, J. (ORAL)

1. This writ petition is directed against the order dated 12.07.2006 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.642/2005 whereby the petitioner's said O.A. was rejected. The only issue that arises for consideration in this case is with regard to the date from which the petitioner has to be accorded seniority in the post of Head Constable with the Delhi Police. He has been promoted as Head Constable w.e.f. 13.11.1987 whereas he claims that he should be promoted as Head Constable w.e.f. 11.04.1975.

2. The facts of the case are that the petitioner was enlisted with the Delhi Police on 16.11.1965 as Constable. On 14.04.1967 there was a police agitation in which the petitioner allegedly participated as a result of which he was suspended on that date itself. On 18.04.1967 he was also arrested in FIR No.94/1967 registered at Police Station Kingsway Camp, Delhi. The said FIR was in connection with the same agitation. He remained under suspension till 12.06.1968 when his services were terminated. On 04.01.1971 the termination order was withdrawn and he was appointed afresh as a Constable with the Delhi Police w.e.f. 04.01.1971.

3. The petitioner being aggrieved by the fact that he was not granted continuity in service, filed a writ petition before this Court being CWP No.3111/1982 which was decided in his favour, as a result of which he was granted seniority from the date of his initial appointment. Consequently, he was also confirmed as Constable w.e.f. 09.07.1970.

4. The petitioner had appeared in the 'A (i)' test held in the year 1975 and his name was brought on the promotion list 'A (i)' w.e.f. 11.04.1975 by virtue of the order dated 14.04.1975. This test was held for considering the case of the petitioner for promotion to the post of Head Constable. It was a

two-part test. The first part being the 'A (i)' test and the second part being the 'B (i)' test. As per the extant rules, if a Constable cleared both the tests he became eligible to be promoted to the post of Head Constable as per his seniority. In this case what happened was that the petitioner qualified the 'A (i)' test held in the year 1975 but he failed to qualify in the 'B (i)' test which was held on 20.04.1975. Another attempt was made by him on 24.08.1975. But, once again, he failed to clear the said 'B (i)' test. This is where the matter rested.

5. On 20.08.1976, FIR No.42/1976 came to be registered at Police Station Anti Corruption Branch, Delhi under the provisions of the Prevention of Corruption Act, 1947 as also the Indian Penal Code. The petitioner was arrested in connection with that FIR and was placed under suspension w.e.f. 17.08.1976. Subsequently, the petitioner was reinstated on 29.08.1986 without prejudice to the pending criminal appeal.

6. In 1980, the Delhi Police (Promotion and Confirmation) Rules, 1980 came into existence. The petitioner appeared in the promotion list 'A' (Exe.) test held in the year 1987 as per the said Rules. Due to the pendency of the criminal appeal, his case was kept in abeyance. On the disposal of the appeal by this court, the result of the petitioner's promotion list 'A' test

was opened and it was found that he had made the grade. Consequently, his name was brought on the promotion list 'A' w.e.f. 13.11.1987 and his inter se seniority was fixed at serial No.1 'Special' considering his date of appointment and he was given further promotion. He was given proforma promotion w.e.f. 01.09.1988 till the actual date of promotion i.e., 22.10.2000.

7. Thereafter, the petitioner submitted a representation dated 22.01.2001 wherein he had stated that he had appeared in the 'A (i)' test in the year 1975 and that in the test for the promotion list 'A' held in the year 1986 also he had succeeded in the first attempt. Consequently, he submitted that if his alleged involvement in the police agitation and the criminal case are put aside, he would have held the post of Sub-Inspector (Exe.) along with his colleagues and, therefore, he requested that his case be considered for promotion to the rank of Sub-Inspector with all consequential benefits.

8. The representation of the petitioner dated 22.01.2010 was examined by the Police Headquarters in accordance with the relevant rules which were prevalent at that time. Since the petitioner had not cleared the 'B (i)' test, his representation was rejected by the DCP Headquarters (Estt.) and

intimation of the rejection was communicated to the petitioner through the memorandum dated 06.08.2001. The appeal from the said order was also rejected.

9. Being aggrieved thereby, the petitioner filed O.A. No.2713/2003 before the Central Administrative Tribunal whereby the Tribunal quashed the impugned order and directed the respondents to consider the petitioner for promotion to the post of Sub-Inspector from the date his juniors had been so promoted. It was also directed that if the petitioner was found suitable, he would be entitled for all monetary and all consequential benefits in pay and allowances.

10. Subsequently, a review application was filed by the respondent being R.A. No.278/2004 in the said O.A. No.2713/2003. That review application was filed in the backdrop of the fact that it had come to the notice of the respondent while implementing the order of the Tribunal dated 06.05.2004 that the petitioner had appeared in the 'B (i)' test held on 20.04.2005 but had failed to clear the same. It was also stated that the petitioner had again attempted the 'B (i)' test held on 24.08.1975 but in that also he had failed to make the grade.

11. The Tribunal on considering the aforesaid circumstances, allowed the

review application and recalled the earlier order dated 06.05.2004 and by virtue of its order dated 17.01.2005 directed the respondent to examine the issue afresh in the light of observations made in the said order.

12. Consequent thereto, the matter was examined afresh by the respondent and the petitioner's claim to seniority w.e.f. 11.04.1975 was rejected by virtue of the order dated 24.04.2005. That order became the subject matter of challenge in O.A. No.642/2005 which has been rejected by the Tribunal by the impugned order dated 12.07.2006.

13. We notice that both the respondent as well as the Tribunal have taken the stand that the request for promotion of the petitioner with effect from the year 1975 cannot be acceded to because the petitioner had failed to qualify the 'B (i)' test held on two occasions i.e., on 20.04.1975 and 24.08.1975. Consequently, it was noticed by both the authorities below that it could not be presumed that the petitioner would have cleared the test, particularly when he failed to pass the 'B (i)' test on earlier two occasions. The only claim of the petitioner is that had there been no suspension order and had there been no criminal case against him in which he was ultimately acquitted, the petitioner could have appeared in the 'B (i)' test once again and in all probability would have cleared the test, inasmuch as, the

petitioner did, in fact, clear the test in the year 1987, after the suspension order was revoked.

14. We are afraid that we cannot agree with the submission made by the learned counsel for the petitioner, particularly because we do not know what might have happened. We do not know whether the petitioner would have taken the 'B (i)' test and whether he would have cleared the same. The fact of the matter is that the petitioner was not qualified for promotion to the post of Head Constable prior to the year 1987. The moment he took the test and cleared the same in 1987, he has been granted the promotion to the post of Head Constable w.e.f. 13.11.1987. He cannot claim promotion to the post of Head Constable prior to that date inasmuch as he was not qualified for the same in accordance with the extant rules.

15. We, therefore, see no reason to differ from the view taken by the Tribunal and the respondent in the orders dated 12.07.2006 and 24.02.2005. The writ petition is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SEPTEMBER 13, 2012/dn

SIDDHARTH MRIDUL, J