

THE HIGH COURT OF DELHI AT NEW DELHI

%	Judgment reserved on	: 23.08.2012
	Judgment pronounced on	: 28.09.2012

+ W.P.(C) 6776/2011

GNCT OF DELHI & ORS

... Petitioners

versus

DALBIR SINGH

... Respondent

Advocates who appeared in this case:

For the Petitioners : Ms Avnish Ahlawat with Ms Latika Chaudhary
For the Respondent : Mr Saurabh Ahuja

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

SIDDHARTH MRIDUL, J.

1. The present writ petition assails the order dated 15th February, 2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.3618/2010 whereby the Tribunal allowed the O.A. filed by the respondent herein with a direction that the respondent would continue in the post of Head Constable (Executive) on ad-hoc basis till he gets regularized for the said post. The Tribunal further directed that he would

be entitled to the pay and allowances attached to the post, however, such period would not count towards his seniority in the rank of Head Constable (Executive). The brief facts as are relevant to the adjudication of the present writ petition are as follows:-

- (i) The respondent was appointed in Delhi Police on 1st May, 1982 as Constable (Executive) and was confirmed in the said rank w.e.f. 1st February, 1986.
- (ii) The respondent was in the zone of consideration for Promotion to List 'C' (Executive) and was considered for promotion on ad-hoc basis for a period of six months. On 1st January, 2004 the respondent was promoted on ad-hoc basis vide order dated 1st January, 2004.
- (iii) In November, 2004, a DPC was convened to select Constables/Head Constables (Executive) (ad-hoc) for admission of their names to Promotion List 'C' (Executive). On recommendation of the said DPC, the name of the respondent was admitted to the Promotion List 'C' (Executive) w.e.f. 9th November, 2004 and as such he was promoted to officiate as Head Constable (Executive) w.e.f. 18th November,

2004.

- (iv) Consequently, after a lapse of about five years, it was reported on 15th May, 2009, that the respondent had remained under suspension from 29th October, 2004 to 10th March, 2005 and had been awarded the punishment of withholding of future increments for a period of one year without cumulative effect and his suspension period determined as period 'not spent on duty' vide order dated 23rd March, 2006. The said punishment was an impediment for his promotion for a period of two years and the same expired on 22nd March, 2008.
- (v) It is the case of the petitioners that officers who have been awarded any major punishment in the preceding five years on the charges of corruption, moral turpitude and gross dereliction in discharge of duty and involved in a major punishment within two years on charges of administrative lapse, misconduct, negligence, inefficient performance from the date of consideration, may not be empanelled.
- (vi) The fact of such punishment had not been brought to the notice of the DPC held on the 2nd November, 2004 and

consequently, the name of the respondent had been brought to the Promotion List 'C' (Executive) and the respondent had subsequently been promoted to the rank of Head Constable (Executive).

- (vii) A Show Cause Notice (SCN) was issued to the respondent on the 18th June, 2009 stating therein as to why the order regarding admission of the respondent's name to Promotion List 'C' (Executive) w.e.f. 9th November, 2004 and promotion as Head Constable (Executive) w.e.f. 18th November, 2004 should not be cancelled with immediate effect.
- (viii) Subsequently, after receiving the representation of the respondent, appropriate orders were passed on the 25th October, 2009 and the name of the respondent brought on Promotion List 'C' (Executive) and further promotion to the rank of Head Constable (Executive) was cancelled.
- (ix) The respondent's name was again considered for promotion to the Promotion List 'C' (Executive) but was found to be on secret list of doubtful integrity.
- (x) Aggrieved by the action of the petitioners, the respondent filed

the said O.A. No.3618/2010 which was allowed vide order dated 15th February, 2011as aforesaid.

(xi) The petitioners have filed the present writ petition impugning the said order dated 15th February, 2011 passed by the Tribunal.

2. In the present case the question to be determined is whether the promotion of the respondent herein to the post of Head Constable (Executive) is legally sustainable in view of the fact that the factual omission, regarding an imposition of punishment, was not considered by the DPC at the relevant time.

3. On behalf of the petitioners it was submitted that as per the Government of India's order FR 31-A, officers who had been awarded major punishment in the preceding five years on the charge of corruption, moral turpitude and gross dereliction in discharge of duties or major punishment within two years on charges of administrative lapses, misconduct, negligent, inefficient performance from the date of consideration may not be empanelled.

4. The counsel for the petitioners further submitted that had the fact about the respondent's previous punishment been brought to the notice of

DPC, findings with regard to the suitability of the respondent to be included in the Promotion List 'C' (Executive), would have been kept in a sealed cover in terms of the provisions contained in Rule 5 (iii) of the Delhi Police (Promotion & Confirmation) Rules, 1980 and his promotion would have been kept in abeyance till the decision of suspension period. This omission has resulted in admission of the respondent's name to the Promotion List 'C' (Executive) and further promotion to the rank of Head Constable (Executive). Counsel urges that the mistake made with regard to the respondent's promotion had been corrected by issuing him a Show Cause Notice and receiving his representation and thereafter passing an appropriate order confirming the correction.

5. It was also urged on behalf of the petitioners that the Government of India's order in FR 31-A stipulates that the order of the Government for promotion or appointment of Government servant should be cancelled as soon as it is brought to the notice of the appointing authority that such a promotion was the result of a factual error and the Government servant should, immediately on such cancellation, be brought to the position which he would have held but for the incorrect order of promotion or appointment.

6. The petitioners have relied upon the decision of the Supreme Court reported as **Union ov India & Anr. vs. Narendra Singh : 2008 (2) SCC 750.** In that case the Supreme Court considered a case of erroneous promotion. The facts of that case were that an employee who was an Accountant was mistakenly promoted as Senior Accountant (Functional). The mistake was detected after four years and it was found that the employee was ineligible in view of the fact that the legal requirement of clearing a departmental examination for Accountants for the promotional post had not been complied with. A Show Cause Notice was issued, the case of the employee was considered and thereafter his promotion was cancelled. The O.A. challenging the order of cancellation of promotion was decided with a direction to reconsider the case. The Supreme Court considered the fact that the Recruitment Rules contained a provision empowering the Comptroller and Auditor General of India to relax the Rules with respect to any class or category of persons and yet upheld the cancellation of promotion.

7. Per contra, it was submitted on behalf of the respondent that the promotion to the post of Head Constable (Executive) and inclusion of his name to the Promotion List 'C' (Executive) was not due to any fault or

misrepresentation or mistake attributable to him. On the other hand, admittedly, it was a mistake committed by the petitioners and correction of such a mistake at this stage, would entail difficult consequences and undue hardship to the respondent.

8. It was further submitted that the respondent's promotion order had been issued way back in the year 2004 and correction of the alleged mistake after such a long period would cause irreparable loss of reputation, dignity and morale to the respondent. It was urged that the respondent would have to work under his juniors if the orders of cancellation of promotion were to be upheld.

9. The respondent relied on a decision of a Division Bench of this Court reported as **The Commissioner of Police & Ors. vs. H.C. Durgesh Kumar : 147 (2008) DLT 42** wherein this Court considered the case of a mistaken promotion of an OBC candidate who was erroneously treated as SC/ST candidate and consequently erroneously promoted.

10. In the present case, it is seen that the procedure prescribed necessitates that all the facts including vigilance clearance, punishment awarded, suspension order, departmental enquiry and whether the employee is faced with pending criminal charges, are all facts which are to be placed

before the DPC. In the present case, this procedure was admittedly not followed and the DPC was not informed of the respondent's suspension at the relevant time. The reason why such a lapse occurred could be owing to the fact that the concerned DPC was convened only a few days after the respondent was suspended. However, the respondent had all along been aware of his suspension from 29th October, 2004 to 10th March, 2005 and at the time the DPC was held on the 2nd November, 2004.

11. In ***Narendera Singh*** (*supra*) the Supreme Court observed that:-

“32. It is true that the mistake was of the Department and the respondent was promoted though he was not eligible and qualified. But, we cannot countenance the submission of the respondent that the mistake cannot be corrected. Mistakes are mistakes and they can always be corrected by following due process of law. (In Indian Council of Agricultural Research and Anr. V. T.K. Suryanarayan and Ors. (1997) 6 SCC 766, it was held that if erroneous promotion is given by wrongly interpreting the rules, the employer cannot be prevented from applying the rules rightly and in correcting the mistake. It may cause hardship to the employees but a court of law cannot ignore Statutory Rules.

33. As observed by us, Statutory Rules provide for passing of Departmental Examination and the Authorities were right in not relaxing the said condition and no fault can be found with the Authorities in insisting for the requirement of law. In the circumstances, the action of the Authorities of correcting the mistake cannot be faulted.”

12. In ***Durgesh Kumar*** (*supra*), this Court had considered a case of erroneous promotion of an OBC candidate who was mistakenly treated as SC/ST candidate and subsequently promoted to the post of Head Constable. It was held that the candidate being a Constable had not noticed this aspect and was unaware of the same as the list was never circulated. Hence, there was no question of the candidate having concealed any information deliberately or not having informed the authorities in this behalf.

13. The case of ***Durgesh Kumar*** (*supra*) does not come to the aid of the respondent, inasmuch as, in the instant matter, as has been noticed above, the respondent was fully aware of his suspension. The respondent was conscious of the fact that his name could not have been placed on the Promotion List 'C' (Executive) and yet conveniently chose to remain silent on this aspect and consequently derived the benefit of such an error. In the case of ***Durgesh Kumar*** (*supra*) the candidate had disclosed the fact of his caste category and had even submitted a certificate for the same.

14. As observed by the Supreme Court in ***Narendra Singh*** (*supra*) '*Mistakes are mistakes and they can always be corrected by following due process of law*' and consequently the employer cannot be prevented from applying the Rules correctly and correcting the mistakes even if it causes

hardship to the employee. Thus, the respondent cannot be permitted to derive the benefit that emanates from an illegality.

15. In view of the foregoing discussion, the instant writ petition is allowed and the impugned order of the Tribunal dated 15th February, 2011 is hereby set aside. There shall be no order as to costs.

SIDDHARTH MRIDUL, J

BADAR DURREZ AHMED, J

SEPTEMBER 28, 2012
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