

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

Judgment Reserved on: May 10, 2013
% *Judgment Delivered on: May 20, 2013*

+ **W.P.(C) 6169/2011**

COMMISSIONER OF POLICE, DELHI Petitioner
Represented by: Mr.Yogesh Saini, Advocate for
Mr.V.K.Tandon, Advocate

versus

JAI CHAND Respondent
Represented by: Ms.Sumedha Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE V. KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. The facts noted hereinafter are not in dispute. The respondent was not promoted since he was facing a criminal trial and additionally a departmental enquiry. He was acquitted in the criminal case and the order imposing penalty at the departmental inquiry was quashed by the Tribunal. After various rounds of litigation, the respondent succeeded in being granted *ad-hoc* promotion on January 01, 2004 to the post of Sub Inspector (Exe.) and later on from the date on which the person immediately junior to him was promoted i.e. May 29, 1996. For purpose of pay fixation, petitioner was granted notional promotion reckoned from September 13, 1999, and as regards back wages for the post of Sub Inspector, same was denied applying Rule 17(1) of the Fundamental Rules on the ground that he would be entitled to the same from the date he assumed charge of the higher post.

2. At the outset we must note that the factual matrix has been culled together with great difficulty; the pleadings of the parties being wanting for the most part and information to be gathered from bits and pieces lying scattered.

3. The respondent, Jai Chand, has a background of long and protracted litigation. He was a member of the Delhi Police Force and was promoted to the rank of ASI (Exe.) with effect from September 26, 1986.

4. He became an accused in FIR No. 11/85 PS Sultan Puri for offences punishable under Sections 341/342/330/323 IPC and 5(2) of the Prevention of Corruption Act. He was charge-sheeted and had to face a trial in said FIR. On December 29, 1993 a departmental inquiry was initiated against him and the next year his name was entered in a Secret List of officers with Doubtful Integrity on September 22, 1994. Entitled to be considered for promotion at a DPC held on November 25, 1994, due to his name being entered in the list of officers with Doubtful Integrity and not achieving the bench mark 'Good' in at least three of the five preceding ACRs, the DPC found him unfit to be promoted.

5. His name was considered at the DPCs held on January 16, 1997, December 02, 1998 and September 01, 2000 as per Rule 16(i) of the Delhi Police (Promotion & Confirmation) Rules, 1980; recommendations whereof were kept in a sealed cover on account of pendency of the departmental inquiry as also the criminal case in which respondent was an accused.

6. Vide judgment dated August 28, 2000 respondent was acquitted in FIR No.11/85 and the acquittal became final. On May 25, 2001 the penalty of withholding future increments with cumulative effect was imposed upon him against which he filed OA 3380/2002, pending consideration whereof his name was considered by another DPC which met on March 15, 2002.

Recommendations whereof pertaining to the respondent were placed in a sealed cover, for reasons unknown because by said date the respondent had been acquitted in the criminal trial and at the departmental inquiry the penalty was imposed upon him and thus while considering the penalty and the ACRs, whatever decision was taken by the DPC had to be given effect to and not kept in a sealed cover. Another DPC was held on March 28, 2003 at which respondent was found unfit to be promoted.

7. OA 3380/2002 was allowed by the Tribunal, the date of the order not pleaded by any party and hence not known to us, the penalty imposed upon the respondent vide order dated May 25, 2001 was quashed and the decision taken by the Tribunal attained finality.

8. A consequential direction was issued to convene a DPC to consider entitlement of the respondent to be promoted ignoring the penalty imposed.

9. The respondent was promoted as a Sub Inspector (Exe.) but on ad-hoc basis with effect from January 01, 2004. It is not clear whether the same was on account of a DPC being convened or otherwise.

10. The sealed covers containing the name of the petitioner pertaining to the DPCs which were held on January 16, 1997, December 02, 1998 and September 01, 2000 were opened and it was noted that recommendations pertaining to the first two DPCs found respondent unfit to be promoted and in the last DPC he was found fit to be promoted and thus on June 25, 2004, respondent's name was entered in the promotion list 'E-I' with effect from September 01, 2000.

11. Respondent filed representations against the said order which was rejected compelling him to file OA No.257/2005 which was disposed of by the Tribunal vide order dated September 07, 2006, directing as under:

“We are unable to appreciate how the DPC held on 25.11.94 found the applicant to be unfit for promotion due to

non-achievement of benchmark of three 'Good' ACRs. We do not consider it necessary to look into the five years ACRs relevant to the subsequent DPCs and find that the impugned order cannot stand which is, therefore, quashed. The respondents are directed to hold a review DPC as on 25.11.94 in respect of the applicant keeping in view the above observations and pass appropriate orders in accordance with law within a period of three months from the date of this order. In case favourable order was passed for the applicant, he would be entitled to all consequential benefits or else respondent shall pass a detailed and speaking order in accordance with law.'

12. Review DPC was held and found respondent unfit for promotion as of November 25, 1994 and also as of January 16, 1997 but found him fit to be promoted with effect from December 02, 1998 because respondent's name had been removed from the list of officers of Doubtful Integrity and he had also achieved the prescribed bench mark.

13. On December 22, 2006 the name of the respondent was admitted to the Promotion List E-I (Executive) with effect from December 02, 1998 and the respondent was promoted as Sub Inspector (Executive) with effect from September 13, 1999. However, the promotion was to be treated as notional for the period from September 13, 1999 to December 31, 2003 since the respondent had not assumed the work of the higher post. Relevant would it be to highlight that as noted hereinabove with effect from January 01, 2004 ad-hoc promotion to the post of Sub-Inspector (Exe.) had been given to the respondent.

14. The respondent once again approached the Tribunal by filing OA No. 2062/2008, this time praying that his name should be removed from the Secret List of officers with Doubtful Integrity with effect from September 22, 1994 and his entitlement to be promoted considered afresh by treating him as an officer not with Doubtful Integrity. Vide order dated September

22, 2008 the Tribunal directed the department to take a fresh decision and communicate the same to the respondent.

15. Considering the representation of the respondent, his name was removed from the Secret List of Doubtful Integrity with effect from September 22, 1994 and in the changed circumstances, on November 17, 2009 his case was placed before the review DPC for admission to Promotion List E-I (Executive) and the DPC found him to be 'fit' for admission to promotion list E-I with effect from November 25, 1994. Vide order dated December 03, 2009 he was promoted to the post of Sub Inspector (Executive) with effect from May 29, 1996 i.e. the date when his counterparts were given promotion.

16. It needs to be highlighted that as per the promotion rules in the Delhi police upon being found fit to be promoted the names of officers are entered in a promotion list but promotion is effected on the basis of seniority as and when vacancies arise and thus the respondent could not claim a right to be promoted with effect from November 25, 1994 and at best the right would be to claim promotion with effect from May 29, 1996.

17. Earning a promotion with effect from May 29, 1996, but on notional basis till respondent assumed the charge of the higher post of a Sub Inspector on January 01, 2004, the subsisting grievance of the respondent which remained was arrears of pay and allowances from the period May 29, 1996 till December 31, 2003.

18. The respondent approached the tribunal for the fourth time by filing OA No. 586/2010 seeking payment of arrears of pay and allowances in the rank of Sub Inspector from May 29, 1996 to December 31, 2003 and the claim has been allowed by the Tribunal vide impugned order dated January 21, 2011. The Tribunal has relied on the decision of the Supreme Court

reported as (1991) 4 SCC 109 Union of India vs K.V. Janakiraman, wherein it was observed that where recommendations pertaining to a person are kept in a DPC pending completion of a departmental inquiry or a criminal trial, upon acquittal the person concerned would be entitled to not only promotion from a back date but even wages for the period in question.

19. With great difficulty we were able to cull out the facts from the sketchy pleadings for the reason past history is long.

20. The view taken by the Tribunal is not only pedantic but ignores the law declared by the Supreme Court in the decision reported as (1993) 3 SCC 196 Delhi Development Authority Vs. H.C.Khurana. It has to be kept in mind that the respondent was an accused for offences punishable under Section 341/342/330/323 IPC read with Section 5(2) of the Prevention of Corruption Act. Till he got himself cleared at the criminal trial the department was justified in keeping his name in a sealed cover pertaining to the recommendations of the DPC. FR 17(1) requires salary of a higher post to be received from the date when charge of the higher post is assumed.

21. The writ petition is accordingly allowed. Impugned decision dated January 21, 2011 is set aside and OA 586/2010 filed by the respondent is dismissed.

22. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

MAY 20, 2013
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