

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

% *Judgment Reserved on: April 22, 2013*
Judgment Pronounced on: May 06, 2013

+ **W.P.(C) 2414/2012**

COMMISSIONER OF POLICE AND ORS Petitioners
Represented by: Ms.Avnish Ahlawat and
Mr.Vaibhav Mirra, Advocates

versus

SUNIL KUMAR Respondent
Represented by: Mr.Arun Bhardwaj, Advocate

W.P.(C) 4278/2012

GNCT OF DELHI AND ORS Petitioners
Represented by: Ms.Avnish Ahlawat and
Mr.Vaibhav Mehra, Advocates

versus

JAGVINDER SINGH Respondent
Represented by: Mr.Anil Singal, Advocate

W.P.(C) 6626/2011

UNION OF INDIA REPRESENTED BY: COMMISSIONER OF
POLICE Petitioner
Represented by: Ms.Avnish Ahlawat and
Mr.Vaibhav Mehra, Advocates

versus

BRAMH JEET SINGH AND ORS Respondents
Represented by: Mr.Arun Bhardwaj, Advocate

W.P.(C) 6768/2011

UNION OF INDIA REPRESENTED BY: COMMISSIONER OF
POLICE AND ORS Petitioners
Represented by: Ms.Avnish Ahlawat and
Mr.Vaibhav Mehra, Advocates

versus

ABDUL NAZIR KUNJU AND ORS Respondents
Represented by: Mr.Anil Singal, Advocate

W.P.(C) 7822/2011

GOVT. OF NCT OF DELHI AND ORS Petitioners
Represented by: Ms.Avnish Ahlawat and
Mr.Vaibhav Mirra, Advocates

versus

RAVINDER PAL Respondent
Represented by: Mr.Sourabh Ahuja, Advocate

W.P.(C) 8638/2011

GOVT. OF NCT OF DELHI AND ORS Petitioners
Represented by: Ms.Avnish Ahlawat and
Mr.Vaibhav Mirra, Advocates

versus

RAJU PUNIA Respondent
Represented by: Mr.Anil Singal, Advocate

W.P.(C) 3284/2012

COMMISSIONER OF POLICE AND ANR Petitioners
Represented by: Ms.Avnish Ahlawat and
Mr.Vaibhav Mehra, Advocates

versus

ASHOK KUMAR AND ANR Respondents
Represented by: Mr.Ajesh Luthra, Advocate

W.P.(C) 5514/2012

COMMISSIONER OF POLICE AND ORS Petitioners
Represented by: Ms.Avnish Ahlawat and
Mr.Vaibhav Mehra, Advocates

versus

RAKEKSH KUMAR TYAGI Respondent
Represented by: Mr.Ajesh Luthra, Advocate

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

PRADEEP NANDRAJOG, J.

1. A common question of law arises for consideration in the above captioned writ petitions regarding interpretation of Rule 19(ii) of the '*Delhi Police (Promotion & Confirmation) Rules, 1980*', more specifically regarding the year from which the seniority of the subordinate officers of the Delhi Police would be reckoned, upon promotion under Rule 19(ii). The Rule reads as under:-

"19. Ad-hoc promotions-

(i) In special circumstances when there are no approved names on promotion lists, and vacancies exists, the Commissioner of Police, may promote suitable officers in order of seniority to next higher rank temporarily. Such promotions shall not entitle the officers concerned to claim and right for regular appointment or seniority or for appointment to such or any other equivalent post and shall be liable to reversion without notice as soon as qualified men become available.

(ii) To encourage outstanding sportsmen, marksmen,

officers who have shown exceptional gallantry and devotion to duty, the Commissioner of Police may, with prior approval of Administrator, promote such officers to the next higher rank provided vacancies exist. Such promotions shall not exceed 5 per cent of the vacancies likely to fall vacant in the given year in the rank. Such promotions shall be treated as ad-hoc and will be regularised when the persons so promoted have successfully completed the training course prescribed like (Lower School Course), if any. For purposes of seniority such promotees shall be placed at the bottom of the promotion list drawn up for that year.”

2. Vide order dated May 10, 2006, a Full Bench of the Central Administrative Tribunal held as under:-

“The seniority of persons promoted under sub Rule (ii) of Rule 19 of Delhi Police (Promotion & Confirmation) Rules, 1980 is to be placed at the bottom of the promotion list drawn up in that year when they were considered for regular promotion under Rule-12 to 17 of the said Rules.”

3. The issue was later on referred to a larger (5 Judge) Bench of the Tribunal, which, vide order dated March 24, 2011 passed in OA No. 2047/2006 and OA No. 2612/2005 held that the correct interpretation of the rule implied that the officers promoted, out of turn in any year, shall be placed for the purposes of seniority at the bottom of the Promotion List of the year in which out of turn promotion is given. In so holding the Tribunal, relied upon the decision reported as 2008 (3) SCALE 469, Gujrat Urja Vikas Nigam Ltd. V. Essar Power Ltd, to interpret the language of Rule 19(ii) of the Delhi Police (Promotion & Confirmation) Rules, 1980 holding the same to be clear and unambiguous regarding the interpretation of the expression ‘that year’, to in fact alluding to the year in which the official is granted the out of turn promotion and not the year in which the eligibility lists are prepared.

4. In Delhi Police appointments are made as per '*Delhi Police (Appointment & Recruitment) Rules 1980*'. Clause (a) of Rule 5 of the said Rules reads as under:-

Rule 5. Recruitment. –

(a) *Save in the case of Ministerial Cadre, Women Police and other specialised appointments, as hereinafter provided in these rules, direct recruitment to subordinate ranks (executive) of Delhi Police shall be made only at two levels viz. Sub-Inspectors and Constables.*

(b) /
/
(h)

5. It is thus apparent that appointment to the post of Head Constable, Assistant Sub-Inspector and Inspector are only by promotion.

6. Since appointment to the post of Head Constable, Assistant Sub-Inspector and Inspector is by promotion alone, and since appointment to the post of Constable and Sub-Inspector are envisaged to be the only posts where direct recruitment can be made, we need to note that being at the lowest level, it is but obvious that appointment to the post of Constable has to be by direct recruitment and for the reason the post of Sub-Inspector is three steps ahead that of a Constable, we find that as per Rule 7 of the '*Delhi Police (Appointment & Recruitment) Rules, 1980*', 50% posts of Sub-Inspectors have to be filled up by direct recruitment and 50% by promotion. Thus, it is apparent that appointment to the post of Head Constable, Assistant Sub-Inspector, Sub-Inspector and Inspector would be governed by some Rules, and we find that the Rules are '*Delhi Police (Promotion & Confirmation) Rules, 1980*'. We note the relevant Rules, being Rule 7, 12, 13, 15, 16 and 17. They read as under:-

“Rule 7. Promotion of enrolled Police personnel. -

(i) List A.B.C.D-I, D-II, E-I, E-II and F shall be maintained for selection, for regulating promotional courses, where applicable and promotion to various subordinate ranks. Each list shall be the nominal roll of police personnel considered suitable for further advancement in the concerned ranks, as provided in this rule, and shall be maintained separately for (1) Executive (2) Technical and (3) Ministerial Cadres.

(ii) The conduct and efficiency of men on promotion list shall be, at all times, watched with special care. Any officer whose name exists on the promotion list, if found guilty of a misconduct of nature reflecting upon his character or fitness for responsibility or who shows either by specific acts or by his record as a whole that he is unfit for promotion to higher rank shall be reported to the Deputy Commissioner of Police, head Quarters (1), Delhi in respect of persons on lists ‘A’ to ‘E’ and to Additional Commissioner of Police (Administration) Delhi in respect of officers on list ‘F’. However, final decision regarding removal of name(s) from a promotion list shall be taken by the Appointing Authority only after giving show cause notice to the individual.

Rule 12. Promotion List ‘A’ –

(i)(a) Promotion list ‘A’(Executive) shall be a list of conformed constables (Executive) considered fit for being sent to lower School Course. Confirmed Constables having a minimum of 5 years service shall be eligible for consideration. The list shall be framed on the recommendations of the departmental promotion committee which shall adopt the evaluation system based on (1) Service record (2) Seniority (3) Annual Confidential Reports (4) Acquaintance in Professional test which shall cover following subjects:

(i)Physical Training and Parade,

(ii) Elementary law and Police practical work,

- (iii) *General Knowledge,*
- (iv) *Professional work done.*

A constable up to 40 years of age shall be eligible to take tests and only ten chances will be allowed. The names of selected constables shall be brought on list 'A' in order of their seniority keeping in view the number of vacancies in the rank of Head Constables likely to be available in the following one years.

The selected constables will be sent for lower School Course subject to their medical fitness by the Civil Surgeon.

Rule 13. List 'B'

(i) List 'B'(executive shall comprise names and particulars of the constables, who have qualified in the lower school course. The names shall be brought on list 'B' in order of seniority as on List 'A'. Promotions to the rank of Head Constables shall be made as and when vacancies occur in the rank of Head Constables. 80 percent of vacancies in the rank of Head Constables (Executives) shall be filled out of this list.

Rule 15. List 'D' – *List 'D' shall be a list of confirmed Head Constables considered suitable for promotion to the rank of Assistant Sub-Inspector.*

(i) List-D (Executive)

Confirmed Head-Constables, who have put in minimum of 5 years service in the rank, shall be eligible. The selection shall be made on the recommendations of the Departmental Promotion Committee.

The Head-Constable, so selected, shall be brought on list D-1, keeping in view the number of vacancies likely to occur in the rank of Assistant Sub-Inspector in the following one year, in order of their respective seniority in the rank of Head Constable subject to the medical fitness by

the Civil Surgeon. They shall be detailed for training in the Intermediate School Course. Those, who successfully qualify the Intermediate School Course, shall be brought on List D-II, as per their respective seniority on the list D-I. Promotions shall be ordered from amongst the Head-Constable on List D-II as and when vacancies occur.

(ii)

(iii)

Rule 16. List 'E'- List-E (Executive)

Confirmed Assistant Sub-Inspector (Executive), who have in a minimum of 6 years of service in the rank of Assistant Sub-Inspector (Executive), shall be eligible for List-E-I (Executive). The selection shall be made on the recommendations of the Departmental Promotion Committee. The Assistant Sub-Inspector so elected, shall be brought on List E-I in order of their respective seniority, keeping in view the vacancies in the rank Sub-Inspector (Executive) likely to occur in the following one year. Subject to the medical fitness by the Civil Surgeon the selected Assistant sub-Inspectors (Executive) shall be sent for training in the Upper School Course. On successfully completing the Upper School Course, their names shall be brought on promotion List E-II (Executive) in order of their respective seniority in List-E-I for promotion to the rank of Sib-Inspector (Executive) as and when vacancies occur.

(ii).....

(iii).....

Rule 17. List 'F'

(i) List-F (Executive)

Confirmed Sub-Inspector (Executive), who have put in a minimum of 6 years service in the rank of Sub-Inspector, shall be eligible. The selection shall be made on the

recommendations of the Departmental Promotion Committee. The names of selected Sub-Inspector shall be admitted to List-F (Executive) on the basis of their respective seniority, keeping in view the number of vacancies likely to occur in the following one year, and promotion made to the rank of Inspector from this list as and when vacancies become available.

(ii).....

(iii).....

7. From a perusal of the Promotion and Confirmation Rules it emerges that confirmed constables having minimum 5 years service become eligible to be promoted as Head Constables and a promotion list 'A' has to be prepared after evaluating the service record, seniority, ACRs and acquaintance in elementary law and police practical work, professional work and general work. These constables have then to clear a '*lower school course*' and those who qualify in the said course have their names entered in List 'B'. As and when vacancies arise promotions are effected from those whose names are in list 'B' keeping in view the seniority in the post of Constable. In other words, clearing the lower school course is the sine qua non to be promoted. Similarly, pertaining to Head Constables who have put in minimum 5 years of service become eligible to be promoted as an Assistant Sub Inspector and after performance is appraised at a Departmental Promotion Committee, those found fit to be promoted have their names entered in List 'D-I' and have to successfully clear an '*intermediate school course*' to have their names entered in List 'D-II', from which promotions are effected as per seniority as and when vacancies arise to the post of Assistant Sub Inspector. Likewise, the Assistant Sub Inspectors become eligible to be promoted as Sub-Inspectors on rendering 6

years service with names entered in List 'E-I' upon being appraised by a Departmental Promotion Committee and in List 'E-II' upon successfully clearing an '*upper school course*'. Sub Inspectors become eligible to be promoted as an Inspector on rendering 6 years service and selection is on the basis of the recommendations of a Departmental Promotion Committee with names entered in List 'F'. Relevant would it be to highlight that for being promoted as an Inspector, the Sub Inspectors do not have to clear any promotion course. In other words, Constables, Head Constables and Assistant Sub Inspectors have to clear a course called the '*Lower School Course*' '*Intermediate School Course*' and '*Upper School Course*' respectively to earn promotion.

8. Though not a part of the writ pleadings, learned counsel for the parties were in agreement that Constables, Head Constables and Assistant Sub Inspectors undergo the respective training course around the time they become eligible for promotion and vacancies in the near future are anticipated. The reason is, and which we find to be logical, training should be imparted to a person around the time the person is likely to earn a promotion for the reason stale knowledge tends to get blurred and finally, imprints removed from the mind. Thus, practically what happens is that by the time vacancies arise the eligible candidates have already undertaken the promotional courses and those whose names are brought on List 'B', List 'D-II' and List 'E-II' earn promotion with reference to their seniority reflected in List 'A', List 'D-I' and List 'E-I' respectively.

9. Vis-a-vis direct recruits and promotees and inter-se promotees, seniority is governed by Rule 22 of the '*Delhi Police (Appointment & Recruitment) Rules, 1980*', which reads as under:-

Rule 22. *Seniority in the case of upper and lower subordinate shall be initially reckoned from the date of first appointment,*

and officer of subordinate rank promoted from a lower rank being considered senior, to persons appointed direct to the same rank on the same day, till seniority is finally settled by confirmation. The seniority of direct recruits in all ranks except Sub-Inspectors (Ex.) appointed as a result of some examination or selection shall be reckoned by the order of merit determined.

By the Selection Board and in case no order of merit is indicated by the age of candidates, the oldest being placed senior-most and the youngest the junior-most. The inter-seniority of directly recruited Sub-Inspectors (Ex.) shall be fixed, on the basis of total of marks obtained by them in the Staff Selection Commission Examination/Interview as well as in the final examination held at Police Training School/College.

10. As noted above, Rule 19 (ii) of the ‘*Delhi Police (Promotion & Confirmation) Rules, 1980*’ empowers the Commissioner of Police, with the prior approval of administrator, to promote subordinate officers who are outstanding sportsmen or have shown exceptional gallantry and devotion to duty to the next higher rank but up to 5% of the vacancies *likely to fall vacant in the given year in the rank*. Meaning thereby, 5% of the vacancies in a rank of subordinate officers can be filled up under Rule 19 (ii). Such promotions are to be treated as ad-hoc, to be regularized when the person so promoted successfully completes the training course prescribed.

11. Ex-facie, reason for giving ad-hoc promotion is that a subordinate officer who earns promotion by virtue of Rule 19 (ii) may otherwise not be eligible for promotion as per the seniority position and may not have been sent for the mandatory promotional course to be cleared Constables, Head Constables and Assistant Sub Inspectors to earn further promotion. But the act of bravery, gallantry and exceptional devotion to duty or an outstanding performance in sports may result in a right to be promoted. Thus, the Rule envisages an ad-hoc promotion to be followed by

a regular promotion upon successful completion of a training course. But, since for being promoted as an Inspector, a Sub Inspector has not to clear any promotional course, it is apparent that if a Sub Inspector earns promotion under Rule 19(ii), the promotion has to be on a regular basis.

12. Facts relevant and individual to the respondents of the above captioned writ petitions are :-

(i) Rakesh Kumar Tyagi, the respondent of WP(C) 5514/2012 was enlisted as a Constable on September 30, 1988 and earned a promotion under Rule 19(ii) of the '*Delhi Police (Promotion & Confirmation) Rules, 1980*' on November 21, 1996 as a Head Constable, but while drawing up of the seniority list his name was placed at the bottom of those who were promoted in the year 1999 as Constables. As per him his seniority position has to be assigned as of November 21, 1996 when he was promoted as a Head Constable. And relevant would it be for us to note that in the pleadings neither party has informed the date when he had cleared the Lower School Course, a mandatory requirement to be promoted as a Head Constable.

(ii) Ashok Kumar and Hari Ram, the respondents of WP(C) 3284/2012 were appointed as Constables on September 30, 1988 and on July 28, 1988 respectively. Both of them earned promotions under Rule 19(ii) of '*Delhi Police (Promotion & Confirmation) Rules, 1980*' to the post of Head Constable and then to the post of Assistant Sub Inspector. Ashok Kumar earned out of turn promotion as a Head Constable on November 02, 1994 and as an Assistant Sub Inspector on June 26, 1996. Hari Ram earned out of turn promotion as a Head Constable on July 22, 1995 and as an Assistant Sub Inspector on June 26, 1996. And relevant would it be for us to note that in the pleadings neither party has informed the date when they had cleared

the Lower School Course and the Intermediate School Course, a mandatory requirement to be promoted as a Head Constable and then as an Assistant Sub Inspector.

(iii) Ravinder Pal, the respondent of WP(C) 7822/2011 was appointed as a Constable on May 01, 1982 and earned a promotion under Rule 19(ii) of the '*Delhi Police (Promotion & Confirmation) Rules, 1980*' on March 01, 2002 to the post of Head Constable. And relevant would it be for us to note that in the pleadings neither party has informed the date when he had cleared the Lower School Course, a mandatory requirement to be promoted as a Head Constable.

(iv) Abdul Nazir Kunju, the respondent of WP(C) 6768/2011 was appointed as a Constable on September 01, 1986 and earned promotion under Rule 19(ii) of the '*Delhi Police (Promotion & Confirmation) Rules, 1980*' on July 04, 1995 to the post of Head Constable. And relevant would it be for us to note that in the pleadings neither party has informed the date when he had cleared the Lower School Course, a mandatory requirement to be promoted as a Head Constable.

(v) Jagvinder Singh, the respondent of WP(C) 4278/2012 was appointed as a Constable and was promoted to the post of Head Constable on October 31, 1986 and earned promotion under Rule 19(ii) of the '*Delhi Police (Promotion & Confirmation) Rules, 1980*' on August 09, 1999 to the post of Assistant Sub Inspector. And relevant would it be for us to note that in the pleadings neither party has informed the date when he had cleared the Lower School Course and Intermediate School Course, a mandatory requirement to be promoted as a Head Constable and thereafter as an Assistant Sub Inspector.

(vi) Sunil Kumar, the respondent of WP(C) 2414/2012 was

appointed as a Constable on September 15, 1982 and earned promotion under Rule 19(ii) of the '*Delhi Police (Promotion & Confirmation) Rules, 1980*' to the post of Head Constable on May 17, 1991. He then earned another out of turn promotion to the post of Assistant Sub Inspector under Rule 19(ii) of the '*Delhi Police (Promotion & Confirmation) Rules, 1980*' on November 02, 1994 and thereafter earned another promotion under Rule 19(ii) on June 26, 1996 to the post of Sub Inspector. And relevant would it be for us to note that in the pleadings neither party has informed the date when he had cleared the Lower School Course, the Intermediate School Course and the Upper School Course, a mandatory requirement to be promoted as a Head Constable, Assistant Sub Inspector and Sub Inspector respectively.

(vii) Bramh Jeet Singh, the respondent of WP(C) 6626/2011 was confirmed as a Sub Inspector on December 12, 1992 earned a promotion under Rule 19(ii) of the '*Delhi Police (Promotion & Confirmation) Rules, 1980*' on May 26, 2000 to the post of Inspector.

(viii) Raju Punia, the respondent of WP(C) 8638/2011 was appointed as a Constable on May 01, 1990 and earned a promotion under Rule 19(ii) of the '*Delhi Police (Promotion & Confirmation) Rules, 1980*' on May 14, 2002 to the post of Head Constable. And relevant would it be for us to note that in the pleadings neither party has informed the date when he had cleared the Lower School Course, a mandatory requirement to be promoted as a Head Constable.

13. The issue which all respondents raised firstly before the Department and because their claims were rejected, before the Central Administrative Tribunal, was the issue of the date with effect where from seniority had to be assigned to them as and when they earned a promotion

under Rule 19(ii) of the '*Delhi Police (Promotion & Confirmation) Rules, 1980*'.

14. As per the department the seniority had to be accorded when they completed the probation. As per the respondents seniority was governed by Rule 22 of the '*Delhi Police (Appointment & Recruitment) Rules, 1980*' which meant from the date of first appointment to the post in question.

15. The view taken by the Tribunal is that the words '*that year*' in sub Rule (ii) made it amply clear that for purposes of seniority of promotees who earned promotion under Rule 19(ii) of the '*Delhi Police (Promotion & Confirmation) Rules, 1980*' seniority would be by placing their names at the bottom of the promotion list drawn up for that year.

16. We have already indicated above that keeping in view the anticipated vacancies which would ensue in the future, the Delhi Police so organizes sending Constables, Head Constables and Assistant Sub Inspectors to undertake the Lower School Course, Intermediate School Course and Upper School Course respectively so that as and when, based upon seniority and upon suitability being determined, these subordinate officers earn a promotion. In other words promotions are earned in the year when vacancies accrue. We have already opined that the reason why out of turn promotees who earn a promotion under Rule 19(ii) of the '*Delhi Police (Promotion & Confirmation) Rules, 1980*' are firstly given ad-hoc promotion is because an act of bravery, gallantry and devotion to duty may be an unexpected event and the officer concerned may not have been deputed to undergo the promotional course. That is why the Rule states: '*Such promotions shall be treated as ad-hoc and will be regularize when the persons so promoted have successfully completed the training course*

prescribed'. But, for purposes of seniority, the last sentence of the Rule provides : '*For purposes of seniority such promotees shall be placed at the bottom of the promotion list drawn up for that year*'.

17. Plain and simple English language guides us that in the promotion list drawn up for that year i.e. the year of promotion, the names of these subordinate officers have to be entered and for purposes of seniority to be placed at the bottom of the promotion list drawn up for that year, meaning thereby the year of the promotion and not any other year.

18. The Tribunal has reached the right destination.

19. We concur with the reasoning of the Tribunal.

20. It assumes importance to note that Sub Inspectors who earned promotion as Inspectors under Rule 19(ii) of the '*Delhi Police (Promotion & Confirmation) Rules, 1980*' need not clear any promotional course for the reason the '*Delhi Police (Promotion & Confirmation) Rules, 1980*' do not envisage any promotion course to be successfully cleared for Sub Inspectors to be promoted as Inspectors. In any case, pertaining to respondent Brahm Jeet Singh there is not even an issue on fact because the year in which he earned promotion under Rule 19(ii) of the '*Delhi Police (Promotion & Confirmation) Rules, 1980*' vacancies existed and his promotion could not be contingent upon he successfully clearing any promotion course.

21. We give one more additional reason. If we look at sub Rule (i) of Rule 19 of the '*Delhi Police (Promotion & Confirmation) Rules, 1980*' we find that if no approved names are on the promotion lists and vacancies exist, as a special circumstance the Commissioner of Police may promote suitable officers in order of seniority to the next higher rank temporarily and these officers are not entitled to claim right for regular promotion or seniority. Meaning thereby, the Draftsman was conscious of temporary

promotions and the consequence thereof as envisaged by sub Rule (i) and promotions with consequences thereof as envisaged by sub Rule (ii) of Rule 19 of the '*Delhi Police (Promotion & Confirmation) Rules, 1980*'.

22. We accordingly dismiss the writ petitions affirming the view taken by the Tribunal in the impugned decisions, but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(V. KAMESWAR RAO)
JUDGE

MAY 06, 2013
mamta/skb