

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

+ **W.P.(C) 3612/2014 & CM APPL. No.7365/2014**

**COMMISSIONER OF POLICE AND ORS. .... Petitioners**  
Through **Mr. Ameit Andlay & Mr. Arun K. Sharma, Advocates**

versus

**CONSTABLE (MOUNTED) LAXMI NARAYAN... Respondent**  
Through **Mr. Pradeep Kumar, Advocate**

**CORAM:**

**HON'BLE MR. JUSTICE KAILASH GAMBHIR**

**HON'BLE MR. JUSTICE I.S.MEHTA**

**ORDER**

% **03.03.2015**

**KAILASH GAMBHIR, J. (ORAL)**

1. By this Petition filed under Articles 226 and 227 of the Constitution of India, the petitioners/ Union of India seek to challenge the order dated 19.12.2013 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (*hereinafter referred to as the 'CAT'*) whereby the learned Tribunal allowed the Original Application (*in short 'OA'*) No.2837/2011 preferred by the respondent with a direction to the petitioners/ Union of India to consider the claim of the respondent for 'out of turn promotion' to the rank of Head Constable strictly in terms of Standing Order No. 4/1989.

2. Assailing the said order, Mr. Ameit Andlay, the learned counsel for

the petitioners/ Union of India submits that the case of the respondent cannot be considered under the earlier Standing Order No.4/1989, as the same was superseded by the new Standing Order No. 4/2003, and subsequently a fresh Standing Order No. 4-A/2009 was issued, which was applicable to the respondent at the relevant time. As per this latest Standing Order, the respondent did not fulfil the eligibility criteria for the purpose of 'out of turn promotion' to the next higher rank of Head Constable.

3. The learned counsel also submits that the achievements of the respondent of winning i) one Gold Medal, Normal Medium (Individual) Event and ii) one Gold Medal in Normal Medium (Team) Event in the National Equestrian Championship 2006, falls short of the laid down requirement for 'out of turn promotion' to the next higher rank of Head Constable. Based on these submissions, the learned counsel for the petitioners/ Union of India submits that the impugned order dated 19.12.2013 passed by the learned CAT is excessive, illegal and perverse on the very face of it.

4. Opposing the present petition, Mr. Pradeep Kumar, the learned counsel for the respondent submits that in the year 2009, the petitioners

had promoted Constable Dharam Pal to the post of Head Constable (Mounted) and similarly in the year 2007 one Radhey Shyam was granted 'out of turn promotion' to the post of Head Constable (Mounted) whereas in the case of the respondent, the petitioners have been taking a different stand in a most illegal and arbitrary manner with a view to defeat his justified and legitimate claim for 'out of turn promotion' to the rank of Head Constable. The learned counsel also submits that the respondent became eligible for promotion in December, 2006 and earlier request of the respondent was turned down by the petitioners vide order dated 24.02.2009 on the ground that no post of Head Constable (Mounted) was vacant at that time and later the same was turned down due to the respondent not fulfilling the eligibility criteria in terms of Standing Order No.4-A/2009.

5. The learned counsel further submits that despite the direction given by the learned CAT vide order dated 03.02.2010 in the earlier OA No.2389/2009 to the petitioners to consider the respondent's claim for 'out of turn promotion' in the light of the similar relief granted to his counterparts within a period of three months from the date of the said order, the petitioners had again rejected the claim of the respondent

without properly carrying out a comparison with the case of other Constables who were granted 'out of turn promotion' only by placing reliance on the Standing Order No.4-A/2009. Based on these submissions, the learned counsel for the respondent submits that the direction given by the learned CAT vide order dated 03.02.2010 cannot be faulted with and the same deserves to be upheld.

6. We have the learned counsel for the parties.

7. The respondent who was an applicant before the learned CAT is a Constable (Mounted) who has shown excellent record in the equestrian sport and won medals in various championships, including two medals one each in normal medium (individual) in the National Equestrian Championship (NEC), 2006. As per the case set up by the respondent before the learned CAT, he was entitled to *ad-hoc*, 'out of turn promotion' to the rank of Head Constable as an incentive for outstanding performance in the field of sports.

8. The Standing Order No.4-A/2009 denied promotion to the respondent and his various representations were rejected. He had approached the learned CAT vide OA No. 2389/2009, wherein the learned CAT had ordered the petitioners vide order 03.02.2010 to

consider the claim of the respondent for 'out of turn promotion' in the light of the similar relief granted to his counterparts within a period of three months from the date of the said order. In pursuance of the direction of the learned CAT, the petitioners passed an order on 14.08.2010 whereby they again rejected his claim. The respondent had preferred a MA No. 3310/2010 in OA No.2389/2010, which was subsequently, withdrawn by him to file a fresh OA to challenge the said order dated 14.08.2010. The learned CAT after taking into consideration the rival stand of both the parties, again directed the petitioners to consider of the applicant for out of turn promotion to the rank of Head Constable strictly in terms of Standing Order No.4/1989 without considering the question of availability of vacancies in the same manner in which similar cases were considered earlier.

9. In our view, this direction given by the learned CAT for consideration of the case of the respondent for 'out of turn promotion' to the rank of Head Constable in terms of Standing Order No.4/1989 is not sustainable in the eyes of law. The case of the respondent for the first time was considered by the petitioners on 24.02.2009, when his case was governed by Standing Order No. 4/2003 which did not have the provision

for 'out of turn' promotion for showcasing outstanding performance in sports. Another representation was made by the respondent on 06.03.2009; however by that time the Standing Order No. 4-A/2009 already held the field. As per the Standing Order No. 4-A/2009, the respondent falls short of the laid down requirement and this position has not been disputed by the learned counsel for the respondent. In the year 2003 also the case of the respondent for out of turn promotion could not have been considered as the said Standing Order No.4/2003 made no provision for 'out of turn promotion' for outstanding performance in sports. Standing Order No.4/2003 clearly states that it superseded the earlier Standing Order No.4/1989. In these circumstances, to give a direction to the petitioners/ Union of India to consider the claim of the respondent in terms of Standing Order No. 4/1989 which stood superseded at the time of consideration of the case of the respondent would amount to giving illegal direction to the petitioners/ Union of India. In so far as the comparison of the case of the respondent with other cases of Constables Dharam Pal and Radhey Shyam is concerned, we find no justifiable ground for the petitioners having considered their cases under Standing Order No.4/ 1989 based on their achievements in sports

for the relevant period when the 2003 Standing Order already held the field, and we are of the view that Article 14 of the Constitution of India envisages a positive concept which can't be enforced in a negative manner and the same view is reiterated by the Hon'ble Supreme Court in a catena of cases. The Hon'ble Supreme Court in the case of ***State of Bihar v Kameshwar Prasad Singh AIR 2000 SC 2306*** held:

*“The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals other cannot claim the same illegality or irregularity on ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits.”*

10. In this regard the Supreme Court in ***Gursharan Singh & Ors. v. NDMC & Ors. [1996 (2) SCC 459]*** held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed in the High Court. The Court observed:

*"Neither Article 14 of the Constitution conceives within*

*the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination."*

11. Therefore, in the light of the settled legal position we are of the considered view that the respondent cannot claim a right based on negative equality. Consequently, the present petition is allowed. The impugned order dated 19.12.2013 is set aside. All the pending applications are disposed of in above terms.

**KAILASH GAMBHIR, J.**

**I.S.MEHTA, J.**

**MARCH 03, 2015**

**v**