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

+ **W.P.(C) 217/2017**

Date of decision: 11<sup>th</sup> January, 2017

GNCT OF DELHI ..... Petitioner  
Through Ms. Harvinder Oberoi, Advocate.

versus

S.I. DEVENDER KUMAR ..... Respondent  
Through Mr. Sourabh Ahuja, Advocate for  
Caveator

**CORAM:**  
**HON'BLE MR. JUSTICE SANJIV KHANNA**  
**HON'BLE MR. JUSTICE CHANDER SHEKHAR**

**SANJIV KHANNA, J. (ORAL)**

**CM No. 1011-1012/2017**

Exemption allowed subject to all just exceptions.

The applications stand disposed of.

**W.P.(C) 217/2017**

The Government of NCT of Delhi through the Commissioner of Police impugns the order dated 7<sup>th</sup> August, 2015 whereby OA No.3825/2014 filed by the respondent-Sub Inspector Devender Kumar before the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) was allowed. The order dated 15<sup>th</sup> January, 2016, by which the review

application filed by the writ petitioners was dismissed and the order dated 11<sup>th</sup> November, 2016 passed in Contempt Petition No. 779/2015, have been also challenged.

2. The respondent-Devender Kumar was appointed as a Constable in Delhi Police on 15<sup>th</sup> June, 1989. He earned three out-of-turn promotions as Head Constable on 3<sup>rd</sup> June, 2003, as Assistant Sub-Inspector on 30<sup>th</sup> March, 2006 and as Sub-Inspector on 24<sup>th</sup> July, 2007 under Rule 19 (ii) of the Delhi Police (Promotion and Conformation) Rules 1980. The said Rule reads as under:-

**"19. Ad-hoc promotions-**

(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. "

The aforesaid Rule provides accelerated and out-of-turn promotion to outstanding sportsmen, marksmen and officers, who have shown exceptional gallantry and devotion to duty.

3. Promotion as Sub-Inspector with effect from 24<sup>th</sup> July, 2007, was made pursuant to order dated 16<sup>th</sup> July, 2009, passed by the Delhi High Court in W.P. (C) No. 8841/2008, ***ASI Devender Kumar v. GNCTD and Ors.***

4. The controversy raised in the present writ petition pertains to the seniority of the respondent viz. those, who were promoted or were appointed as Sub-Inspectors in Delhi Police in normal course. The respondent was placed at the bottom of promotion list E-1 (Executive) in the seniority list dated 15<sup>th</sup> January, 2014, his date of appointment as Sub-Inspector being taken as 14<sup>th</sup> September, 2012, notwithstanding the fact that he was treated as promoted with effect from 24<sup>th</sup> July, 2007 in terms of the directions given by the Delhi High Court in the order dated 16<sup>th</sup> July, 2009 passed in W.P. (C) No. 8841/2008.

5. This had prompted the respondent to file OA No.3825/2014, which was decided in favour of the respondent by the first impugned order passed by the Tribunal dated 7<sup>th</sup> August, 2015. The Tribunal in this order has referred to another decision of the Delhi High Court dated 6<sup>th</sup> May, 2013 in Writ Petition (C) No.2414/2012 titled ***Commissioner of Police & Ors. v. Sunil Kumar***. The Tribunal in their order dated 7<sup>th</sup> August, 2015, had

directed that the respondent would be placed at the bottom of the promotion list for the year 2007 i.e. the year in which he was actually promoted to the post of Sub-Inspector.

6. The petitioner while implementing the said order placed the respondent at the bottom of the promotion list E-1 with effect from 14<sup>th</sup> December, 2007. List E-1 is of Assistant Sub-Inspectors (Executive), who were yet to be notified and promoted as Sub-Inspectors. Aggrieved, the respondent filed Contempt Petition No.779/2015 stating that the petitioners have deliberately flouted the orders of the Tribunal by placing the respondent at the bottom of the promotion list E-1, which consists of Assistant Sub-Inspectors, who were yet to be promoted and appointed as Sub-Inspectors.

7. Order dated 11<sup>th</sup> November, 2016, passed by the Tribunal in the contempt petition holds that the respondent's name should not have been included in list E-I belonging to Assistant Sub-Inspectors, who were selected and had to be sent for training and then promoted as Sub-Inspectors on vacancies that occur in the following year. The petitioners, it was held, were violating various orders of the Tribunal on the aforesaid question. The contention that the respondent had been placed below one Kaptan Singh, his

immediate senior, was rejected observing that the respondent was given out-of-turn promotion under Rule 19 (ii) and had already been appointed as Sub-Inspector. The petitioners were granted two months time to make faithful compliance of the order dated 17<sup>th</sup> August, 2015 by which OA No.3825/2014 was allowed.

8. The controversy raised by the petitioner, in our opinion, is completely settled and decided by the decision in the case of Sunil Kumar (supra). This decision refers to the rule position for promotion of Constables as Head Constables, Head Constables as Assistant Sub-Inspectors, Assistant Sub-Inspectors as Sub-Inspectors and Sub-Inspectors as Inspectors in the normal course. As per Rule 12, Constables eligible for promotion to the post of Head Constable have to clear 'lower school course' and thereupon their names are entered in List B. As and when vacancies arise, they are then promoted as Head Constables. As per Rule 15, Head Constables, who are found fit to be promoted as Assistant Sub-Inspector by the Departmental Promotion Committee are brought on list D-I. They have to clear 'intermediate school course' and then their names are entered into list D-II. Promotions are effected from list D-II as per seniority as and when vacancies arise in the cadre of Assistant Sub-Inspector. As per Rule 16, the

Assistant Sub-Inspectors, who have completed six years of confirmed service, are brought and included in list E-II and, as and when vacancies occurs in the cadre of Sub-Inspectors, they are promoted.

9. In Sunil Kumar's case the Division Bench referring to Rule 19 (ii) observed that the Commissioner of Police with prior approval of the Administrator can grant out-of-turn promotions upto 5% of the vacancies likely to fall vacant in the given year in the rank. The persons so promoted whether as Head Constables, Assistant Sub-Inspectors or Sub-Inspectors need not have already undertaken and cleared the prescribed courses, namely, lower school course for promotion of Constable as Head Constable, intermediate school course for Head Constable to be promoted as Assistant Sub-Inspectors and upper school course to be promoted as Sub-Inspectors. When Rule 19(ii) applies, the promotion does not have to wait and there is no need to include the name in either list A or B in the case of Constables, list D-I or D-II in the case of Head Constables and list E-I and E-II in the case of Assistant Sub-Inspectors. These lists are prepared for promotion in normal course and not for promotion under Rule 19(ii). Promotions made under Rule 19 (ii) are treated as *ad-hoc* promotions, which are regularized on successful completion of requisite training. Officers promoted under

Rule 19 (ii) are paid salary as applicable to the promotional cadre even when they are undergoing the training. They acquire the promotional rank immediately. Constables included in list A or B, Head Constables included in list D-I or D-II and Assistant Sub-Inspectors included in list E-I and E-II till they are actually promoted remain at the lower post and post successful completion of the training course, as and when vacancies arise they are promoted either as Head Constables, Assistant Sub-Inspectors or Sub-Inspectors. Upon promotion, they became entitled to salary of the higher posts.

10. We would like to reproduce the findings of the Division Bench in Sunil Kumar's case, which read:-

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 that 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 (sic.) 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 any 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”.

11. In view of the aforesaid position, we do not find any merit in the writ petition and the same is dismissed. No order as to costs.

**SANJIV KHANNA, J**

**CHANDER SHEKHAR, J**

**JANUARY 11, 2017**  
**b/NA/VKR**