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

+ W.P.(C) 840/2018, CM APPL. 3575-76/2018 and CAV 72/2018

GNCT OF DELHI

..... Petitioner

Through: Mr. Devesh Singh, ASC (Civil),
GNCTD with Ms. Minal Sehgal, Advocate

versus

BHIKAMBER

..... Respondent

Through: Mr. Anil Singal, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **31.01.2018**

1. The petitioner/Delhi Police is aggrieved by the order dated 14.03.2017 passed by the Central Administrative Tribunal, New Delhi, allowing O.A. No.1504/2013 filed by the respondent, who was working on the post of a Head Constable and had prayed for quashing and setting aside of a show cause notice dated 12.04.2013, issued by the petitioner, calling upon him to explain as to why he should not be reverted to the rank of a Constable and his name removed from the Promotion List 'A' w.e.f. 25.01.2008.

2. For proper appreciation of the case, a brief reference to the facts is considered necessary.

3. In the year 1994, the respondent was recruited as a Constable in the Delhi Police. In the year 2007, the respondent applied for Promotion List

‘A’ test and qualified the same. As a result, his name was included in the Promotion List ‘A’ w.e.f. 25.01.2008, in terms of a Notification issued on 29.01.2008. From the very same date, the petitioner was also promoted to the rank of a Head Constable on an *ad hoc* basis. Subsequently, vide order dated 08.07.2009, the respondent was promoted to the rank of a Head Constable on a regular basis, w.e.f. 01.07.2009. Three and a half years thereafter, the petitioner issued a notice to show cause dated 12.04.2013 to the respondent stating *inter alia* as follows:-

“As per provision in SO No.91/2007, two bonus marks shall be awarded to the Constables who are having educational qualification of LLB or higher i.e. LLM and BCA or higher i.e. MCA. During the course of an enquiry into a complaint it has come to notice that HC (Exe.) Bhikamber, No.2911/SD, (now 585/SE) (PIS No.28940255) is a simple post graduate and he was granted 2 bonus marks inadvertently in lieu of higher education prescribed for LLB or LLM and BCA or MCA. The details of marks for ‘A’ list test, 2007 were displayed on INTRADP at the time of pronouncement of result, but he has not intimated any of the authority about the benefit of marks so granted inadvertently. He is a General Candidate and if his two bonus marks is deducted, which were granted to him inadvertently, his total marks are less than the qualifying marks fixed for ‘A’ list test, 2007 and he fails to make the grade in the list of successful candidates.

As per Govt. of India’s decision at Sl.No.1 below FR-31A, it is stipulated that the orders of notification of Promotion of a Government servant should be cancelled as soon as it is brought to the notice of the Appointing Authority that such a promotion or appointment has resulted from a factual error and the Govt. servant concerned should, immediately on such cancellation, be brought to the position, which he would have held, but for the incorrect order of promotion or appointment.

HC (Exe.) Bhikamber, No.2911/SD (PIS No.28940255) is therefore, called upon to show cause as to why he should not be reverted to his substantive rank and subsequently his name should not be removed from Promotion List 'A', which was admitted w.e.f. 25/01/2008 vide notification No.2150-2250/P.Br.(A.Cell)PHQ dated 29/01/2008. His reply in this regard, if any should reach this Hdqrs. within 15 days from the date of receipt of this notice, failing which it will be presumed that he has nothing to say in his defence and the case will be decided on merit."

4. Aggrieved by the aforesaid notice to show cause, the respondent approached the Tribunal for relief. Notice was issued on the said O.A. on 07.05.2013 and as an interim measure, the impugned show cause notice dated 12.04.2013 was stayed. A detailed counter affidavit in opposition was filed by the petitioner, wherein it was averred that the promotional test from Constable (Exe.) to Head Constable (Exe.) was being conducted in Delhi Police in terms of Rule 12(i) of the Delhi Police (Promotion & Confirmation) Rules, 1980 (hereinafter referred to as 'Delhi Police Rules'), which prescribed that confirmed constables having a minimum of 5 years service and upto the age of 40 years (age limit was extended upto 50 years in the Rules), shall be eligible for consideration for the Promotion List 'A'. The said list was required to be prepared on the recommendation of the DPC, by adopting an evaluation system based on the service record, seniority, Annual Confidential Report and Acutance in the professional test. In exercise of the powers vested on the Commissioner of Police, Delhi vide Rule 21 of the Delhi Police Rules, he had issued SO No.91/07 to prescribe the criteria, standard and guidelines for regulating the promotion in the light of the existing instructions before conducting the 'A' list test. SO No.91/07

provided amongst others, that a minimum ten marks shall be awarded for certain professional courses undergone by a candidate and two marks each shall be awarded for LLB Law Graduate or for holding a higher degree from a Government recognized University.

5. The petitioner contended before the Tribunal that though the respondent was simply a post graduate, but due to wrong feeding of the data of higher education of post graduation in his service particulars, he was granted two additional marks and therefore succeeded in being promoted to List 'A'. The marks of the test were announced on the INTRA DP, but the respondent had failed to intimate the authorities about the wrong benefit of marks granted to him. On receiving a complaint in this regard, an enquiry was conducted and when the records of the respondent were checked, it transpired that he had been given two additional marks for holding a post graduate degree to which he was not entitled, since two additional marks could only be given for LLB Law Graduate or LLM or BCA or MCA. Consequently, the case of the respondent was re-examined and on deducting two marks granted to him inadvertently, the respondent could not make the grade for his name to be included in the Promotion List 'A', 2007, since his revised marks were below the qualifying benchmark. As a result, a show cause notice dated 12.04.2013 was issued to the respondent for reverting him and removing his name from the Promotion List 'A'.

6. In the course of arguments, learned counsel for the respondent had stated before the Tribunal that the question as to whether an employee can be visited with adverse orders such as reversion, for a fault that was exclusively attributable to the employer and that too at a stage when he was already in position on the promoted post, had already been examined by the

Tribunal in **O.A. No.2757/2008** entitled, HC Umesh Kumar and Ors. vs. Govt. of NCT of Delhi and Ors., which was decided on 08.09.2009 and the said decision had already been implemented by the petitioner. Arguing that the case of the respondent herein was squarely covered by the aforesaid judgment, learned counsel had prayed for quashment of the show cause notice issued to the respondent.

7. The Tribunal concurred with the submission made by learned counsel for the respondent and observed that the fact situation of the present case was squarely covered by the judgment dated 08.09.2009 in the case of HC Umesh Kumar (supra). Pertinently, while pronouncing the judgment dated 08.09.2009, the Tribunal had followed an earlier decision dated 12.09.2007 rendered in **O.A. No.88/2007** in the case of HC Durgesh Kumar vs. UOI. The challenge laid by the UOI to the said judgment before the High Court in W.P.(C) 394/2008, was turned down by a Division Bench vide judgment dated 16.01.2008. On a conspectus of the case law cited before it, the respondent's O.A. was allowed and the impugned notice to show cause dated 12.04.2013 was quashed and set aside by the Tribunal with directions issued to the petitioner to let the respondent continue on the promotional post. Aggrieved by the said judgment, the petitioner/Delhi Police has filed the present petition.

8. Learned counsel for the petitioner/Delhi Police submits that the Tribunal has fallen into an error by overlooking the provisions of the Government of India decision at Sl.No.1 below FR 31A, wherein it is stipulated that orders of notification of promotion of a Government servant should be cancelled as soon as it is brought to the notice of the Appointing Authority that such a promotion or appointment has resulted from a factual

error and on such cancellation, the Government servant should be brought to the position, which he would have held, but for the incorrect order of promotion/appointment. He argues that in the instant case, the respondent is a general category candidate and if two bonus marks that were granted to him inadvertently, are deducted, his total marks are less than the qualifying marks fixed for the 'A' list test, 2007, which would disentitle him to promotion. Lastly, learned counsel submits that the Tribunal overlooked the fact that the details of the marks in the 'A' list test, 2007 had been displayed on the INTRA DP, but the respondent did not disclose the fact that he had inadvertently been given the benefit of two marks when he did not possess educational qualification such as LLB, LLM, BCA or MCA.

9. From the facts of the case noted hereinabove, it is clear that the mistake in recording the educational qualifications of the respondent in his service book took place at the end of the petitioner/Delhi Police and no fault can be attributed to the respondent in this regard since he did not make any false representation relating to his educational qualifications. The very same issue as raised in the present petition was considered by the Tribunal in the case of HC Umesh Kumar (supra) decided on 08.09.2009, wherein the Government had conducted a selection for Promotion List 'A' in the year 2006 from the post of Constable to that of Head Constable and the petitioners therein, who fell within the zone of consideration, were called upon to appear in the selection process and were duly selected as Head Constables w.e.f. 26.12.2006. Subsequently, a notice dated 21.08.2008 was issued to the petitioners therein calling upon them to show cause why their names should not be removed from the Promotion List 'A' for the reason that it had come to the notice of the Department that they had inadvertently

been granted two marks in lieu of higher education, which they did not possess. The aforesaid O.A. was allowed by the Tribunal with the following observations:-

“7. It is the positive case of the applicants that they had no access to INTRADP on which the result of the test was pronounced. The respondents have brought no evidence to show that the result declared on INTRADP was accessible to the applicants, and further that marks on various heads including 2 bonus marks for higher qualification were also shown in the result. Be that as it may, if the respondents were under a bona fide mistake with regard to eligibility of the applicants in getting 2 extra marks, the applicants too could be under the same impression. No evidence that the applicants knew about getting 2 extra marks for their higher qualification apart, as mentioned above, there was no occasion for the applicants to have disclosed this fact to the concerned authorities, as they too, as mentioned above, could be under the same wrong impression.

8. In view of the discussion made above, we allow this Application. Show cause notice dated 21.8.2008 and impugned order dated 10.12.2008 are hereby quashed and set aside. The applicants, if reverted during pendency of this Application, shall be restored to their positions as Head Constable, with all consequential benefits. Let the needful be done within a period of fifteen days from today. There shall, however, be no order as to costs.”

10. Aggrieved by the judgment dated 08.09.2009, the Delhi Police had filed W.P.(C) 394/2008, which was dismissed by the High Court on the ground that the Tribunal's decision could not be faulted.

11. Even in the present case, the respondent had categorically denied having access to the INTRA DP as also the allegation levelled by the

petitioner/Delhi Police that he was aware of the fact that he had been given two bonus marks for his post graduation qualification and that without these marks, he could not have achieved the benchmark fixed for promotion. Nothing was brought on record by the petitioner/Delhi Police to demonstrate that the respondent was in any manner responsible for the wrong entry of his educational qualifications in his service records, nor had the respondent concealed any fact from the Department or made a misrepresentation to the DPC, which had resulted in wrong admission of his name in the Promotion List 'A'.

12. We are of the opinion that it would cause great injustice to the respondent if after working on the promotional post of a Head Constable for almost three years, during which period, tests for promotion must have been conducted by the petitioner/Delhi Police, they propose to revert him to the post of a Constable. Had the respondent been informed in the year 2008 itself that his name had been mistakenly included in the Promotion List 'A', he would have participated in the subsequent examinations conducted by the Department but he could not avail of the said opportunity to appear in the Departmental examinations held in the subsequent years between the year 2009 to 2013. Having not been so informed, the respondent missed out all the subsequent opportunities that were available to him to clear the examination. The respondent having altered his position, the petitioner is estopped in law by its own conduct in cancelling his promotion to the post of a Head Constable and reverting him to the post of a Constable. Any such decision would cause great injustice to him when he is in no way blameworthy for the error that has crept in his service records.

13. In view of the aforesaid discussion, we are of the firm opinion that the impugned order does not warrant any interference by this Court under Article 226 of the Constitution of India. The writ petition is accordingly dismissed in *limine* alongwith the pending applications.

HIMA KOHLI, J

REKHA PALLI, J

JANUARY 31, 2018

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