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

+ **W.P.(C) 8209/2016**

G.N.C.T. OF DELHI

..... Petitioner

Through Mr. Devesh Singh, Additional
Standing counsel.

versus

SHOBHA RAM

..... Respondent

Through Mr. Sachin Chauhan, Advocate

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
10.12.2019

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Dr. S. Muralidhar, J.:

1. The Government of NCT of Delhi ('GNCTD') has in this petition challenged an order dated 17th May, 2016 passed by the Central Administrative Tribunal ('CAT') allowing OA No. 3277/2013 filed by the Respondent and directing the Petitioner to treat the Respondent as having passed the examination required for promotion to the post of Head Constable ('HC') held immediately after the examination in which the Respondent appeared and passed. The CAT further directed that he should be treated as a last candidate having passed the said exam in the said year and that his seniority should be accordingly fixed. The Respondent was also held to be entitled to all consequential reliefs that may accrue to him on

account of fixation of his seniority.

2. The Respondent was appointed as Constable in the Delhi Police in 1996 in the General Category ('GC'). In 2006, he appeared under 'General Category' in the 'A' List Test conducted. He was admitted to the promotion List 'A' 2006 at Sl.No.919 for promotion as HC. In 2008, the Petitioner realised that the Respondent had been wrongly considered under the Scheduled Caste ('SC') category in the 2006 'A' List Test. Accordingly, by an order dated 19th November, 2008 his name was deleted and he was reverted as Constable.

3. The Respondent's grievance was that he had not adopted any deceitful means, nor had he been negligent in providing any information to the department or concealed any material fact. Secondly, he contended that since he was included in the promotion List 'A' in 2006, he missed the opportunity to participate in the promotion examination of list 'A' conducted subsequently in 2007 and 2008. In short, his grievance was that he should not be made to suffer for the department's mistake. The Respondent relied on the order dated 22nd September, 2007 of the CAT in OA No.88/2007 (*Durgesh Kumar v. Union of India*) and the fact that W.P.(C) No.394/2008 filed by the department against the said judgment, had been dismissed by this Court on 16th January, 2008.

4. The CAT noted that in the case of *Durgesh Kumar* the mistake of the department was discovered after 16 years, but held that "whether the period is 16 years or 2 years is not relevant, the question of prejudice is relevant".

According to the CAT, once it had in its order in ***Durgesh Kumar*** “shown a way out to the department to alleviate the prejudice caused in such cases” the department “should have adopted the same policy”. Accordingly, the application was allowed.

5. This Court has heard the submissions of Mr. Devesh Singh, learned Additional Standing Counsel for the Petitioner and Mr. Sachin Chauhan, learned counsel for the Respondent.

6. Mr. Devesh Singh, *inter alia* referred to the fact that for the GC, the cut off mark was 101.5, whereas admittedly, the Respondent had scored only 89 marks. Consequently, he could not be considered as a qualified (GC) candidate for the post of HC. He also pointed out that in ***Durgesh Kumar*** (*supra*) the mistake regarding the error in granting him promotion was discovered 16 years after the event in 2001. Durgesh Kumar was awaiting promotion as an Assistant Sub-Inspector (ASI) when he was reverted. Consequently, no comparison could be drawn with that case.

7. Mr. Chauhan, learned counsel appearing for the Respondent reiterated that the Respondent could not be penalised for the mistake of the department. He had not misled the department by providing any wrong information. He could not be presumed to have been aware that such a mistake had been committed by the department. He submitted that the principle behind the decision in ***Durgesh Kumar*** equally applied to the present case and that it did not matter whether the mistake was discovered after 16 years or after 2 years, as in the present case.

8. The facts in *Durgesh Kumar (supra)*, which decision has been followed by the CAT in the impugned judgment, is that he was appointed as Constable on 3rd October, 1980 as an OBC candidate. He had submitted an OBC certificate issued by the Additional District Magistrate, Ghaziabad, while submitting his application form for recruitment in the Delhi Police. He appeared in the list 'A' exam for promotion as HC in 1987. After passing the test, he was sent to the Police Training School, Jharoda Kalan, New Delhi. After he successfully completed that course, he was brought on the 'A' list by an order dated 10th June, 1990 and promoted as HC with effect from the same date.

9. A decade later i.e. on 20th July, 2001 the Additional Commissioner of Police (Establishment) sought service particulars in respect of HCs including that of Durgesh Kumar, for admission of their names to the promotion list 'D-1' (Executive), the Joint Commissioner of Police by a letter dated 8th October, 2001 mentioned about the discrepancies in the service particulars. Here it was noted that Durgesh Kumar's caste category was shown as SC, whereas he belonged to the OBC category. When a clarification was sought, the Deputy Commissioner of Police by a letter dated 31st October, 2001 directed Durgesh Kumar to report to the SIP branch for clarification of his caste certificate. At this stage, Durgesh Kumar clarified that he belonged to OBC and that he had always maintained this.

10. Meanwhile, Durgesh Kumar's name was in fact brought on the D-1 (Exe) List by a notification dated 7th August, 2005 and now his name figured at Sl.No.194 as a GC candidate. It was from this list that promotions were to

be made to the post of ASI. The list was circulated by a communication dated 2nd December, 2005. Durgesh Kumar and other HCs were put to medical examination and training in the inter-mediate school course. He passed this course and was awaiting his name to be brought on the promotion list D-2 for promotion as ASI (Exe), when all of a sudden he received a Show Cause Notice dated 22nd February, 2006 asking him why his admission to promotion list 'A' and 'B' and promotion as HC should not be cancelled and he should not be reverted as a Constable.

11. It was in the above circumstances that Durgesh Kumar went to the CAT challenging his reversion as Constable and the CAT found that Durgesh Kumar had no hand in his being treated as belonging to the ST category as a result of which he should be penalized by being reverted. It was noted in para 12 of the CAT's order as under:

“12....the mistake in showing the caste of the Applicant as ST and later as SC was exclusively of the Respondents, in which the Applicant had no hand whatsoever.”

12. It was also noted in the para 12 as under:

“12...the applicant, however, knew about this mistake, but would not report it to the concerned authorities, as he ought to have, belonging to a disciplined force. Having said so, the situation that prevails now where the applicant cannot possibly be restored to his original position, has also to be taken into consideration.”

13. The CAT then thought a solution was being found and referred to another case of HC Asha Ram, who had been given a Show Cause Notice

for cancellation of an order erroneously bringing his name in the promotion list. Having noted this, the CAT observed in para 14 as under:

“14....the applicant be treated to have passed the examination required for promotion to the post Head Constable held immediately after the examination in which the applicant had appeared and passed the test, and he be treated as the last candidate having passed the said examination in the said year, and his seniority be accordingly fixed. The applicant shall also be entitled to consequential reliefs that may accrue to him on account of fixation of his seniority in the manner referred to above.”

14. The Court fails to appreciate how the case of ***Durgesh Kumar*** could be said to be similar to the case at hand. There, 16 years after he was promoted as HC, the Department woke up suddenly and decided that he should be reverted virtually from the post of ASI, two steps below, to the post of Constable. The Court is unable to concur with the observations of the CAT that it makes no difference whether the error was discovered after 16 years or 2 years. The decision in ***Durgesh Kumar*** itself reveals that the decision had to be taken in the peculiar facts with the prospect of severe prejudice being writ large.

15. The second important feature is that in the present case, in the GC category the Respondent did not make the cut having scored only 89 marks, whereas the cut off marks was 101.5. There is no way, therefore, that the Respondent could have made it to the ‘A’ list as a GC candidate. In the circumstances, the Court is unable to accept the reasoning of the CAT in granting the relief that it has to the Respondent in the impugned order.

16. For the aforementioned reasons, the impugned order is hereby set aside and the petition is allowed, but in the circumstances with no order as to costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 10, 2019

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