
(2014) 11 DEL CK 0184
In the Delhi High Court
Case No : Writ Petition (Civil) 8888/2009

Ajay Pal Singh

APPELLANT

Vs

Lt. Governor

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2014) 146 DRJ 331

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Arun Bhardwaj, Advocate for the Appellant; Zubeda Begum, Advocate for the Respondent

Judgement

S. Ravindra Bhat, J.—The petitioner, in these proceedings under Article 226 of the Constitution of India questions orders dated 19.03.2009 and 02.09.2006 of the Central Administrative Tribunal (hereafter "the CAT"), in R. A. No. 130/2007 and O. A. No. 144/2005 respectively which denied ad-hoc out of turn promotion to him. The CAT reasoned that promotion is not a matter of right and that the competent authority rejected the petitioner's request upon due consideration.

2. The relevant facts of this case are that the petitioner joined the Delhi Police as Sub-Inspector (Exe) in 1985 in the sports quota. From the time of his appointment, he participated in various sports events. He won the gold medal in the hammer throw event at the Second National Games held in Trivandrum on 27.12.1987, thereby creating a new National Games record. In 1990, the petitioner participated as an athlete in the International Athletic Permit Meet. He also won the bronze medal in the National Meet in 1990. In 1989-1990, the petitioner applied for out of turn promotion to the rank of Inspector (Exe) on the basis of Standing Order (SO) No. 4 which is in respect of Recruitment and Further Promotion of Sportsmen in Delhi Police. According to this S.O., a Sub-Inspector (Exe) is eligible for promotion to the rank of Inspector if he wins a gold medal in the National Games.

3. The Petitioner's case was considered and assessed by the Deputy Commissioner of Police (Sports) on merits. The request was rejected on the technical grounds that though the petitioner had secured a gold medal in the 1987 National Games, S.O. No. 4 came into existence with effect from 08.12.1989 and did not have retrospective effect. The second request made by the petitioner was also declined on 27.12.1990. He then appealed to the competent authority to reconsider his case on the basis of the relevant rules governing the issue prior to the S.O., namely the Delhi Police (Promotion and Confirmation) Rules which came into existence with effect from 29.12.1980. Rule 19 specifically addressed the granting of ad-hoc or out of turn promotions to sportsmen. Accordingly the case was considered and assessed at different levels of the department continuously for more than 12 years but did not yield any outcome. In the meantime, DCP Sports by memo dated 17.04.2000 categorically stated that the petitioner was fit for out of turn promotion as an outstanding sportsman under Rule 19(ii) of the Delhi Police (Promotion and Confirmation) Rules, 1980. The Screening Committee of Delhi Police considered and recommended the case of the petitioner for out of turn promotion under Sports Quota on 05.12.2000. The Commissioner of Delhi Police recommended and forwarded the case of the petitioner to the Government of NCT of Delhi for the approval of the LG/Administrator. Nevertheless, after the matter remained pending with the respondent for more than 12 years, the petitioner's case was rejected by order dated 03.10.2002 without any reason being assigned whatsoever.

4. The petitioner accordingly filed O. A. No. 2757/2002. The CAT, by order dated 20.02.2003 allowed the application and directed the first respondent to consider the case of the petitioner under Rule 19(ii) of the 1980 Rules. The petitioner represented to the first respondent for execution of the order of the CAT. In the interregnum, on 16.07.2003 he was promoted to the rank of Inspector. On 28.08.2003, he again urged for out of turn promotion according to the directions of the CAT. He subsequently filed contempt proceedings (CP 18/2004) before the CAT against the respondents. Since the contempt petition had been filed, the first respondent was requested to grant out of turn promotion to the petitioner w.e.f. 1988. The first respondent addressed a communication to the Joint Commissioner of Police on 08.04.2004 stating that after due consideration the petitioner was not fit for the promotion because he did not have "conspicuous achievements" and his performance was "not of such exceptional order", therefore rendering him undeserving of promotion under Rule 19(ii) of the 1980 Rules. The first respondent also stated that the petitioner had, in any case, been promoted to the rank of Inspector.

5. The CAT, by order dated 22.04.2004, set aside the fresh grounds of rejection and directed the respondents to implement the order of the CAT dated 20.02.2003 within a month. The respondents herein filed W. P. No. 8444/04. This Court, by its order dated 07.12.2004, allowed the writ petition on the ground that the CAT had exceeded its contempt jurisdiction and that the rejection by the

respondents, upon consideration of the petitioner's case, gave rise to a fresh cause of action, necessitating the petitioner to file a fresh O. A. before the CAT. Therefore, the Court declared the CAT's order in the contempt proceedings unsustainable but left it open to the petitioner to pursue any remedy available to him in law.

6. The petitioner herein then preferred O. A. No. 144/2005 against the order dated 08.04.2004. The CAT, by the impugned order dated 02.09.2006, dismissed the O. A. The CAT also dismissed the review petition, R. A. No. 130/07 filed by the petitioner.

7. The petitioner is aggrieved by the impugned order in the O. A. which, in relevant part, is as follows:

"10. The representation of the respondents have been turned down because he was appointed against sports quota in 1985 and thereafter he was awarded Gold Medal barely 3 years after joining the Police Force in 1987. Thereafter he did not have any other outstanding performance in the sports. As such there was no consistency in his performance in the sports after joining the Police Force. It is submitted that Committee constituted for promotion of applicant for ad hoc out of turn promotion had once recommended the case of the applicant but the Administrator, the Lt. Governor of Delhi, had not accepted this recommendation. Since the applicant has only right of consideration and the Government had already considered him for out of turn promotion for his achievement in the year 1987 and 1990, we do not find that the Tribunal may direct the respondent to promote him also."

12. The promotions to the higher post or rank are to come into effect from the date of promotion. The Government, however, in order to alleviate the hardship of a person who has been denied promotion because of inordinate delay in holding all the DPC etc. may make it retrospective. There is no allegation of malafide against any of the authorities of the respondent. It can also not be stated here that there was delay in holding the DPC or Screening Committee. The representation of the applicant has been duly considered. It is only the last Screening Committee which has made recommendation but the competent authority has refused to accept this recommendation. We do not find that the decision warranted any interference by this Tribunal as the applicant did not have any right of promotion especially from retrospective date on ad hoc or otherwise."

13. Furthermore, we are told that the applicant has already been promoted to the rank of Inspector. The OA, therefore, has become infructuous as the promotion of the applicant under Rule 19, if any, had to take effect from the date of promotion."

(emphasis supplied)

8. The petitioner argues that he was discriminated against by being denied ad-hoc out of turn promotion. He claims that he fulfils all requirements under Rule

19(ii) of the Delhi Police (Promotion and Confirmation) Rules, 1980. Under S.O. No. 4, the only criterion stipulated in respect of Sub-Inspectors is winning a gold medal in the National Games, a feat achieved by the petitioner in the 1987 National Games. Accordingly, he is fit to qualify as an "outstanding sportsman". However, the respondents, with a mala fide intention, rejected his request on the basis of extraneous and irrelevant considerations, despite obliging other similarly placed sportsmen under the same Rule. The respondents inordinately delayed its decision on the petitioner's request only to deny him the promotion on unjustified grounds.

9. The respondents argue that in pursuance of the CAT's order dated 20.02.2003, the case of the petitioner was considered. The outcome of such consideration was that he was not considered fit to be promoted because his performance was not continuous and not of an exceptional order so as to merit a promotion within 3-4 years of his initial appointment. In any case, the petitioner was promoted to the rank of Inspector in the interregnum on 16.07.2003, rendering his request infructuous.

10. The issue which requires resolution is whether the petitioner was unfairly treated and discriminated against by the denial of the ad-hoc out of turn promotion by the respondents.

11. Rule 19(ii) of the Delhi Police (Promotion and Confirmation) Rules, 1980 reads as follows:

"To encourage outstanding sportsmen, marks men, officers who have shown exceptional gallantry and devotion to duty, the Commissioner of Police may, with prior permission of Administrator, promote such officers to the next higher rank provided vacancies exist. Such promotions, shall exceed, 5 percent of the vacancies likely to fall vacant in the given year not in the rank. Such promotion 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 Training), if any. For purpose of seniority such promotes shall be placed at the bottom of promotion list drawn up for that year."

(emphasis supplied)

12. The relevant part of S.O. No. 4 is as follows:

"5. PROMOTION

Ad hoc promotion to sportsmen as outstanding performance will be considered by a Screening Committee consisting of one Addl. Commissioner of Police, and 2 DCP's to be nominated by Commissioner of Police, Delhi. Following will be the criteria for performance for consideration:-

(a) INDIVIDUAL PERFORMANCE

(i) INSPECTOR

- (1) He qualifies for the final round in Olympics OR
- (2) He wins a Medal in the Common Wealth/Asian Games. OR
- (3) He wins Gold Medal in the National Games OR
- (4) He wins three Gold Medals in All India Police Games.

(emphasis supplied)

13. The Deputy Commissioner of Police, by memo dated 17.04.2000, affirmed that the case of the petitioner was fit for out of turn promotion. Noting his various achievements, the DCP acknowledged that the petitioner secured the gold medal in the 1987 National Games, secured a position in National Meets twice in 1989 and once in 1990, and secured medals in 1987 and 1988 at the All India Police Games. These achievements are "sufficient to grade him as an outstanding sportsman." The DCP also agreed with the petitioner that his case was governed by the 1980 Rules and not S.O. No. 4. The relevant part of the DCP's statement is as follows:

"The SI has submitted his request for reconsideration of his case. I have carefully read the facts and grounds advanced by him in it. I am now of considered opinion that SI Ajay Pal Singh's case is fully covered by the requirement of an outstanding sportsmen (Delhi Police Promotion and Confirmation Rule 1980) and SO No. -4 also. I also do not find any anomaly in his contents that the fundamental rules to govern out of turn promotions is rule 19(ii) of Delhi Police Promotion and Confirmation Rules 1980 and not SO. -4. Examples of previously and subsequently out of turn promote sportsmen, since the issuance of SO No. -4 substantially provide support to his claim. Therefore recommend that case of SI Ajay Pal Singh is fit for out of turn promotion as an outstanding sportsman under Rule 19(ii) of Delhi Police (Promotion and Confirmation) Rules, 1980."

(emphasis supplied)

Analysis and Conclusions

14. The Delhi Police (Promotion and Confirmation) Rules, 1980 authorize grant of ad-hoc promotions to "outstanding sportsmen". The Rule, however, does not stipulate criteria or parameters to facilitate the determination of "outstanding". S.O. No. 4 prescribes securing two gold medals in the All India Police Games or one gold medal in the National Games as the criteria to identify "outstanding sportsmen" in the category of Sub- Inspectors who are in turn entitled to promotion to the rank of Inspector. The point that needs to be highlighted is that it is the Rules and not the S.O. which provides for the ad-hoc promotion of outstanding sportsmen. Therefore, there is no substance in the contention that since the petitioner won the gold medal in 1987, the S.O. cannot be applied retrospectively given it assumed effect from 1989. There is no question of applying the said order retrospectively. In this respect, attention must be drawn to the order of the CAT dated 20.02.2003, the relevant part of which is as follows:

"8. Our attention has been drawn to Standing Order 4 issued by the Commissioner of Police dated 8.12.89 to contend that the applicant had down the Gold Medal before the said standing order and the standing order would only be prospective in nature. Even if it be so, keeping in view Rule 19(ii) of the Rules, referred to above, the applicant had a right to be considered for promotion in the outstanding sportsmen quota as contemplated under the said rules. Therefore, the claim of the applicant cannot be said to be rejected simply on the ground.

9. Resultantly, we quash the impugned order and it is directed that the claim of the Applicant should be considered for further promotion in the outstanding sportsmen quota in pursuance of Rule 19(ii) referred to above. Consequential benefits, if any, will also be accorded to him."

(emphasis supplied)

In fact, the respondents have admitted the same in their reply affidavit to O. A. No. 2757/2002 wherein they have submitted that while the Screening Committee on 05.12.2000 noticed that the applicant's claim was first rejected on technical grounds and not considered under Rule 19(ii), the next Screening Committee recommended his promotion on the basis of Rule 19(ii) and of fulfilling the eligibility criteria stipulated by the S.O. Therefore, the Petitioner is eligible for promotion under Rule 19(ii) in the outstanding sportsmen quota. S.O. No. 4 only serves to qualify "outstanding" as used in Rule 19(ii) by stipulating criteria which the petitioner concededly satisfied i.e. winning a gold medal in the National Games. In any case, the petitioner requested for ad-hoc promotion in 1989-1990 which is subsequent to the coming in effect of S.O. No. 4. The S.O. does not prescribe any time period beyond which applications for ad- hoc promotions will not be considered. It will apply to any application submitted after 1989 regardless of whether the sporting achievement/s which an applicant draws on to characterise him/herself as "outstanding", took place prior to or after 1989.

15. The order of the CAT dated 20.02.2003 was not appealed against by the respondents. To secure its compliance, the petitioner filed a contempt petition before the CAT. During the pendency of the contempt proceedings, the respondents gave entirely new reasons to decline the petitioner's request, namely, that after the 1987 National Games, the petitioner did not have any "conspicuous achievement" and that his performance was not of an "exceptional order" as to warrant ad-hoc promotion within 3-4 years of his initial appointment as Sub-Inspector. This is irrational, arbitrary and discriminatory. Firstly, such a decision should have been within the parameters of the 1980 Rules and S.O. No. 4, neither of which admit of any scope or basis for such new reasons. This was held by the CAT in its order dated 22.04.2004, in the following terms:

"7. The ground taken by the respondents for rejection of applicant's claim is not provided in the provisions under rule 19(ii) *ibid*. Applicant had secured gold medal in National Games in 1987 and he was held to be an outstanding

sportsman under these provisions in Tribunal's order dated 20.02.2003. Respondents were merely to consider applicant's claim in pursuance of rule 19(2) ibid subject to availability of 5% vacancies under the sports quota. Respondents have wilfully and deliberately resorted to an entirely new ground of lack of continued outstanding performance for denial of promotion as Inspector to the Applicant at the relevant time. The provisions of rule 19(ii) do not contemplate any such restriction or condition."

(emphasis supplied)

Thus, these new reasons are extraneous and can only be described as an afterthought stated in the respondents' attempt to deny the legitimate request of the petitioner. Secondly, even if it be so, it is plain that the petitioner consistently performed well and secured significant achievements even after the 1987 National Games, such as winning medals in 1987 and 1988 in the All India Police Games as well as securing positions in National Meets twice in 1989 and once in 1990. These were expressly noted by the DCP in his memo dated 17.04.2000, by the Screening Committee in its minutes dated 05.12.2000, and by the respondents in their reply to the O. A. No. 2757/2002. Furthermore, once the competent authorities referred to in Rule 19(ii) and Clause 5 of S.O. No. 4 gave the green signal in unequivocal terms, there was no compelling reason for the first respondent to sit over the matter for more than 12 years and to reject the petitioner's case. Thirdly, such action is clearly discriminatory to the petitioner as other applicants were granted ad-hoc promotions under Rule 19(ii) on the basis of outstanding achievements in sports within 3-4 years of their initial appointment. Consequently, such view is clearly unjustified; it suffers from non-application of mind.

16. This Court is in agreement with the CAT's finding that an employee only enjoys a right of consideration and cannot claim promotion as a matter of right. The decision of his promotion comes within the domain of the competent authority who, however, is under an obligation to accord due consideration. Ordinarily, therefore, an argument to this effect would prevail. Nonetheless, when this is to be tested against a constitutional value such as the guarantee of equality and protection against discrimination, the principle which the Courts hold fast to is that any apparent classification needs to be justified. It is integral that any such decision needs to be fair, justified and reasoned so as to not be rendered capricious, arbitrary and unfair. This imperative ensures the right to equality under Article 14 of the Constitution.

17. In the present case, despite a categorical and reasoned recommendation from the DCP as well as clearance from the Screening Committee, the first respondent dismissed the request of the petitioner with a mere "it is felt that it is not possible to consider the case at this stage." Such a response is devoid of any rationale or logic whatsoever and reflects complete non-application of mind and absence of due consideration. Notably, the respondents did not appeal the order of the CAT dated 20.02.2003 but instead gave a new- and utterly irrelevant-

explanation to justify the rejection of the petitioner's case. Neither the 1980 Rules nor S.O. No. 4 stipulate any requirement of continuity or consistency directly or impliedly. Even so, if this be the demand of the respondents, the petitioner fulfils this factor too, satisfactorily as is evident from his performance in sporting events up to and in 1990, and as was even appreciated by the DCP and Screening Committee. Similarly, the reason that the petitioner could not be promoted within 3-4 years of his initial appointment, since his performance was not of an "exceptional order" is unsustainable, and is simply another figment of the imagination of the respondents.

18. The CAT in its order dated 02.09.2006 has extracted the Supreme Court's ruling in Shankarsan Dash Vs. Union of India, to say that mere inclusion of one's name in the list does not confer the right of appointment. However, in the same extract, the Supreme Court has held - "But the authority must act reasonably, fairly and in public interest and omission thereof should not be arbitrary". In the present case, there is no doubt that the respondents did not approach the issue objectively. Other sportsmen who were granted the benefit of Rule 19(ii) were also promoted within 3-4 years of their initial appointment, having similar achievements to the petitioner. Therefore, these sportsmen and the petitioner can be said to be similarly placed within the mandate of Art. 14. All this clearly makes out a case of hostile discrimination against the petitioner, violating the basic tenet of Art. 14.

19. Given all this, the interregnum promotion of the petitioner to the rank of Inspector cannot deprive the petitioner of the promotion to which he is rightly entitled and the consequential benefits of such promotion. This was also appreciated by the CAT in its order dated 22.04.2004.

20. As a result, it is held that the respondents acted in a discriminatory manner in denying the request of the petitioner for ad-hoc promotion. The impugned orders of the CAT are accordingly set aside. A direction is issued to the respondents to ensure that the petitioner is granted promotion from the date on which he is eligible along with full consequential benefits.

21. The writ petition is allowed in the above terms without any order as to costs.