

**(2009) 07 DEL CK 0467**

**In the Delhi High Court**

**Case No : Writ Petition (Civil) No. 8841 of 2008**

ASI Devender Kumar

APPELLANT

Vs

Govt. of NCT of Delhi and Others

RESPONDENT

**Date of Decision : 16-07-2009**

**Acts Referred:**

Constitution of India, 1950 — Article 14

Delhi Police (Promotion and Confirmation) Rules, 1980 — Rule 19, 5

Delhi Police Act, 1978 — Section 147(1), 147(2), 5

**Citation : (2010) 1 ILR Delhi 486**

**Hon'ble Judges : Madan B. Lokur, J;A.K. Pathak, J**

**Bench : Division Bench**

**Advocate : Sourabh Ahuja, for the Appellant; J.K. Chaudhary, for Aditya Madan, for the Respondent**

**Final Decision : Allowed**

## Judgement

A.K. Pathak, J.—Petitioner was appointed as Constable in Delhi Police on 15th June, 1989. He was granted first out of turn ad hoc promotion as Head Constable on 3rd June, 2003 and was later on regularized on 22nd May, 2006. He was granted second out of turn promotion on ad hoc basis on 30th March, 2006 as Assistant Sub Inspector. These out of turn promotions were given to him under Rule 19(ii) of Delhi Police (Promotion & Confirmation) Rules, 1980 (for short hereinafter referred to as "said Rules").

2. Accused Sher Singh Rana, who was involved in the murder of Smt. Phoolan Devi (Member of Parliament), escaped from Tihar Jail on 17th February, 2004 and a reward of Rs. 50,000/- was declared on his arrest by the Delhi Police. A team of 8 police officials was constituted to nab accused Sher Singh Rana. Petitioner was one of the members of the said team. After continuous and untiring efforts, police team came to know that accused had gone to Bangladesh on forged passport. His presence was also noticed in Kolkata. Accordingly, five police officials of the team which comprised SI Neeraj Kumar, HC Satish Kumar,

HC Satyavir Singh and Ct. Surender Kumar besides the Petitioner went to Kolkatta. Petitioner and his teammates made untiring efforts continuously for more than six months and nabbed accused Sher Singh Rana on 24th May, 2006 in Kolkatta.

3. DCP (Special Branch) sent the citation for out of turn promotion to the next higher rank to Petitioner and his four other teammates on 27th June, 2006. Petitioner along with others was also granted Asadharan Karya Purskar (AKP) with cash reward of Rs. 5000/- on 15th December, 2006. Recommendation for out of turn promotion was made by the DCP (Special Branch) as the Petitioner and his team had not only shown extraordinary gallantry but had also displayed determination, extraordinary quality of investigation, dedication, sincerity, meticulous planning in nabbing accused Sher Singh Rana.

4. One Incentive Committee comprising of Special Commissioner of Police as Chairman, two Joint Commissioners of Police and one Dy. Commissioner of Police as Members, was constituted to consider the cases of out of turn promotion. On 24th April, 2007 Incentive Committee considered the cases of Members of Kolkatta team and made recommendation for out of turn promotion to SI Neeraj Kumar, HC Satish Kumar and Ct. Surender Kumar. However, Incentive Committee decided not to recommend the case of Petitioner for grant of out of turn promotion. As per the Respondents, Petitioner was not given out of turn promotion as he had the benefit of out of turn promotions twice in the past.

5. Aggrieved by the denial of out of turn promotion to him by the Incentive Committee, Petitioner filed OA No. 1512/2007 before the Central Administrative Tribunal, Principal Bench (for short hereinafter referred to as "the Tribunal") praying therein that the Respondents be directed to consider the valid claim of the Petitioner for promotion to the rank of Sub-Inspector on out of turn basis and also to grant all consequential benefits including seniority, promotion, pay etc. It was alleged that the Respondents, in not granting out of turn promotion to the Petitioner, had treated him differently than the other members of the team who were identically situated vis-a-vis the Petitioner and this action of the Respondents was discriminatory and in violation of Article 14 of the Constitution of India.

6. Vide impugned order dated 18th September, 2008 the Tribunal held that ad hoc out of turn promotion depended upon the number of vacancies available in a given year and the number of persons being considered for such promotion. It may so happen that the number of vacancies in a year are large and number of recommendations are only few or it may be vice versa. Depending upon these facts, Incentive Committee can mould the policy to be followed on the basis of situation prevalent in a particular year. Depending upon the circumstances, Incentive Committee can restrict out of turn promotion to those who have already got upto two such promotions in the past and discrimination cannot be pleaded as long as all the aspirants, in a particular year are treated equally as per the common criteria. Petitioner could be compared with those who were

considered for out of turn promotion in the year in which members of Kolkatta team were considered. Comparing the Petitioner with other members of the Kolkatta team it cannot be said that he was discriminated as they were not granted third out of turn promotion. Tribunal concluded that the Petitioner was not discriminated as he was declined third out of turn promotion as per the policy made by the Incentive Committee in that particular year.

7. We are of the opinion that the view taken by the Tribunal is erroneous in the factual and legal context of the present case.

8. Petitioner is a member of Delhi Police. Clause (b) of Section 5 of Delhi Police Act (for short hereinafter referred to as "said Act") provides that the recruitment to, and the pay, allowances and all other conditions of service of the members of, the Delhi Police shall be such as may be prescribed. Sub-section (1) of Section 147 of the said Act provides that the Administrator may make rules for carrying out the purposes of the said Act. Sub-section 2(a) of Section 147 of the said Act shows that the Administrator has power to make rules regarding recruitment, pay, allowances and all other conditions of service of the members of the Delhi Police under Clause (b) of Section 5.

9. The Delhi Police (Promotion & Confirmation) Rules, 1980 (for short hereinafter referred to as "said Rules") have been framed by the Administrator in exercise of the power conferred upon him by Sub-section (1) of Section 147 of the said Act. Thus, promotion and confirmation of the Petitioner and other members of the Delhi Police is governed by the said Rules. Rule 5 of the said Rules contains general principles for promotion of the member of the Delhi Police. However, Rule 19 deals with the ad hoc promotion and the same reads as under:

(i) In special circumstances when there are no approved names on promotion lists, and vacancies exist, the Commissioner of Police, may promote suitable officers in order of seniority to next higher rank temporarily. Such promotions shall not entitle the officers concerned to claim any right for regular appointment or seniority or for appointment to such or any other equivalent post and shall be liable to reversion without notice as soon as qualified men become available.

(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 regularized when the persons so promoted have successfully completed the training course prescribed like (Lower School Course), if any. For purposes of seniority such promotes shall be placed at the bottom of the promotion list drawn up for that year.

(iii) The Commissioner of Police, Delhi for the purpose of posting to the Police Training School and the Recruits Training Centre (DAP IVth Bn. At present) personnel of appropriate merit and talent may grant one rank promotion as in

incentive purely on emergent basis up to the level of Inspector without conferring on the promotee, any right of seniority and appointment whatsoever even if he may be borne on promotion list.

Such promotes shall revert to their substantive rank as soon as they are transferred out of training institutions and ceased to be an Instructor.

10. It is, thus, clear that Sub-rule (ii) of Rule 19 governs out-of-turn promotion to the members of the force, who show exceptional gallantry and devotion to duty. However, such promotion can be granted subject to the availability of vacancies and with further stipulation that such promotion shall not exceed 5 per cent of the vacancies likely to fall vacant in the given year in the rank. This rule appears to have been framed in order to encourage the hard-working, dedicated and devoted police officials. Rule 19 of the said Rules does not put any restriction to the number of out of turn promotions to a particular officer/police official. There is no bar that third out of turn promotion cannot be granted to deserving officer, who had shown devotion to duty and displayed gallantry.

11. Rule 19 of the said rules has statutory force having been framed by the Administrator in exercise of the powers vested in him by virtue of Sub-section (1) of Section 147 of the said Act. Accordingly, no circular, guidelines or office memorandum can supplant the substantive rules. No policy can be made contrary to the statutory rules. Accordingly, we are of the view that Respondent could not have denied third out of turn promotion to the Petitioner who was similarly placed vis-a-vis his other teammates named SI Neeraj Kumar, HC Satish Kumar and Ct. Surender Kumar, being part of the same team which nabbed accused Sher Singh Rana.

12. We are of the view that the decision of the Respondent denying out of turn promotion to the Petitioner on the alleged ground of his having already received two out of turn promotions while granting out of turn promotion to other team members i.e. SI Neeraj Kumar, HC Satish Kumar and Ct. Surender Kumar is arbitrary and is not sustainable.

13. It appears that in the past SI Rajiv Kumar, SI Uma Shankar and SI Rakesh Kumar were given third out of turn promotions in the year 2006, 2005 and 1999 respectively. However, Petitioner has been denied third out of turn promotion on the ground that he had already received two out of turn promotions in the past. In spite of the fact that Respondent had granted third out of turn promotion to some of the members of the force in the past, their action in denying third out of turn promotion to the Petitioner is arbitrary and discriminatory and violates Article 14 of the Constitution of India.

14. In the above factual matrix and the legal position applicable to this case, we are of the view that the Tribunal has taken erroneous view in holding that Respondent was justified in declining third ad hoc promotion to the Petitioner in terms of the policy decision taken by the Incentive Committee. We, accordingly, allow the writ petition and set aside the impugned order passed in OA No.

1512/2007 and direct the Respondents to accord benefit of out of turn promotion to the Petitioner on the post of Sub-Inspector on ad hoc basis with effect from the date when three other members of the Kolkatta team namely, SI Neeraj Kumar, HC Satish Kumar and Ct. Surender Kumar were granted ad hoc promotions. Petitioner be also given all consequential benefits. The writ petition is allowed.