

(2006) 11 DEL CK 0065

In the Delhi High Court

Case No : WP (C) No. 11279 of 2004

Assistant Sub-Inspector (Ex.) Rajender Parsad

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-11-2006

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (2006) 11 DEL CK 0065

Hon'ble Judges : Vipin Sanghi, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : Shyam Babu, for the Appellant; V.K. Tandon, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—The petitioner is aggrieved by and challenges the order dated 21st July, 2003 passed by the Central Administrative Tribunal, Principal Bench, Delhi (hereinafter referred to as the Tribunal), whereby the Tribunal has dismissed the petitioner's Original Application No. 470/02. The petitioner was aggrieved by the rejection of his claim for grant of promotion to the rank of Sub Inspector on the basis that he was an outstanding sportsman.

2. The facts in brief are that the petitioner was appointed as a Constable in Delhi Police on 18th February, 1975 and was promoted to the rank of Head Constable on 5th May, 1979. The petitioner was, thereafter, promoted as Assistant Sub Inspector on adhoc basis on 10th December, 1986 and was confirmed in the said post in the year 1990.

3. The petitioner states that he is a sportsman and has specialized in playing Volley Ball for Delhi Police. He claims that due to his exemplary performance, he was selected in the National Team and had played in an international match with the then USSR on 15th June, 1990, in which the Indian team had won the gold medal. He further states that in 1991 he was recommended for out of turn

promotion to the post of Sub Inspector by the Sports Officer of Delhi Police in terms of Rule 19(ii) of the Delhi Police (Promotion and Confirmation) Rules, 1980 read with standing order No. 4/89 but he was not granted the said promotion. Rule 19(ii) of the Delhi Police (Promotion and Confirmation) Rules, 1980 reads as under:

(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 exceed 5 per cent of the vacancies likely to fall vacant in the given year not 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.

4. The relevant extract of standing order No. 4/89 reads as follows:

5. PROMOTION

Adhoc promotion to sportsmen as outstanding performance will be considered by screening committee consisting of one Addl. Commissioner of Police and two DCPs to be nominated by Commissioner of Police, Delhi. Following will be the criteria of performance for consideration:

(a) INDIVIDUAL PERFORMANCE

xxx xxx xxx

xxx xxx xxx

(b) TEAM EVENTS

(i) INSPECTor

A Sub Inspector will be eligible for promotion to the rank of inspector if:

(1)The team he is representing wins any Medal in Olympics.

(2)The team he is representing wins Silver Medal in Common Wealth/Asian Games.

(3)The team he is representing wins Gold Medal in the National Games two times.

(ii) SUB INSPECTOR/ASSTT SUB INSPECTor

A Member of the force in rank of ASI or Head Constable will be eligible for promotion to the rank of SI/ASI, if:

(a) He is selected to represent the country in team event in International Games.

(b) The team he is representing wins Gold Medal in the National Games.

(c) The team he is representing wins Gold Medal twice in All India Police Games or a Silver Medal or above in the National Games.

6. CASH REWARDS FOR SPORTSMEN

i) Cash rewards may be considered for sportsmen who show excellence, in sports but are not considered for promotion at the following rates:

Sr.	Medal	Team	Individual	Team	Individual	No. position	Events	Events	Events
1	Gold Medal	Rs. 600/-	Rs. 1,000/-	Rs. 1,000/-	Rs. 2,000/-	2	Silver Medal	Rs. 400/-	Rs. 700/-
2	Silver Medal	Rs. 400/-	Rs. 700/-	Rs. 700/-	Rs. 1400/-	3	Bronze Medal	Rs. 200/-	Rs. 400/-
3	Bronze Medal	Rs. 200/-	Rs. 400/-	Rs. 400/-	Rs. 1,000/-	4	IVth Position	Rs. 300/-	Rs. 300/-
4	IVth Position	Rs. 300/-	Rs. 300/-	Rs. 400/-	Rs. 400/-	5	Vth Position	Rs. 200/-	Rs. 200/-
5	Vth Position	Rs. 200/-	Rs. 200/-	Rs. 300/-	Rs. 300/-	6	VIth Position	Rs. 100/-	Rs. 100/-
6	VIth Position	Rs. 100/-	Rs. 100/-	Rs. 200/-	Rs. 200/-				

5. The petitioner also claims to have been discriminated against in as much as, Ms. Manju Lata, who has been imp leaded as respondent No. 4 in the writ petition had been granted relief by the Tribunal vide its order dated 1st May, 1996 and the respondents had followed the said order and granted out of turn promotion to her to the rank of Sub Inspector with consequential benefits.

6. The respondents rejected the claim made by the petitioner for out of turn promotion to the rank of Sub Inspector by their order dated 21st April, 1998 which was assailed by the petitioner before the Tribunal by filing O.A. No. 982/98. The said Original Application was disposed of by the Tribunal on 14th November, 2000 with the specific observation:

Going by the aforesaid definition, we have no hesitation in holding that the event in which the applicant took part and in respect of which the aforesaid certificate has been placed on record, was indeed an international event and should, Therefore, qualify for the grant of adhoc promotion to him in terms of the standing orders just referred to.

7. In the meantime, during pendency of O.A. No. 982/98, the petitioner was promoted to the rank of Sub Inspector (Executive) with effect from 30th September, 1999 in accordance with his seniority.

8. The petitioner represented to the respondents in the light of the order passed in O.A. No. 982/98, which came to be decided by the Commissioner of Police, Delhi vide order dated 11th September, 2001 rejecting the claim of the petitioner. Thereafter, the petitioner filed O.A. No. 470/02 which has been dismissed by the Tribunal vide its order impugned herein.

9. The order dated 11th September, 2001 passed by the Commissioner of Police, Delhi is a detailed one and contains the reasons for rejection of the claim of the petitioner. The Commissioner of Police took note of the petitioner's contention that since he had been selected in the National Team of India and had played an international match as a player with USSR on 15th June, 1990, as per Rule 19(ii) of Delhi Police (Promotion and Confirmation) Rules, 1980, the Commissioner may with the approval of the administrator, promote outstanding sportsmen who have

shown exceptional gallantry and devotion to duty. The Commissioner also noted the submission of the petitioner based on standing order No. 4/89 of 19th October, 1989. He observed that the claim of the petitioner for adhoc promotion to the rank of Sub Inspector was placed before the Screening Committee consisting of one Additional Commissioner of Police and two Deputy Commissioners of Police, which had met on 6th April, 1998 and after examining the record, the petitioner had not been found to be suitable for adhoc promotion to the rank of Sub Inspector on sports basis. The Commissioner of Police observed that though the petitioner was eligible to be considered by this Screening Committee for adhoc promotion, it did not mean that he would get automatic adhoc promotion. His right was of having his case considered by the Screening Committee, which was done in his case and his claim for adhoc promotion was rejected by the Screening Committee. The Commissioner observed that any person participating in any international match does not ipso facto become eligible for promotion. In terms of DOPT O.M No. 6/1/85-Estt. (Pay-I) dated 16th July, 1985, 7th November, 1988 and 8th June, 1989, the petitioner had already been granted two increments vide order dated 6th November, 1990 and had also been granted a cash reward of Rs. 500/-. The petitioner had participated in a friendly match between USSR and India on 15th June, 1990 and he did not submit an application for adhoc promotion till 24th December, 1996. Since the match was only a friendly match, it could not lead to an inference that he had shown exceptional gallantry and devotion to duty as an outstanding sportsman.

10. The Tribunal rejected the application filed by the petitioner. It took note of Rule 19(ii) of the Delhi Police (Promotion and Confirmation) Rules, 1980, the earlier order dated 14th November, 2000 passed by the Tribunal in O.A. No. 982/98 as well as the aforesaid standing order No. 4/89. The Tribunal also took note of the reasoned order passed by the Commissioner of Police.

11. The Tribunal then proceeded to dismiss an Original Application by adopting the same reasoning as by the Commissioner of Police. It took note of the fact that not every person who takes part in an international game has necessarily to be promoted and that the match in question was simply a friendly match.

12. Before us the main thrust of the argument of learned Counsel for the petitioner is that the question whether the Volley Ball game played between USSR and India in which he participated on 15.6.1990 was an international event or not, stands concluded vide judgment dated 14.11.2000 in OA No. 982/1998. Taking a cue from here, counsel for the petitioner contends that once the Tribunal has held that it was an international event, which finding has not been assailed by the respondents before any Court, the same has become binding and conclusive between the parties.

13. Learned Counsel further submits that while rejecting the petitioners representation for ad hoc promotion, the Commissioner could not have held that it was only a friendly match. He submits that it was not open for the

Commissioner to record a finding contrary to the one recorded by the Tribunal and on that basis, dispose of the representation.

14. On the other hand, it is contended by Mr. Tandon, learned Counsel for the Respondent that, firstly, the Screening Committee had considered the case of the petitioner and in the exercise of its discretionary powers, the Screening Committee did not consider the petitioner deserving of grant of adhoc promotion. Instead the Screening Committee had granted cash reward to the petitioner, which he had accepted without any protest or demur. It is, Therefore, contended that since it is not the case of the petitioner that the Screening Committee had acted malafide or in arbitrary manner, and on a plain reading of the relevant rules and standing order No. 4/89, it is clear that the Screening Committee was vested with discretion, this Court should not interfere in the exercise of its jurisdiction under Article 226 of the Constitution of India and substitute its own view or assessment in place of the assessment of the Screening Committee. It is further contended by the learned Counsel for the respondents that the petitioner had accepted the decision of the Screening Committee and had started to agitate his claim for adhoc promotion after nearly six years and, Therefore, not only the claim of the petitioner was stale and highly belated but also that the petitioner was barred by estoppel. It is further contended by learned Counsel for the respondents that the use of the expression "International Games" in standing order No. 4/89 connotes international games such as Olympics, Common Wealth Games, Asian Games etc. and, in any event, the Volley Ball match played by the petitioner on 15th June, 1990 cannot be termed as falling within the expression "international games".

15. Having considered the submissions of the parties and the relevant facts and circumstances as also the rules and the standing order in question, we are of the view that the present petition deserves to be dismissed.

16. Rule 19(ii) as extracted above uses the expression "to encourage outstanding sportsmen, marks men, officers who have shown exceptional gallantry and devotion to duty...". For the purposes of the present case, we are concerned with the expression "outstanding sportsmen". To determine what attributes would make a sportsman "outstanding" the expression "who have shown exceptional gallantry and devotion to duty" appear to be relevant.

17. The expression "outstanding sportsmen" would thus mean sportsmen, who, while representing their country, state or force exhibit such performance, which surpasses the normal, physical, mental and psychological limits. The performance has to be such, which could be said to be driven and motivated by their devotion to duty, to uphold the honour of the country, state or para force they are representing. The use of the expression "exceptional gallantry and devotion to duty" also means that the performance has to be extraordinary and not merely average, good or even very good. The expression gallantry in the present context means bravery. An "outstanding sportsman" would, Therefore, be one who is able to surmount physical, psychological and mental barriers and

gives a performance, which is exceptional and reflective of his devotion to duty.

18. Standing order No. 4/89 referred to above, lays down the guidelines, which may be applied to determine whether a particular case falls within the meaning of the expression "outstanding sportsmen". Consequently, it states that there shall be a Screening Committee which shall consider the case of eligible sportsmen. The bench mark for being considered eligible for adhoc promotion as Sub Inspector from the post of Assistant Sub Inspector for sportsmen participating in team events has been set out in Clause 5(b)(ii). The said bench mark is that the candidate should have : (a) been selected to represent the country in a team event in International Games; (b) been a member of a team which wins a gold medal in National Games, or; (c) has been a member of a team which wins gold medals twice in All India Police Games or a silver medal or above in the National Games.

19. The cases of eligible candidates are to be considered by the Screening Committee for which the Screening Committee is vested with discretion, since no hard and fast rule can be laid down in this regard. Every case will have to be judged by the Screening Committee on its own merits by taking into account all the surrounding circumstances such as, the level of the game in respect of which the performance is being judged, that is, whether it is at the level of Olympic Games, Common Wealth Games, Asian Games, National Games, etc., the quality of opposition, the role played by the candidate in the game, and such other considerations. It is also well known that in a team event, the performance of every participant can not be the same. Some may excel, while some others may give only an average performance. There may be cases, where a team may win medals, but the performance of none of the team members may be such as to be adjudged as excellent or outstanding or gallant. On the other hand, there may be cases, where the team may loose to the stronger opposition, yet it may earn laurels due to heroic display of one or more of the members of the team. All these aspects would have to be seen and assessed by the Screening Committee while considering the cases of eligible candidates placed before it. We agree with the stand taken by the respondents that neither Rule 19(ii) nor standing order No. 4/89 creates a right to seek automatic adhoc promotion merely because the sportsman concerned has participated in international/national game. Consequently, the exercise of its discretion by the Screening Committee cannot be judicially interfered with, unless a case of arbitrariness, malafides or patent illegality is made out. We may only refer to the decision of the Supreme Court in Tata Cellular v. Union of India 1994 (3) Sca 477 wherein, in paras 92 and 93, the Hon"ble Supreme Court has held as follows:

92. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law.

3. Committed a breach of the rules of natural justice

4. reached a decision which no reasonable Tribunal would have reached or

5. abused its powers.

93. Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

20. In the present case, we find that the petitioner has not been able to point out either any illegality or arbitrariness in the consideration of his case by the Screening Committee. It is not even his case that the screening Committee acted with malice or was biased against him. The petitioner's case was evaluated by the Screening Committee and the Screening Committee could have decided to either grant him adhoc promotion or a cash reward, or neither of the two things. In the petitioner's case, admittedly, he was granted a cash reward of Rs. 500/- by the Screening Committee which shows that the Screening Committee applied its mind to the petitioner's case.

21. We also find force in the submissions of the learned Counsel for the respondents that the petitioner having accepted the cash reward without any protest or demur, could not have later on turned out to claim adhoc promotion. Clause 6 of standing order No. 4/89 states that "cash rewards may be considered for sportsmen who have shown excellence in sports are not considered for promotion...".

22. It is, Therefore, clear that when the petitioner was given a cash reward of Rs. 500/-, it became clear to him that he had not been considered for promotion. He accepted the cash reward without protest or demur and thereafter sought to challenge his not being given adhoc promotion after a lapse of nearly six years. This, to our mind, precludes the petitioner from claiming the grant of any relief on the grounds of delay and laches. Article 226 is not a blanket power, regardless of temporal and discretionary restraints. If a party is inexplicably insouciant and unduly belated due to laches, the court may ordinarily deny redress (Reference is invited to *Raja Jagdambika Pratap Narain Singh Vs. Central Board of Direct Taxes and Others*,

23. The reliance placed by the petitioner on the earlier order passed by the Tribunal in his favor in OA No. 982/98 dated 14th November, 2000 is of no avail.

The Tribunal while passing the said order, instead of addressing itself to the issue as to the meaning of the expression "International Games", proceeded to pronounce that the Volley Ball match in question between India and USSR played on 15th June, 1990, wherein the petitioner had participated, was an "International Event". The expression used in standing order No. 4/89, is "International Games" and not "International Event". The expression "International Games" in our understanding means not just a single game. It means a series of games. It could involve different disciplines of sports and games. Moreover, it connotes the participation of not just two but more nations/national teams or individuals representing nations. The standing order No. 4/89 itself throws light on the meaning of the expression "International Games". Clause 5(a)(i) which deals with cases relating to promotion to the post of Inspector sets out examples of international games such as Olympics and Common Wealth/Asian Games. The expression "International Games" used in Clause 5(b)(ii) in our opinion has also to be understood in the same sense. The order of the Tribunal in OA No. 982/98 Therefore does not help the petitioner. In any event, we are not bound to accept the said view of the Tribunal and since we are not in agreement with the view taken by the Tribunal, in exercise of our discretionary jurisdiction, we are not inclined to grant any relief to the petitioner founded upon the said decision of the Tribunal.

24. We may at this stage also note that while passing his order dated 11th September, 2001, the Commissioner of Police, at one stage, in paragraph 5 notes that the petitioner had participated in a test match held on 15th June, 1990 at Talkatora Indoor Stadium, New Delhi between India and USSR. In the same order, in paragraph 10, he notes that the participation was in a friendly match between USSR and India on 15th June, 1990. A perusal of the writ petition shows that the petitioner has not challenged the observation of the Commissioner of Police, which has been noticed by the Tribunal, that the match in question was a friendly match between USSR and India. However, even if the match in question is assumed to have been a test match between USSR and India, that by itself in our opinion does not mean that the petitioner had participated in "International Games".

25. In view of the aforesaid, we dismiss the present petition with no order as to costs.