

(2010) 11 DEL CK 0307

In the Delhi High Court

Case No : Writ Petition (C) 7689 of 2010

Commissioner of Delhi Police and Another

APPELLANT

Vs

Manoj Kumar

RESPONDENT

Date of Decision : 26-11-2010

Acts Referred:

Delhi Police (Punishment and Appeal) Rules, 1980 — Rule 8

Citation : (2010) 11 DEL CK 0307

Hon'ble Judges : Siddharth Mridul, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Avnish Ahlawat, for the Appellant; Sachin Chauhan and V.K. Tandon in W.P.(C) 6886/2010, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—OA No. 3555/2009 filed by Manoj Kumar the Respondent of W.P.(C) No. 7689/2010 has been disposed of by the Tribunal directing the Petitioners to constitute a review DPC and to consider the case of Manoj Kumar for promotion to the post of Inspector without taking into account the fact of temporary forfeiture or inclusion of his name in the secret list, with further direction that if found fit for promotion he would be duly promoted to the post of Inspector from the date persons immediate junior to him were promoted. It may be noted that Manoj Kumar was questioning the promotion orders dated 1.12.2007, 18.9.2008, 16.1.2009 and 24.9.2009. Evidenced by para 7 of the impugned order, the Tribunal has not granted any relief with respect to the promotional order dated 1.12.2007 holding that the validity of the concerned DPC cannot be questioned. The Tribunal has held that non consideration of his case in the subsequent DP Cs was ex facie not in consonance with law. Further, the Tribunal has relied upon its decision dated 23.2.2009 allowing OA No. 2130/2006 HC Anumial Haq v. Govt. of NCT and Ors. which interpreted Rule 8(d) of the Delhi Police (Punishment and Appeal) Rules 1980 to mean that unless penalty of forfeiture of approved service was permanent, only then said penalty

could be considered while evaluating the AC Rs of the candidates and a penalty of forfeiture of approved service which was temporary was to be ignored.

2. OA No. 3489/2009 filed by Surya Prakash the Respondent of W.P.(C) No. 6886/2010 has been disposed of with a similar direction and on the same process of reasoning by relying upon the decision of the Tribunal in HC Anumial Haq's case. It may be noted that Surya Prakash was like wise challenging promotional orders dated 1.12.2007, 18.9.2008, 16.1.2009 and 24.9.2009.

3. At the outset it may be noted that OA No. 3555/2009 was filed by Manoj Kumar on 5.12.2009 and qua the promotional order dated 18.9.2008 as also the promotional order dated 1.12.2007 the bar of limitation was pleaded against him. Said issue has not been decided by the Tribunal i.e. whether challenge to the promotional orders dated 1.12.2007 and 18.9.2008 was barred by limitation. Since Surya Prakash had filed OA No. 3489/2009 on 20.11.2009, qua challenge to the orders dated 1.12.2007 and 18.9.2008 the bar of limitation was pleaded in defence and said issue has not been decided by the Tribunal.

4. The decision by the Tribunal in favour of HC Anumial Haq was challenged before this Court vide W.P.(C) No. 2651/2010 and vide order dated 13.9.2010 the order passed by the Tribunal was modified with the direction:

12. Accordingly, we dispose of the writ petition modifying the impugned judgment and order dated 23.2.2009 and maintaining the setting aside of the order dated 11.8.2006 by which the name of the Respondent was removed from list 2 we direct the competent authority to redetermine the matter by taking note of the fact that the show cause notice was premised on the penalty of forfeiture of 3 years approved service permanently which penalty order was subsequently lowered vide order dated 24.10.2005 when penalty of forfeiture of 1 years approved service temporarily for 1 year was imposed. Needless to state while reconsidering the matter the Authority would keep into view Rule 8(d)(i) of the Punishment and Appeal Rules.

5. Since the Tribunal has not dealt with the defence of the bar of limitation as aforementioned pertaining to the promotional orders dated 1.12.2007 and 18.9.2008, and only pertaining to Manoj Kumar has held no taint qua him with respect to the order dated 1.12.2007 and thus qua Surya Prakash the promotional order dated 1.12.2007 has been accepted as adversely affecting his right and for the reason the Tribunal has not dealt with the applicable office memorandums in force at the time DP Cs met and based on the recommendations whereof the two promotional orders were issued, said issues need to be redetermined by the Tribunal and for which we shall be passing a formal direction at the end of our decision to remand the matter before the Tribunal for fresh adjudication qua said two promotional orders.

6. We find that the Tribunal has ignored an office order dated 29.12.2008 which superseded an earlier office order dated 7.2.2005 and thus qua challenge to the promotional orders dated 16.1.2009 and 24.9.2009 the matter needs to be remanded to the Tribunal for re-adjudication with reference to the office order

dated 29.12.2008, which reads as under:

Circular In future, the following criteria shall be observed while holding departmental promotion committees for admission of names of police personnel to promotion lists and grant of Assured Career Progression Scheme:

1. The DPC should assess the suitability of the personnel for promotion on the basis of their service records with particular reference to the Confidential Reports for five preceding years irrespective of the qualifying service prescribed in the Service or Recruitment Rules. Personnel having at least three "good and above" reports without any "below average" or "adverse" report, even for a small period, during the last five years may be empanelled. If more than one ACR has been written for a particular period, then the grading of the ACR, written for the longest period of time would be considered for the entire years. However, if adverse remarks ("C" ACR) have been recorded for even a smaller part of the year, the adverse grading would be taken into consideration and the individual would be debarred from empanelment for 5 years. As per the current ACR format, the only grading which are applicable for lower subordinates are "A", "B" and "C". "A" is excellent/outstanding, "B" is very good/good and "C" is adverse. Any other grading in the form of "plus and "minus" of outstanding, satisfactory, good are irrelevant. Where the work and conduct of my employee has been categorized as "SatisfactoryB" it will be treated as "B".

2. Officers who have been awarded any major punishment in the preceding 05 years on the charges of corruption, moral turpitude and gross dereliction in discharge of duty or major punishment within 02 years on charges of administrative lapses, misconduct, negligence, inefficient performance from the date of consideration may not be empanelled.

3. Officers who have been awarded any minor punishment is preceding 05 years on charges of corruption, moral turpitude etc. consequent upon conducting D.E. proceedings for the award of major punishment in which the charges have been found proved, may not be empanelled.

4. Besides the disciplinary proceedings due to award of major/minor punishments on grounds of moral turpitude, corruption and other reasons as indicated in para (2) and (3) above, the punishment record of the officer during the preceding 10 years in that particular ranks shall be taken into account with particular reference to the gravity and continuity of punishments till date. Award of major/minor punishments on their own, as detailed in para (2) & (3) above, debar a candidate from empanelment for specified period. In addition of the disability caused by specific acts of punishment, the cumulative punishment record of a candidate is also a relevant factor for assessing the suitability of a candidate for a higher post. All punishments awarded during the period of 10 years preceding the year of DPC would also be taken into consideration. If an officer on assessment of record of punishment get more than 10 (ten) adverse points, he shall not be empanelled in that particular year. For calculating 10

adverse points, each major punishment with corruption/moral turpitude would carry 6 points, other major punishments would carry 4 points and each censure would carry 2 points and each censure would carry 2 points. A censure awarded consequent upon conducting DE proceedings for the award of a major punishment in which charges have been found proved would carry 4 points.

5. Officers, who have been awarded a censure during the last 6 months and not covered by any of above clauses on minor punishment, can be allowed to be brought on the promotion list. However, the effect of censure debarring the official for promotion for six months from the date of award shall continue.

6. Officers whose names stand on the Secret List of doubtful integrity shall not be considered fit as per Standing Order No. 265 on the subject.

7. Result of officers who are under suspension or facing departmental enquiry or involved in criminal cases, shall be kept in sealed cover. This supersedes earlier office order issued vide this Hdqrs. No. A-1/12(6)98/SPL/7931-8030/CB-I dated 7.2.2005.

7. Before dealing with the office order dated 29.12.2008 it may be noted that the earlier office order dated 7.2.2005 which was superseded by the office order dated 29.12.2008 was the subject matter of consideration by this Court in W.P. (C) No. 17266/2006 Commissioner of Police v. Jawahar Singhand was decided by a Division Bench of this Court on 17.2.2009. The said office order dated 7.2.2005, vide Clause (v) stipulated that if a police officer is imposed the penalty of censure he would be debarred for being promoted for a period of 6 months. In said case Jawahar Singh posted as an Assistant Sub-Inspector was declared unfit for being promoted to the post of Sub-Inspector on account of being censured 4 times between the years 1996 till the year 2001. His case before the Tribunal was that all 4 censures preceded 6 months from the date the DPC met and in terms of Clause (v) of the office order dated 7.2.2005 the same had to be ignored. The Tribunal agreed with him on the process of reasoning that Clause (v) of the office order dated 7.2.2005 meant that the penalty of censure had to be ignored after 6 months of it being levied. The Division Bench overruled the decision of the Tribunal holding that in view of various judgments it was settled law that while determining fitness of a candidate to be promoted the DPC was justified in considering the service record of the candidate. In particular, the Division Bench noted three decisions pronounced by the Supreme Court and holding so, being the decisions reported as Union of India Vs. K.V. Jankiraman, etc. etc., , State of Tamil Nadu and another Vs. P. Bose and another, and U.P. Jal Nigam and Others Vs. Durga Prasad Singh and Others, .

8. The Division Bench clarified that Clause (v) of the office order dated 7.2.2005 was a bar to be considered for promotion within 6 months of penalty of censure being imposed and could not be interpreted to mean that while evaluating the fitness of the candidate the penalty could not be considered or taken into account by the Departmental Promotion Committee.

9. It may be noted that whether the decision of the Division Bench of this Court in the case of ASI Jawahar Singh was per incuriam or not became the subject matter of conflicting views on the question whether the decision was per incuriam and the matter was referred to a 5 Judge Bench of the Tribunal and it was opined by the 5 Judge Bench as under:

36. In view of above discussion, we hold as follows:

(1) Judgment of Jawahar Singh given by Hon ble High Court cannot be declared as per incuriam.

(2) Office order dated 7.2.2005 is binding but it would not supersede the statutory rules.

(3) Interpretation of clause-v of office order dated 7.2.2005 as mentioned in para (iii) Supra, given by the Tribunal in Ashok Kumar Meena stands overruled by the judgment of Hon ble High Court in Jawahar Singhs case".

10. It is unfortunate that while rendering the decisions which have been impugned before us, the Tribunal has ignored the opinion rendered by the 5 Judge Bench of the Tribunal as also the law declared by this Court in ASI Jawahar Singhs case and further has just not bothered to consider the office memorandum dated 29.12.2008. The Tribunal has just not bothered to note that the opinion of the Tribunal in HC Anamuial Haqs case was contrary to the law declared by this Court in ASI Jawahar Singhs case and the opinion of the 5 Judge Bench of the Tribunal.

11. Suffice would it be to state that, as explained hereinabove the law declared by the Division Bench of this Court in the decision in ASI Jawahar Singhs case is that the DPC can consider the penalties imposed upon an officer while determining his fitness for promotion and a rule prohibiting promotion for a stipulated period post levy of penalty operates in a distinct field. Whereas a rule prohibiting promotion for a certain duration post levy of penalty operates as a bar to be even considered for promotion, the said rule cannot be interpreted to mean that while evaluating fitness for promotion the penalty cannot be looked into. The field of consideration of fitness for promotion is a field distinct from the very right to be considered for promotion. The two fields operate in distinct areas of applicability and do not overlap and hence one cannot be used as exhaustive of the other.

12. Let us now look to the office order in question, contents whereof have been noted by us in para 6 above. Para 1 of the office order lays down the criteria on which the DPC has to assess the suitability of Delhi Police Personnel for promotion and clearly requires the performance to be assessed on the basis of their service record with particular reference to the AC Rs for the preceding 5 years. This is the first mandate of para 1 of the circular. The second mandate of para 1 of the office order is to lay down the benchmark of at least 3 "Good ACR gradings with none being "Below Average or "Adverse. The third mandate of para

1 of the office order is that if for a particular period more than 1 ACR is written, the one for the longest period has to be considered. The third mandate is made subject to an exception, being that, if for the smaller part of the year an "Adverse grading has been awarded the same has to be considered and would be treated as disabling the person concerned to be promoted with reference to the second mandate of para 1 of the office order which states that any ACR grading in the preceding 5 years which is "Below Average or "Adverse would be disentitling the candidate to be empanelled for promotion. The fourth and the last mandate of para 1 of the office order requires gradings (A), (B) and (C) to be treated as equivalent to "Excellent/Outstanding, "Very Good/Good" and "Adverse respectively".

13. Para 2 of the office order has two distinct limbs. Major penalty levied in any preceding 5 years on charges of corruption, moral turpitude and gross dereliction in discharge of duties would disentitle the candidate to be empanelled for promotion. Further, major penalty levied within 2 years on charges of administrative lapses, misconduct, negligence, inefficient performance of duty would disentitle the candidate to be empanelled for promotion. Thus, as per para 2 of the office order the duty has been cast upon the DPC to take into account major penalties levied within 2 years preceding the date of consideration and within 5 years preceding the date of consideration. Such major penalties which attract the charge of corruption, moral turpitude and gross dereliction in discharge of duties if levied within the preceding 5 years would disentitle the candidate to be promoted and thus the DPC has to apply its mind to the charge on which the major punishment was inflicted. Major punishments not of the kind involving corruption, moral turpitude and gross dereliction in discharge of duties have to be evaluated but only for the 2 preceding years.

14. Thus, the mandate of para 2 of the office order has to be applied with reference to the law declared by this Court in ASI Jawahar Singhs case and the opinion of the 5 Judge Bench of the Tribunal.

15. Para 3 of the office order contemplates a situation where within the preceding 5 years, upon a proceeding for award of major penalty, minor penalty is imposed but it relates to a charge of corruption, moral turpitude etc. It is left to the discretion of the DPC to empanel or not empanel the candidate. Meaning thereby that the mandate of para 3 of the office order to the DPC is to consider minor penalties levied in the preceding 5 years where initiation of the penalty proceedings was for a major penalty and if found that the charge related to corruption, moral turpitude etc. the DPC may or may not empanel the candidate, meaning thereby the DPC would have to weigh the magnitude of the taint the corruption and moral turpitude. Needless to state minor punishments pursuant to major penalty proceedings levied within the preceding 5 years not involving the element of corruption and moral turpitude etc. would have to be ignored under the mandate of para 3. But, as would be noted hereinafter the same have to be considered while deducting marks as contemplated by para 4.

16. The words "Besides the disciplinary proceedings which are the opening words of para 4 of the office order makes it plain clear that para 4 is a residual provision and operates in its own field. The mandate of para 4 is that punishment record of the officer during the preceding 10 years have to be taken into account with particular reference "To the gravity and continuity of punishments till date when the DPC meets. Thereafter, the paragraph requires DPC to deduct points for the penalties levied and if the candidate gets more than 10 "Adverse points he has not to be empanelled and while calculating adverse points, each major punishment having element of corruption and moral turpitude would make liable the candidate to be deducted 6 points, other major punishments would make him liable to be deducted 4 points and a censure 2 points. Censures awarded as a result of major punishment proceedings would entail deduction of 4 negative points. Thus, it is apparent that the penalty record with reference to preceding 10 years has to be evaluated on a point scale and decision taken".

17. Para 5 of the office order makes a modification of what was contemplated by Clause 5 of the office order dated 7.2.2005. As per para 5 a censure awarded preceding the last 6 months and not covered by any of the preceding paragraphs on minor punishment would not debar the candidate to be brought on the promotion list but such officer shall not be promoted during the duration of 6 months from date of levy of penalty.

18. Para 6 of the office order prohibits even consideration of such officers whose name stand on the "Secret List of doubtful integrity Para 7 requires to be kept in a sealed cover the recommendations of such officers who are under suspension or are facing departmental inquiry or are involved in criminal cases.

19. We have clarified on the office order dated 29.12.2008 inasmuch as learned Counsel for the parties have requested us to do so for purposes of settling the legal position.

20. A residual controversy may also be settled by us. Rule 8 of the Delhi Police (Punishment and Appeal) Rules 1980 stipulate the penalties which may be levied upon an officer of the Delhi Police and vide Clause (d) penalty of approved service being forfeited permanently or temporarily for a specified period may be imposed. Penalty of reduction in pay or deferment in an increment or increments permanently or temporarily may also be imposed. The language of the clause has been creating some problem and we find that some Benches of the Tribunal have taken the view that only such forfeiture of approved service which is permanent can be taken into account while determining fitness of a police officer under Delhi Police. Clause (d) reads as under:

(d) Forfeiture of approved service Approved service may be forfeited permanently or temporarily for a specified period as under:

(i) For purposes of promotion or seniority (Permanent only).

(ii) Entailing reduction in pay or deferment of an increment or increments

(permanently or temporarily).

21. For the reason the words "permanently or temporarily are to be found at the end of Clause (ii) and the words "permanently only are to be found at the end of Clause (i) the Tribunal has been holding that it would mean that only permanent forfeiture of approved service has to be treated as a penalty for purposes of considering promotion or seniority".

22. The said reasoning of the Tribunal is plainly wrong for the simple reason Rule 8 deals with and provides the penalties which can be levied and the effect of the penalties has to be considered independent thereof. Needless to state the law is well-settled and a few decisions have been noted by the Division Bench of this Court in ASI Jawahar Singhs case, reference whereof has been made by us hereinabove, being that debarment of being considered for promotion is distinct from the parameters on which fitness has to be determined and while determining fitness the DPC can certainly look into the service record and take into account the penalties levied. Thus, it cannot be said that a penalty of temporary forfeiture of approved service has to be ignored while determining fitness.

23. Clarifying on the legal position as aforesaid, we dispose of both the writ petitions setting aside the impugned order dated 2.6.2010 allowing OA No. 3555/2009 as also the order dated 11.5.2010 allowing OA No. 3489/2009 and restoring both Original Applications we direct the Tribunal to take note of the relevant facts pertaining to the penalties levied upon the Respondents of the two writ petitions and with respect to the DP Cs which met after office order dated 29.12.2008 to determine whether the DP Cs have correctly applied the office order dated 29.12.2008. For the preceding DP Cs and promotional orders, the Tribunal would decide the issue of bar of limitation and if held that challenge to the recommendations of the preceding DP Cs was within limitation or limitation was required to be condoned, to decide the matter with reference to the earlier office order dated 7.2.2005 and as interpreted by the Division Bench of this Court in ASI Jawahar Singhs case, which decision we note has been held to be not per incuriam by a 5 Judge Bench of the Tribunal.

24. No costs.