

(2002) 08 DEL CK 0064

In the Delhi High Court

Case No : Civil Writ Petition No. 4484 of 2002

Commissioner of Police and Another

APPELLANT

Vs

Jagmal Singh and Another

RESPONDENT

Date of Decision : 02-08-2002

Acts Referred:

Citation : (2002) 08 DEL CK 0064

Hon'ble Judges : Mukul Mudgal, J;A.D. Singh, J

Bench : Division Bench

Advocate : George Paracken, for the Appellant;

Final Decision : Dismissed

Judgement

Anil Dev Singh, J.—This writ petition challenges the Order dated 3rd August, 2001, passed by the Central Administrative Tribunal, Principal Bench, New Delhi (for short the "Tribunal").

2. The facts giving rise to the writ petition are as follows:

In the years 1968, the first respondent joined the force as constable. Subsequently he was promoted as Sub-Inspector on 23rd September, 1997. His name was included at Sl. No. 39 in the List of eligible Sub-Inspectors drawn by the petitioners for effecting promotions to the rank of Inspector. Subsequently on 9th May, 2000, a fresh list of eligible Sub-Inspectors was framed. In this list the name of the first respondent stood at Sl. No. 15. On 4th August, 2001 the petitioners made promotions of some of the Sub-Inspectors as Inspectors. The name of the first respondent however, did not figure in the list of promotees, however, did not figure in the list of promotees. The first respondent filed a representation before the appropriate authority on 25th August, 2000, against non-inclusion of his name in the list of promotees. On 5th September, 2002, three more persons were promoted to the rank of Inspectors.

3. Dissatisfied with the action of the petitioners, the first respondent filed

Original Application, being O.A. No. 120/2001 before the Tribunal. The Tribunal found that the grading given by the Reporting & Reviewing Officer to the first respondent for the year 1997-98 was revised by the DPC and the same was downgraded. The Tribunal in this regard held as follows:

"..... The plea by the respondents is that the DPC did not go by the overall grading given by the Reporting/Reviewing Officers but have made independent assessment after going through individual entries. We are not calling in question the right of the DPC to arrive at its own criterion for assessing the ACRs and they also are supported by the findings of the Hon'ble Apex Court in UPSC v. Hiranvalal Dev and Ors. AIR 1988 SCC 1069 as the powers of Selection are vested in the DPC but in this case DPC had changed the granting given in the ACR and that too to the disadvantage of the individual concerned on the ground that the adverse entry was not communicated. This interference by the DPC is, to say the least, strange. In this case, notwithstanding the adverse entry in the report for 1997-98, the reporting had found the officer fit for promotion in turn, a remark not disputed by the Reviewing Officer. The adverse entry was not communicated and in terms of the decision of the Hon'ble Supreme Court in U.P. Jal Nigam v. S.C. Atre and Anr., an uncommunicated adverse remark in the ACR would have to be treated as it did not exist. Still the DPC had chosen to downgrade the gradation given in the ACR, to "average" and thus arrived at the finding that keeping the above also in mind, the applicant did not have 4 "good" reports and did not empanel him for promotion. Interestingly, it is the only case in the entire proceedings that the categorisation given by the Reporting/Reviewing Officers has been revised downwards by the DPC and that too for wrong reasons. This was incorrect and this act of the DPC had vitiated the proceedings and the assessment given by the DPC was Therefore malafide, illegal and against the guidelines. The same has Therefore to be quashed and set aside.

x x x x x In the above, view of the matter, the application succeeds and is accordingly allowed. Respondents are directed to consider the case of the applicant by holding a review D.P.C., with uniform standards and treating the uncommunicated adverse entry recorded in the ACR for 1997-98 in view the finding of this Tribunal dated 10.9.99 in O.A. No. 1333/99 filed by Randhir Singh, upheld by the High Court that grade "B" in ACR meant "Very Good" and if found fit "promote him to "F") (Ministerial" with all the consequential benefits, including arrears of pay and allowances, from the date on which his immediate junior has been so promoted. While doing so the respondents shall also put on notice those concerned if any, who are likely to be affected adversely in the event of the applicant's regaining his position. This exercise shall be completed within three months from the date of receipt of the copy of the order."

4. The petitioners being aggrieved by the Order passed by the Tribunal has filed the instant petition. We have heard the learned counsel for the petitioner.

5. According to the first respondent officers having more than 50% good or

above reports and without any below average or adverse reports during the last 6 years were considered fit for empanelment. It is not disputed by either side that ACRs for the years 1993, 1994-95, 1995-96, 1996-97, 1997-98 & 1998-99 were taken into consideration by the DPC. The Tribunal detailed the ACRs of the first respondent as per below:

"Year General Overall Grading Grading by Assessment in ACR DPC 1993 Satisfactory/ "B" Average Average 1994-95 Average "B" Average 1996-96 Good "B" Good 1996-97 Very Good "A" Good 1997-98 Average "B" Average *There is also an adverse Entry for the period 1998-99 Good "B" Good Good "A" Average *Remarks lacks command in the Act is not adverse entry, according to the Reviewing Officer.

Though contains some adverse remarks not Communicated. Hence DPC treats this as average report."

As is evident from the above, there were adverse entries recorded against the first respondent. These entries were not communicated to him. Despite the fact that they were not communicated to him, they were taken into account by the DPC and he was treated as an average candidate. The first respondent was not recommended for promotion as he was found unfit on the basis of the entries which were uncommunicated. There was a clear violation of the principles of natural justice. The Tribunal was entirely right in directing the petitioner to hold a review DPC, applying uniform standards and treating the uncommunicated adverse entries in the ACRs for the year 1997-98 as not existing. We also find that while the impugned Order was passed on 3rd August, 2001, the writ petition was filed on 16th July, 2002. There is no Explanation as to why the writ petition was filed after a lapse of about 11 months. Writ petition also suffers from the vice of laches.

6. Accordingly, the writ petition fails and is hereby dismissed.