
(2013) 07 DEL CK 0362

In the Delhi High Court

Case No : Writ Petition (C) 6015 of 2010

Commissioner of Police

APPELLANT

Vs

Akhileshwar Yadav

RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 201 DLT 765 : (2014) 2 SLJ 367

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Prerna Kumari, for the Appellant; Jyoti Singh Instructed by Ms. Saahila Lamba, for the Respondent

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J.—The Commissioner of Police is aggrieved by the order dated December 22, 2009 allowing OA No. 252/2008 filed by the respondent and also by the order dated July 19, 2010 dismissing RA No. 172/2010 filed by the Commissioner of Police seeking review of the order dated December 22, 2009. Working as a Sub-Inspector in Delhi Police and In-charge of Sarita Vihar Police Chowki a case of a student of Class-IV of Delhi Public School Vasant Kunj who was kidnapped for ransom was successfully investigated and the child recovered by a team headed by the respondent of which HC Nirbhay Singh and Const. Balraj Singh were the members. As per the respondent it was the meritorious work imparted by him which resulted in the case being successfully solved. His grievance pertains to the fact that whereas HC Nirbhay Singh and Const. Balraj Singh were granted out of turn promotions on March 19, 1998, he was given a commendation and a cash award in sum of Rs. 3,000/-. The respondent kept on making representations. He was ultimately promoted on January 02, 2006 as per his seniority and the claim for grant of out of turn promotion continued to simmer. As per Rule 19 of the Delhi Police (Promotion and Confirmation) Rules, 1980 out of turn promotions not exceeding 5% of the vacancies can be made, by

way of incentive, for such officers who have shown exceptional devotion to duty.

2. The department took the stand that the input by the respondent justified only a citation and a cash award and no more. The respondent rested his stand on the strength of the fact two junior members of his team who had much lesser role were granted out of turn promotion.

3. The Original Application filed by the respondent has been allowed by the Tribunal as per order dated December 22, 2009 on the reasoning that the two junior members of the team being granted out of turn promotion was a recognition of exemplary devotion to duty by the entire team and the respondent could not be discriminated against. Seeking review the Commissioner of Police pointed out that after the Tribunal had passed the order its incentive committee reviewed the matter and had opined that the respondent had a periphery role in the matter and hence did not deserve an out of turn promotion. Dismissing the application seeking review, the Tribunal observed:-

We are distressed to note that even though, no pleadings were made as regards the role of the applicant, which is sought to be underplayed now, the averment made in the review application is that the decision of the Tribunal ought to have been based on the role attributed to the applicant in the FIR or case diaries and not as reflected in the letter written by the then Spl. C.P./Admn. The letter of Spl. C.P./Admn. is stated to be "perhaps (emphasis supplied) could have been based on a report from the Distt., which may not be entirely of a reliable nature." If the respondents were of the view as regards the role of the applicant as is now sought to be taken, it ought to have been pleaded in their reply. We have returned the finding with regard to the role of the applicant based upon pleadings as also letter dated 18.09.2003 of the then Spl. C.P./Admn. This letter is now stated to have been "perhaps" based on a report from the District, which may not be of a reliable nature. There is no positive averment even now that the contents of the letter aforesaid are not correct. Be that as it may, we decided the matter on the basis of the pleadings and the relevant documents produced before us. The role of the applicant now ascertained by the incentive committee cannot be taken into consideration in the limited scope of review.

4. Arguing the writ petition, learned counsel for the Commissioner of Police simply harped upon the note penned by the Incentive Committee after the Tribunal had passed the order on December 22, 2009. Per contra Ms. Jyoti Singh, learned senior counsel appearing for the respondent would draw our attention to the letter written by Dr. K.K. Paul the then Special Commissioner of Police (Admn.) in response to clarifications sought by the Principal Secretary Home. She further drew our attention to page 274 which are the notings of the SHO Badarpur and ACP, Kalkaji wherein the said officers recommended the out of turn promotion to the respondent.

5. That in so far as the aspect of judicial review in cases of this nature is concerned, the same is no more res Integra. This Court while deciding the batch

of writ petitions on December 10, 2010 the lead one being WP(C) No. 5444/2010 Government of Delhi & Ors. v. H.C. Raj Kumar has held as under:-

23. Unlike courts, administrators and administrative bodies have the power to take decisions on the basis of broad, general policy considerations. Review, as is understood in functioning of courts, is an entirely different concept; importing element from said concept in administrative functioning, would inject an avoidable rigidity in administrative process. The correct position is that the administrative authorities can change their decisions, if the circumstances so warrant. If, while exercising such power of administrative review, the agency oversteps such limits, or acts illegally, or mala fides, or arbitrarily or its review or modification of previous order is hit by Wednesbury unreasonableness, or other well established grounds, the court can judicially review the same under Article 226 of Constitution of India. In this regards, it is most apposite to note the following observations of Supreme Court in the decision reported as R.R. Verma and Others Vs. Union of India (UOI) and Others, It was observed:-

The last point raised by Shri Garg was that the Central Government had no power to review its earlier orders as the rules do not vest the government with any such power. Shri Garg relied on certain decisions of this Court in support of his submission: Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji; D.N. Roy v. State of Bihar and State of Assam v. J.N. Roy Biswas. All the cases cited by Shri Garg are cases where the government was exercising quasi-judicial power vested in them by statute. We do not think that the principle that the power to review must be conferred by statute either specifically or by necessary implication is applicable to decisions purely of an administrative nature. To extend the principle to pure administrative decisions would indeed lead to untoward and startling results. Surely, any government must be free to alter its policy or its decision in administrative matters. If they are to carry on their daily administration they cannot be hidebound by the rules and restrictions of judicial procedure though of course they are bound to obey all statutory requirements and also observe the principles of natural justice where rights of parties may be affected. Here again, we emphasise that if administrative decisions are reviewed, the decisions taken after review are subject to judicial review on all grounds on which an administrative decision may be questioned in a court. We see no force in this submission of the learned Counsel. The appeal is, therefore, dismissed.

(Emphasis Supplied)

6. The question which falls for our consideration is whether in the given facts petitioner is entitled to be granted out of turn promotion. It is seen that the stand of the petitioner in reply to the Original Application has primarily been that the Incentive Committee comprising of highly designated officers had recommended "Asadharan Karya Puraskar" along with cash reward of Rs. 3000/- for the act of the respondent in solving the case. In other words his act in solving the case through a process of excellent piece of investigation has been recognized by the petitioners themselves.

7. In the Review Application a dramatically opposite stand is taken inasmuch as the petitioner underplayed the role of the respondent in solving the case. It is an accepted position that three of the personnel have been granted out of turn promotion to the next higher post from the post on which they were working. It is also an accepted position that the acts for which they have been recommended out of turn promotion is for solving the case of kidnapping of the child, with which the respondent was associated as a team leader. The acts of the three police personnel are not different cannot be segregated with the acts of the respondent in solving the case. At this stage it is important to reproduce the relevant contents of the letter of the then Special Commissioner (Admn.) in his letter dated September 18, 2003 which is as under:

It was indeed a miraculous break through subsequent expeditious and timely action which helped solving the case in less than 24 hours. It was entirely the initiative/drive/resourcefulness and local contacts of the SI, through whom the information could be developed and was made use of. Even at the time of the recovery of the child, the SI was himself leading along with the HC and Constable, but the then DCP/South as admitted, had perhaps, acted with a great degree of modesty and underplayed the matter, but the officer, it is strongly felt, should not be denied his due, and may kindly be considered for an out of turn promotion as and when there is a vacancy in the slot. It would not be out of place to mention that he is currently posted in the Special Staff, South District and a number of sensational cases worked out in South District which have hit the headlines during the last few years, are attributed to his good work.

8. On the face of such a stand having been taken by the then Special Commissioner (Admn.) in his communication it is surprising how the petitioner can even contest the impugned orders of the Tribunal.

9. Even in the writ petition the petitioners have taken one bald ground "G", "that the investigation in the said case was taken away from the respondent immediately after the case was registered and was handed by the special staff. The averment in ground "G" has been denied by the respondent in the counter affidavit. We are unable to gulp this stand of the petitioner by which the respondents trying to underplay the role of the respondent. If the respondent had played the role only for registration of FIR and recording of a few statements then on what grounds he has been awarded the puraskar and reward of Rs. 3000/-. Naturally the same is for solving the case of kidnapping. It is not the case of the petitioner the same has since been withdrawn.

10. The aforesaid being the position we find it very strange that the respondent would earn Asadharan Karya Puraskar with a reward of Rs. 3000/- and for the same act his fellow colleagues would earn an out of turn promotion and now for unexplainable reasons the petitioners have turn around and says that he is not entitled to the same benefit as his colleagues as his role was very limited.

11. The plea that no promotional post was available which was sought to be

urged in the writ petition for the first time before us is refused to be gone into by us because the plea is one of fact. The department had to show how many posts of Inspectors were sanctioned in the year 1998 and how many were filled up. Only then the said issue could be decided with reference to the fact that 5% of the said posts could be earmarked for out of turn promotion. Further, if no vacancy was available in the year 1998, in the next year whenever a vacancy was available the respondent ought to have been promoted there against.

12. In view of the above discussion the impugned orders of the Tribunal dated December 22, 2009 and July 19, 2010 are affirmed but with a modification. The respondent would be given the benefit of promotion on notional basis, meaning thereby he would not be paid any arrears and only pay would be fixed in the scale of pay applicable to the post of Inspector. And we note that in any case the respondent in terms of his seniority earned a promotion to the post of Inspector in the year 2006. No costs.