

(2002) 08 DEL CK 0210

Delhi High Court

Case No: C.W.P. No. 4164 of 2001

Govt. of NCT of Delhi and Others

APPELLANT

Vs

Rajbir Singh

RESPONDENT

Date of Decision: Aug. 28, 2002

Acts Referred:

- Delhi Police (Promotion and Confirmation) Rules, 1980 - Rule 17, 19
- Punjab Police Rules, 1934 - Rule 13.1, 13.8(2)

Citation: (2003) 3 SLJ 436

Hon'ble Judges: S.B. Sinha, C.J; A.K. Sikri, J

Bench: Division Bench

Advocate: George Paracken, for the Appellant; Shyam Babu, for the Respondent

Final Decision: Allowed

Judgement

S.B. Sinha, C.J.

Interpretation of Rule 19 (ii) of Delhi Police (Promotion & Confirmation) Rules, 1980 (hereinafter for the sake of brevity referred to as, "the said Act") is in question in this writ petition, which arises out of a judgment and order dated 19.01.2001 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter for the sake of brevity referred to as, "the Tribunal") in O.A. NO. 2672 of 1999 whereby and whereunder the Original Application filed by the respondent herein was allowed.

2. The basic fact of the matter is not in dispute.

The respondent at the relevant point of time was a Sub- Inspector. He was promoted as an Inspector on out of turn basis in terms of the said Rules. The said promotion was made on ad hoc basis wherein it was made clear that he would not have any claim for seniority. Within a few days, i.e., on 12.08.1994 a meeting of regular Departmental Promotion Committee (in short, "DPC") was held wherein also the respondent herein was found eligible for promotion. He was promoted to the

post of Inspector on regular basis on 18.08.1994.

Thereafter on or about 28.08.1999, he filed the aforementioned Original Application claiming seniority w.e.f. 05.08.1994. Before the learned Tribunal, a representation was made to the effect that the respondent would not claim any other benefit except his seniority from the said date. The learned Tribunal held:-

"9. In our view, when person promoted to the rank of Inspectors are not required to undergo any training course, no purpose seems to be served by treating such promotion as ad hoc. The provisions relating to treatment of such promotions as ad hoc appears to be relating to promotions to the ranks other than that of Inspector. If promotions to the rank of Inspector are treated as regularized on promotion under Rule 19(ii) *ibid* there would be no violation of the provisions of this rule. Promotions as Inspector (Exe.) under Rule 19(ii) for which no training course is prescribed can be treated as regularized straightaway. Such treatment will not cause any hindrance for placement of such promotes for purposes of seniority at the bottom of the promotion list drawn for that year under this rule."

3. Mr. George Paracken, the learned counsel appearing on behalf of the petitioners, would submit that the learned Tribunal erred in passing the impugned judgment insofar as it failed to take into consideration that the Original Application filed by the respondent herein was barred under the law of limitation. The learned counsel would contend that having regard to the fact that a regular promotion was made on or about 18.08.1994, the respondent herein could not have filed the aforementioned Original Application on or about 28.08.1999.

The learned counsel would argue that the findings of the learned Tribunal to the effect that the said Rules will have no application is not correct inasmuch as the normal promotion is made in terms of Rule 17 of the said Rules and only on the basis thereof, inter-se seniority is fixed. In any event, the learned counsel would contend, seniority cannot be fixed with retrospective effect.

4. My. Shyam Babu, the learned counsel appearing on behalf of the respondent on the other hand, would contend that the language used in Rule 19(ii) of the said Rules is absolutely clear and explicit. According to the learned counsel, having regard to the fact that no training course is required to be undergone by the Sub-Inspector for his promotion to the post of Inspector, the question of the respondent being promoted on ad hoc basis would not arise and in that view of the matter, the said promotion dated 05.08.1994 must be held to have been done on regular basis. In support of the said contention, reliance has been placed on a decision of the Apex Court in *Rishal Singh v. State of Haryana and Ors.* 1994 (2) SCALE 490

5. Rule 19(ii) of the said Rules reads thus:-

"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 not in the rank. Such promotions shall be treated as ad-hoc and will be regularized when the person so promoted have successfully completed the training course prescribed like (Lower School Course), if an. For purposes of seniority such promotes shall be placed at the bottom of the promotion list drawn up for that year."

A bare perusal of the aforementioned Rule would clearly go to show that for the purpose of seniority of the respondent herein, even if at one point of time, he was promoted on out of turn basis, he was to be placed at the bottom of the promotion list drawn up for that year.

6. It is not in dispute that regular promotion in this case has been made within a period of one week, the respondent along with others had also been promoted on regular basis. Once he was promoted on regular basis his position in the said seniority list would be as per rules. Even if it be considered that he had been promoted in terms of the aforementioned Rule 19(ii) of the said Rules, his seniority would be at the bottom of the list.

7. Furthermore, the order of the promotion dated 05.08.1994 is as follows:-

"No. 26573/CB-VII PROMOTION :- The following Sub-Inspectors (Ex.), ASIs (Ex.), Head Constables (Ex.), Head Constable (Driver). Constable (Ex.) and Constable (Driver) have been promoted to officiate as Inspector (Executive), Sub-Inspector (Executive), Asstt. Sub-Inspector (Executive), Asstt. Sub-Inspector (Driver), Head Constable (Executive) and Head Constable (Driver) with effect from 05.08.1994, on purely temporary and ad hoc basis, under Rule 19(ii) of Delhi Police (Promotion and Confirmation) Rules, 1980. They will have no claim for seniority etc. and are liable for reversion at any time without assigning any reason. Their ad hoc promotion will be dependent on their continued good work and conduct during the period of such promotion:-

1. S.I. Rajbir Singh, D-162

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sd/-

(RANJIT NARAYAN)

DEPUTY COMMISSIONER OF POLICE:

had QRS. (I): DELHI"

8. It may be true that the promotions made in favor of the respondent along with other candidates were out of turn promotions, but the said promotions were on temporary basis. They could have been reverted at any time without assigning any

reason therefore. Such ad hoc promotions were also dependent on their continued good work and conduct during the period of such promotions.

When the respondent was promoted on a regular post on 18.08.1994, he was at Serial No. 204. In the event, if he be given promotion w.e.f. 05.08.1994, despite the rule to the effect that he should be at the bottom of the promotion list, he would supercede others. As regular promotion has been effected in the same year, the question of the respondent's having been promoted w.e.f. 05.08.1994 for the purpose of his seniority would not arise.

In this view of the matter, it is not necessary for us to consider as to what would be the effect if a person is granted out of turn promotion, but the regular promotion takes place after a number of years.

The decision of the Apex Court in Rishal Singh's case (Supra) cannot be said to have any application whatsoever in the facts and circumstances of the case. Therein the Apex Court was considering the interpretation of Rules 13.1(1) and 13.8(2) of Chapter XIII of the Punjab Police Rules, 1934 (in short "P.P. Rules"). The relevant portions of Rules 13.1(1) and 13.8(2) of the P.P. Rules were in the following terms:-

"Promotion from one rank to another and from one grade to another in the same rank, shall be made by selection tempered by seniority. Efficiency and honesty shall be the main factors governing selection. Specific qualifications, whether in the nature of training courses passed for practical experience, shall be carefully considered in each case. When the qualifications of two officers are otherwise equal, the senior shall be promoted. This rule does not affect increments within a time-scale."

"... Selection grade constables who have not passed the Lower School Course at the Police Training School but are otherwise considered suitable may, with the approval of the Deputy Inspector General, be promoted to head constable up to a maximum of ten per cent of vacancies."

Having regard to the fact that therein a promotion was made within the prescribed quota as specific in Rule 13.8(2) of the Punjab Police Rules, it was held that such appointment in absence of any rule cannot be on ad hoc basis. Furthermore, the language of the aforementioned Rules 13.1(1) and 13.8(2) of the Punjab Police Rules vis-a-vis the language of the provisions of the said Rules are different.

9. In the instant case, such promotion in terms of the said Rules itself was to be ad hoc in nature and subject to fulfillment of certain conditions, although in the instant case, such a condition may not be applicable. We, Therefore, are of the opinion that the impugned judgment cannot be sustained.

10. Furthermore, in the instant case, the learned Tribunal committed a serious error inasmuch as it failed to take into consideration that the said Original Application was barred by time. The respondent as noticed hereinbefore, had been granted regular

promotion w.e.f. 18.08.1994 and his seniority has been granted from that date, he could not have filed the aforementioned Original Application on 28.08.1999, i.e., after a period of 5 years.

11. It is now a well-settled principle of law that having regard to the period of limitation prescribed in the Administrative Tribunal Act itself, the Tribunal should not entertain an application after expiry of the said period, unless cogent reasons exist therefore.

12. In [S.S. Rathore Vs. State of Madhya Pradesh](#), it was categorically been held that even if a representation is filed, the original application should be filed within a period of 1 year and 6 months from the date of filing of such representation.

13. For the reasons aforementioned, the impugned judgment cannot be sustained, which is set accordingly.

This writ petition is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.