

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C)7934/2009**

Date of decision: 11.01.2010

SURINDER KUMAR SAND ...PETITIONER
Through: Mr. P.P. Khurana, Sr. Adv. with Ms.
Seema Pandey, Advocate

Versus

UNION OF INDIA & ORS. ...RESPONDENTS
Through: Ms. Jasmine Ahmed, adv. for
respondent No.1.
Ms. Avnish Ahlawat, Adv. for
respondents No. 2 to 4.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

: **MOOL CHAND GARG, J.**

1. The short point involved in this petition is as to whether the petitioner, who arrested 75 proclaimed offenders during the period of one year i.e. from 11.05.1992 to 10.05.1993 and was recommended for out of turn promotion in accordance with Rule 19 of Delhi Police (Promotion and Confirmation) Rules, 1980 (hereinafter referred to as 'the said Rules') ought to have been promoted w.e.f. 11.5.1993 irrespective of the holding of Departmental Promotion Committee (DPC) by the respondents.

2. Briefly stating the facts of this case are; that the petitioner who was working as a Sub-Inspector with Delhi Police and arrested 75 proclaimed offenders in one year during the period commencing from

11.05.1992 to 10.05.1993 and was recommended for out of turn promotion but was promoted to the post of Inspector w.e.f. 05.08.1994 after a DPC was held and was regularly promoted w.e.f. 18.08.1994. It may be observed here that letter recommending the promotion of the petitioner to the post of Inspector has not been placed on record.

3. It is the case of the petitioner that he ought to have been promoted to the next post of Inspector w.e.f. 11.05.1993 in view of the scheme framed by the respondents as given on page 53 of the paper book as Annexure P-5, Annexed to the rejoinder which reads as under:

“Copy of Circluar No.10/CB-VI/PHQ from DCP/Hdqrs.(I), Delhi to DCP/North District, Delhi etc.

Subject: Reward for arresting proclaimed offenders.

It has been noticed that a number of subordinate officers have taken keen interest in arresting Proclaimed 200 Offenders which act is indeed commendable.

In order to recognize their hard work and commitment to duty these officers have been given, from time to time, varying a rewards, including out of turn promotion. In order to have a uniform policy for recognizing the services of such officers categories of rewards:-

I. OUT OF TURN PROMOTION

Out of turn promotion will be given to an officer who apprehends;

- i) More than 75 POs in one year, or
- ii) More than 125 POs. in two years, or
- iii) More than 250 POs. in 5 years.

4. The petitioner submits that in view of the aforesaid policy once he was recommended for promotion, the respondents ought to have considered his out of turn promotion w.e.f. 11.05.1993 and not with effect from the date on which he was actually promoted by the DPC i.e.

on 05.08.1994. He also relies upon the judgment delivered by this Court in the case of S.I. Naresh Kumar Vs. Govt. of NCT of Delhi & Anr., who was also similarly considered to have been promoted with effect from the date of his recommendation for out of turn promotion and whose case came up before this Court in W.P.(C.) No. 11732/2005 decided on 06.03.2007.

5. It is submitted that the case of the petitioner was considered by the Tribunal vide order dated 22.07.2008 when it was held that the petitioner was entitled for being considered to be promoted on out of turn basis from the date he was recommended but the matter was left for the respondents to decide. The relevant observations made in the judgment is reproduced herein:

Judgment of the Delhi High Court would clearly manifest that the controversy as raked up in the present Applications was not an issue before the High Court at all. The only debate was with regard to the applicability of circulars clarified later. The petitioner was held entitled to the relief as per the original circular and clarifications were not to apply retrospectively. It is too well settled that no decision can be cited as a precedent unless on the concerned issue there is a debate, and in consideration thereof law that may be laid down. No directions sans issuance of such directions being a matter of debate can be cited as a ratio deci dendi. It may thus, therefore, be true that even though Naresh Kumar was granted relief of out of turn promotion from the date of recommendation of his case, but the same, in our considered view, cannot be cited as a binding precedent.

6. The respondents contested the aforesaid stand of the petitioner by filing the counter affidavit have submitted, that even though the petitioner was held entitled for the out of turn promotion in accordance with the Rule 19(ii) of the said Rules but that this recommendation does not mean that the petitioner ought to have been treated as having

promoted from the date of the recommendation inasmuch as the aforesaid rule does not *ipso facto* talk of promotion but requires the promotion to be considered by a Departmental Promotion Committee (DPC). The said Rule, for the sake of reference, is reproduced hereunder:

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

7. It was submitted by the respondents that in accordance with the aforesaid rules after the recommendation was made in favour of the petitioner, the matter was placed before the Departmental Promotion Committee, it was considered by the Committee consisting of the Commissioner of Police as Chairman and Additional CP/Admn. New Delhi Range and DCP/Headquarters (I) as members. The said Committee also considered his case along with other 156 cases received in Police Headquarters from the Month of December, 1992 to July 1994, in its meeting held on 05.08.1994. After consideration, the Committee recommended, 34 subordinate officers including the petitioner for the grant of Out of Turn Promotion in the next higher rank, 55 were recommended for the grant of Ashadharan Karya Puraskar, 46 were recommended for the grant of Commendation Roll, 09 were recommended for President Police Medal for Gallantry and the remaining were recommended for the grant of suitable reward by the concerned CDSP. Accordingly, the petitioner and other 33 subordinates officers

were granted adhoc promotion to the next-higher rank w.e.f. 05.08.1994 on the basis of Out of Turn promotion under Rule 19(ii) of the said Rules vide PHQ's Notification No.26573-660/CB-VI, dated 05.08.1994.

8. In the said notification it was clearly mentioned that they will have no claim for seniority etc. and liable for reversion at any time without assigning any reason. Their adhoc promotion will be dependent on their continued good work and conduct during the period of such promotion.

9. Subsequently the name of the petitioner was admitted to promotion list F (Exe.) w.e.f. 12.08.1994 in terms of Rule 17(i) of the said Rules vide Police Headquarters notification No.27543-643/CB-I/PHQ dated 12.08.1994. Since, the petitioner had already been promoted on adhoc basis to the rank of Inspector(Exe.) under Rule 19(ii) of the said Rules, his seniority was required to be fixed at the bottom of the List F(Exe.) drawn on 12.08.1994. But keeping in view all fairness and to avoid loss of seniority to the applicant, his due seniority was not ignored in List F(Exe.) and his name was placed at Sl. No.148 in the aforesaid notification dated 12.08.1994, his adhoc promotion in the rank of Inspector (Exe.) was regularized w.e.f. 18.08.1994 vide PHQ's notification No.29109/CB-I/PHQ dated 22.08.1994.

10. It is also submitted that despite passing of the aforesaid order and issuance of Notification bearing Sl. No.148 dated 12.08.1994, the petitioner submitted a representation only in 2006 for consideration made for promotion to Grade-II of DANIPS against vacancies for the year 1999-2000 and enclosed copy of his earlier representation dated 10.01.2002 requesting him to grant out of turn promotion to the rank of Inspector w.e.f. 11.05.1993 instead of 05.08.1994. As the representation

dated 10.01.2002 was not available on record, the copy of the same was received in Police Headquarters only during the month of July, 2006 and it was found that the petitioner was granted adhoc promotion in the rank of Inspector (Exe.) on out of turn basis w.e.f. 05.08.1994 i.e. the date on which his case was approved by the Commissioner of Police, Delhi and accordingly the representation made by the petitioner was rejected. It was thereafter, he filed the Original Application which, as stated above, has not been decided in his favour.

11. Insofar as the case of the Naresh Kumar (Supra) is concerned to which reference has been made by the petitioner, the Tribunal has considered the decision in that case, which was decided only for the purpose of deciding the number of arrests made by the said Naresh Kumar. The relevant portion of the discussion had in this case in this regard are reproduced hereunder:

8. Insofar as, the second contention of the learned counsel that the applicant in his out of turn promotion should be assigned seniority of the year 1993, as it is in that year that his case was recommended and that he had fulfilled the criteria and become eligible for out of turn promotion for making requisite arrests of proclaimed offenders in a year preceding the date of recommendation, is concerned, support is sought to be drawn only from the decision of the Hon^{ble} Delhi High Court in Naresh Kumar (supra). The facts of the case reveal that pursuant to circular dated 29.11.1992, citation was issued in favour of the petitioner on 7.3.2001 recommending his name for out of turn promotion. He was, however, not granted out of turn promotion though he was granted commendation on 26.2.2002, in addition to a sum of Rs.5000/- as cash reward. The only ground on which the petitioner was denied out of turn promotion was that due to the stand taken by the respondents that benefit of circular dated 29.11.1992 could not be granted to him as in a later circular dated 21.5.2001, the method and manner of calculating arrests of proclaimed offenders was that the arrests occasioned by production warrants were not to be reckoned for arriving at the figure of 75 arrests entitling the petitioner to out of turn promotion. This was based on the respondents splitting up the petitioner's arrests of

proclaimed offenders into 59 physical arrests and 16 arrests through production warrants issued by courts. Naresh Kumar challenged denial of out of turn promotion to him before this Tribunal by placing reliance on circular dated 29.11.1992. The Tribunal while denying him the benefit of circular dated 29.11.1992, observed as follows:

“So far the plea of the respondents that these Circulars will have retrospective effect is concerned, we have no hesitation in rejecting the said contention. This is for the reason that on 7.3.2001, the Officer/In-charge, Police Station, Kotwali had recommended the claim of the applicant for out of turn promotion. The Circulars have been issued thereafter. Once the vested right had accrued to the applicant, if any, it could not have been withdrawn or taken away by a subsequent Circular. Therefore, the principle that a clarificatory circular necessarily will have a retrospective effect, has no application in the facts of the present case.”

The order of this Tribunal which was challenged in the High Court was set aside, by observing as follows:

“12. We are unable to agree with the conclusion of the Tribunal which denies the petitioner the benefit of the Circular of 29.11.1992 for the following reasons:

(a) Having arrived at a finding that the latter circular of 13th May, 2001 was not retrospective, the rationale of the said Circular could not be applied to the case of the petitioner particularly when the respondents had not challenged in this court the findings of the prospective operation of the Circular of 21st May, 2001.

(b) The respondents having applied the principle of adding the arrests of production warrants in the case of Surender Kumar Sand, could not deny it to the petitioner as such denial would violate Article 14 and 16.

(c) The recommendation for out of turn promotion was made on 7th March, 2001 and his claim being justified could not be covered under a circular issued on 21st May, 2001.

(d) In any case the rationale to deny the benefits of the arrests of the proclaimed offenders merely because it was on the basis of a production warrant does not appear to be wholly logical.”

The High Court further held that Naresh Kumar should be granted the same treatment as was granted to Surender Kumar Sand (applicant herein) and be given the benefit of circular dated 29.11.1992 so as to count even the arrests made through production warrants towards his out of turn promotion. The operative part of the order granting

relief to Naresh Kumar reads, thus:

“14. Accordingly, the writ petition is allowed and the Respondents are directed to give the benefit of Circular dated 29th November, 1992 to the Petitioner on or before 7th May, 2007 with consequential benefits not later than 30th April, 2007.

15. We clarify that consequential benefits when given shall not involve any emoluments for the past period. The financial benefits will be from the date of this judgement. However, all promotions and seniority will be from 1st April, 2001 as the Petitioner was recommended departmentally for this benefit on 7th March, 2001 as per the existing circular dated 29th November, 1992 (emphasis supplied).”

12. Learned counsel for the petitioner has submitted that the O.A. was within limitation inasmuch as the O.A. was filed by the petitioner on 10.01.2002 when he came to know of the seniority list circulated by the respondents on 29.11.2001. However, as stated by the respondents, the representation dated 10.01.2002 is not available on record. The second representation filed by the petitioner was dated 21.07.2006 which was apparently for pre-dating of his promotion for the purpose of getting further benefits. It is obvious that the petitioner who got benefit of the out of turn promotion w.e.f. 05.08.1994 cannot be said to have no knowledge of his out of turn promotion even though not only that he was promoted out of turn on 05.08.1994 but was also promoted regularly w.e.f. 18.08.1994.

13. In these circumstances, when the Rule provides that the out of turn promotion which is to be treated as adhoc promotion will have also to be considered by the DPC, it cannot be said that merely because the DPC was not held in 1993 but was held in 1994, any injustice has been caused to the petitioner who, as stated above, accepted the position for a

period of more than 13 years and has waken up in 2006 only. Thus, we do not find any infirmity in the order of the Tribunal and, accordingly, the writ petition is dismissed.

MOOL CHAND GARG, J.

ANIL KUMAR, J.

JANUARY 11, 2010

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