

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved On: 28th July, 2010
Judgment Delivered On: 30th July, 2010

+ **W.P.(C) NO.3331/2008**

MUKUND LAL Petitioner

Through: Mr. Shyam Babu, Advocate

versus

COMMISSIONER OF POLICE, DELHI & ORS. Respondents

Through: Ms. Sana Ansari for Ms. Zubeda
Begum, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. Claim of the writ petitioner, by and under WP(C)No.6602/1998, which was transferred to the Central Administrative Tribunal and was re-numbered as T.A.No.3/2006, was of denial of the benefits which flowed out of judgment and order dated 26.7.1984 when WP(C)No.79/1981 filed by the petitioner was allowed quashing the order of penalty imposed upon the petitioner. It was held that the petitioner would be entitled to all the consequential benefits.

2. The grievance of the petitioner in W.P.(C) No.6602/1998 was that during the period post issuance of a charge sheet to him and penalty being imposed and further till W.P.(C) No.79/1981 was decided, persons junior to him and in

particular the person immediately junior to him i.e. Constable Om Prakash was promoted as Head Constable and thereafter as ASI, SI and Inspector. The petitioner prayed in the writ petition that he be promoted as Head Constable then ASI then SI and finally as Inspector w.e.f. the dates Om Prakash was so promoted. Needless to state the claim was predicated on the ground that since he was charge-sheeted in the year 1972 his case for promotion was not considered till the year 1984 and as a result of the penalty imposed upon him being set aside vide judgment and order dated 26.7.1984 with a direction that the petitioner would be entitled to all consequential benefits, he was to be given promotion to all posts to which Om Prakash earned promotions.

3. It may be noted here that before filing the writ petition, the petitioner had filed a contempt petition alleging that the mandamus issued by this Court vide judgment and order dated 26.7.1984 when WP(C)No.79/1981 was allowed, has not been complied with. It was stated that the petitioner was eligible to be brought to the rank of Head Constable in the year 1974 and accordingly w.e.f. 30.5.1974 he was promoted as a Head Constable in view of the mandamus issued by this Court, but claim for further promotion was denied.

4. The contempt petition was disposed of vide order dated 17.3.1998 holding that in contempt proceedings substantive issues in dispute could not be decided and thus it was held that the remedy of the petitioner was to file a fresh writ petition, which he did when WP(C)No.6602/1998 was filed.

5. It may be noted here that WP(C)No.6602/1998 was transferred to the Central Administrative Tribunal vide order dated 16.1.2006 passed by a learned Single Judge of this Court holding that the dispute pertained to service under the Delhi

Police and the appropriate forum would be the Central Administrative Tribunal.

6. The petitioner sought a review of the order dated 16.1.2006 by filing an application for review being R.P.No.89/2006 and stated therein that his claim arose on issues pre-1982 and he may thus experience some issue on the bar of limitation; if raised by the respondents before the Tribunal.

7. Vide order dated 22.2.2006, the learned Single Judge disposed of R.P.No.89/2006, clarifying that the rights sought to be enforced by the petitioner, as pleaded, arose out of the judgment and order dated 26.7.1984 allowing WP(C)No.79/1981 and thus there was no scope for anyone to plead the bar of limitation.

8. The petitioner has not met with success before the Tribunal.

9. The Tribunal has noted that the petitioner was enlisted as a Constable in the year 1953 and was confirmed as Constable on 15.12.1960 and his name was brought in list B-II on 18.8.1961 and he was promoted as a Selection Grade Constable after three years and thereafter confirmed w.e.f. 16.11.1975; the date being revised to 30.5.1974. All these facts are not in dispute.

10. As regards further promotions, the Tribunal has noted that the right to earn promotions arose only when the order levying penalty was set aside vide judgment and order dated 26.7.1984 allowing WP(C)No.79/1981.

11. The Tribunal has noted in para 10 of the impugned order that the respondents have urged that the claim of the petitioner is barred by limitation and the only consequential benefits which could be given to him would be as were already granted by the respondent.

12. The Tribunal has concluded the issue in para 18 of the impugned order by holding that the events prior to 1972 had to be ignored and overlooked and could not be the subject matter of the dispute before the Tribunal and that events post 1972 could be considered, for the reason the charge-sheet was issued against the petitioner in the said year. Thus, the relief has been denied.

13. Unfortunately, the Tribunal has not brought out the position with clarity and had it been so done, there would have been no problem for us in understanding the dispute raised.

14. As is noted hereinabove, the grievance of the petitioner pertained to the promotions earned by constables junior to the petitioner and in particular Om Prakash, the person immediately junior to the petitioner, as a constable.

15. Let us make a chart of the career profile of the petitioner and Om Prakash. It is as under:

| MUKUND LAL | | SHRI OM PRAKASH | |
|---------------------------|-------------------|------------------------|-------------------|
| Rank | Date of Promotion | Rank | Date of Promotion |
| Constable | 12.10.1953 | Constable | 24.02.1954 |
| Confirmed as Constable | 15.12.1960 | Confirmed as Constable | 15.11.1962 |
| Selection grade Constable | 15.11.1962 | Selection Grade | 17.02.1967 |
| Head Const. | 30.05.1974 | Head Const. | 20.10.1967 |
| | | Promoted as ASI | 14.08.1974 |
| | | Confirmed as ASI | 01.08.1976 |
| | | Promoted as SI | 18.07.1979 |
| | | Promoted as Inspector | 1987 |

16. Anyone who would look at the tabulation afore-noted would immediately understand what the problem is. Petitioner joined as a Constable on 12.10.1953 and Om Prakash joined as a Constable after him on 24.2.1954. Petitioner was confirmed as a Constable on 15.12.1960 whereas Om Prakash was confirmed as a Constable on 15.11.1962. Further, petitioner was promoted as a constable selection grade on 15.11.1962 and Om Prakash was promoted as Constable selection grade on 17.2.1967.

17. Om Prakash was promoted as a Head Constable on 20.10.1967. Petitioner was not promoted as a Head Constable on or before said date and if he was aggrieved of a junior being promoted over his head, the remedy of the petitioner was to challenge the action in the year 1967.

18. He did not do so. He was charge-sheeted in the year 1972 and as a result thereof no further benefits could accrue to him. It was only when the judgment and order dated 26.7.1984 was passed that case of the petitioner for further promotion was considered.

19. What we want to highlight is the fact that Om Prakash stole a march over the petitioner when he earned the promotion as a Head Constable on 20.10.1967 and thus the Tribunal is absolutely correct to hold that by filing the writ petition in the year 1998 the petitioner could not open issues prior to the year 1972 for the reason what was the subject matter of the writ petition was the charge-sheet issued to the petitioner in the year 1972 and his promotions being denied post 1972 on account of his being charge-sheeted. The Tribunal is right in holding that events post 1972 could be the ones which could be agitated and not pre-1972.

20. It is apparent that it was too late in the day for the petitioner to question what took place on 20.10.1967.

21. We would be failing if we do not note that in the writ petition filed by the petitioner which ultimately got registered as T.A.No.3/2006, very cleverly the petitioner has omitted to state that Om Prakash was promoted as a Head constable on 20.10.1967. In the writ petition the petitioner has stated that Om Prakash joined as a Constable after him and that Om Prakash was confirmed as a Constable after him and further that Om Prakash earned selection grade after him. The petitioner has just not disclosed that Om Prakash was promoted as a Head Constable on 20.10.1967.

22. We must further add that the entire claim of the petitioner was predicated on the plea that he must earn such promotions as were earned by Om Prakash. Independent of said plea no other reasons were advanced for the claim of further promotion.

23. The writ petition is dismissed.

24. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

JULY 30, 2010
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