

HIGH COURT OF DELHI

Bench: Justice V. Kameswar Rao And Justice Anoop Kumar Mendiratta

Date of Decision: 06 November 2023

W.P.(C) 8820/2016

GNCT OF DELHI AND ORS.

..... Petitioners

Versus

AZAM KHAN

..... Respondent

Legislation:

Central Administrative Tribunal Act

Delhi Police (Promotion and Confirmation) Rules, 1980

Standing Order No. 4/1989

Subject: Challenge against the order of the Central Administrative Tribunal, which had granted out of turn promotion to the respondent based on his achievements in the National Shooting Championship, and whether such achievements can be considered equivalent to winning a gold medal in the National Games as per the prescribed criteria for out of turn promotion in the Delhi Police.

Headnotes:

Administrative Law – Judicial Review of Tribunal's Decision – Challenge against the Tribunal's decision allowing out-of-turn promotion based on sporting achievements – Tribunal's decision quashed due to incorrect application of relevant standing orders for promotion criteria. [Paras 1, 14-15, 22]

Promotion in Delhi Police – Criteria under Standing Order No. 4/1989 – Eligibility for promotion from Sub Inspector to Inspector based on sporting credentials – Distinction between National Games and National Shooting Championships clarified – Respondent's achievements in National Shooting Championships not equivalent to National Games as per rules, thereby not meeting the criteria for out-of-turn promotion. [Paras 6, 14-18]

Sports Achievements and Employment Benefits – Interpretation of Standing Order's provisions relating to out-of-turn promotion – Emphasis on the necessity of winning gold medals in National Games as per specific rules for eligibility – Respondent's gold medals in National Shooting Championships held under different rules not recognized for promotion. [Paras 14-18]

Precedents on Sports and Promotions – Reliance on the case of ASI Dheerga Pal Singh misplaced – Each case to be assessed on individual merits and specific criteria as outlined in the Standing Order – No "negative equity" permissible when terms are explicit. [Paras 20]

Tribunal's Overreach and Error in Judgment – Tribunal's misinterpretation of the distinction between National Games and National Shooting Championships – Tribunal's order equating the two set aside – Respondent

not entitled to out-of-turn promotion as per the specific criteria of the Standing Order. [Paras 15, 19, 22]

Referred Cases:

W.P.(C) 7593/2011

ASI Rajender Parsad v. Union of India and Ors., W.P.(C) 11279/2004

Representing Advocates:

Petitioners: Mrs. Avnish Ahlawat, SC, GNCTD (Services) with Mrs. Taniya Ahlawat, Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam & Mr. Mohnish Sehrawat, Advs.

Respondent: Mr. Chandra Shekhar, Mr. Ashwani Saini, and Mr. Prashant Shekhar, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this petition is to an order dated February 9, 2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in the Original Application being OA 3581/2013 whereby the Tribunal has allowed the OA filed by the respondent herein by stating in paragraph 6 onwards as under:

"6. In paragraph 5 (a) of the Standing Order (ibid), it has been provided that a Sub Inspector will be eligible for promotion to the rank of Inspector, if:-

- (1) He qualifies for the final round in Olympics. Or*
- (2) He wins a Medal in the Common Wealth/Asian Games. Or*
- (3) He wins Gold Medal in the National Games. Or (4) He wins three Gold Medal in All India Police Games.*

7. The applicant is claiming the benefit of category 5 (a) (3) of the aforementioned Standing Order, i.e., he has won gold medal in the National Games. However, the respondents have disputed the status of the games in which the applicant participated. According to them, the games were not the National Games. The only reason advanced by them for such stand is that the only event held as per International Shooting Union (ISU) Rules is equivalent to the National Games and since the National Shooting Championship is held as per National Rule to promote grass root level shooters, the same cannot be equated with National Games. It is not the case on behalf of the respondents that there is any other National Championship of Shooting conducted by the National Rifle Association or any other Organization as per the International Shooting Sports Federation (ISSF) Rule (earlier International Shooting Union (ISU)). Could it be so, only then a classification could be drawn between National Shooting Championship

and National Game. Once there is only one National Shooting Championship held as per the approved set of Rules, merely because the competition was held as per National Rules, it cannot be said that the same was not a National Game. It is also not the case of the respondents that the National Rifle Association of India is not recognized for Annual National Championship of Shooting Sports. Besides once the Annual National Championship of Shooting Sports is certified to be an equal to National Games in all respects, merely because the Championship was held as per particular set of Rules not decided by the applicant, he cannot be deprived of the benefits in terms of the provisions of Clause 5 (a) (3) of the order (ibid). 8. As far as the reference to the case of ASI Dheerga Pal Singh made by the applicant is concerned, the criterion for the same is different and there is sufficient substance in the plea raised by the respondents that the case of the applicant cannot be compared with the case of ASI Dheerga Pal Singh. 9. In view of the aforementioned, impugned order is quashed. Original Application is disposed of with direction to the respondents to act upon the order dated 22.09.2009 (Annexure A-8). No costs.”

2. The facts as noted from the record are that the respondent was appointed in Delhi Police, which is one of the petitioners, as temporary Sub-Inspector (Executive) on September 2, 1996 and remained under probation for two years. While undergoing basic training at Police Training School, he had an opportunity to participate in the 40th National Shooting Championship held in Chennai from January 15, 1997 to January 26, 1997 and obtained the following positions in the competition:

- i. Clay Pigeon Trap – 1st position.
- ii. Clay Pigeon Trap – 2nd position.
- iii. Clay Pigeon Skeet – 3rd position.
- iv. Clay Pigeon Skeet – 1st position.

3. He also participated in 42nd National Shooting Championship held in Chennai from January 12, 1999 to January 19, 1999 and secured 1st position. It was his case that in view of Standing Order No. 4/1989 ('Standing Order', for short), he is entitled to out of turn promotion and had also made a representation in this regard.

4. In terms of order dated September 22, 2009, the approval of the Lieutenant Governor, Delhi was conveyed for his out of turn promotion to the post of Inspector (Executive) under Rule 19 (ii) of Delhi Police (Promotion and Confirmation) Rules, 1980 ('Rules of 1980', for short). It appears that the matter of his promotion was reconsidered and the order of out of turn promotion of the respondent was withdrawn in terms of order dated February 8, 2010. The said order became the subject matter of a challenge in the

Original Application being OA No. 1135/2010 filed by the respondent herein, which was dismissed by the Tribunal on April 5, 2011.

5. The order of the Tribunal was challenged before this Court in **W.P.(C) 7593/2011**, wherein this Court vide order dated March 8, 2013 has set aside the order dated February 8, 2010, passed by the petitioners herein and remitted the matter back to the Commissioner of Police to re-consider the representation of the respondent for out of turn promotion afresh, in accordance with law. The same has resulted in the order dated April 10, 2013, passed by the petitioners herein, wherein, it was stated that the respondent did not participate in any of the competitions mentioned in Clause 5 of the Standing Order, inasmuch as, he had participated in the events of National Shooting Championship regarding which there is no mention in the Standing Order. It was also stated that equivalence of events / competitions in which the respondent won the medals, was checked with the events / competitions of National Games and it was found that the only event which is held as per International Shooting Union ('ISU', for short) Rules is National Games and the respondent had participated in the National Shooting Championship matches which are conducted as per rules framed by NMRAI, i.e., National Rules ('NR', for short) to promote shooting amongst grassroot level shooters. In other words, it was the case of the petitioners herein that since the respondent had not participated in the events which were conducted as per International Shooting Sports Federation ('ISSF', for short) Rules (earlier known as ISU, Rules), he is not entitled to avail the benefit of out of turn promotion.

6. Whereas, it was the case of the respondent before the Tribunal that the Standing Order nowhere specifies that a member of Delhi Police will be eligible for out of turn promotion only when he wins a gold medal in National Games conducted as per ISSF Rules or ISU Rules. It was stated that the stand taken by the petitioners herein, that only event held as per ISU Rules is equal to National Games, is baseless. It was also the case of the respondent that once he has participated in the National Games, as per NR, he cannot be denied the benefit of out of turn promotion.

7. The primary submission of Mrs. Avnish Ahlawat, learned Standing Counsel appearing for the petitioners is the one, which was taken by the petitioners herein before the Tribunal, which we have already noted above. Additionally, she would submit that the out of turn promotion is not a matter of right. The only right available to an employee is to be considered for promotion and the case of the respondent having been considered and it was

found that he is not entitled to out of turn promotion then the Tribunal was not justified in interfering with the decision of the petitioners by directing the out of turn promotion of the respondent.

8. Suffice to state, it was also the case of the respondent before the Tribunal that one ASI Dheerga Pal Singh, who had not won any gold medal in any National Games but had won only one gold medal in National Shooting Championship, has been granted the benefit of out of turn promotion. On this, it is the submission of Mrs. Ahlawat that the case of the respondent is not at par with the case of ASI Dheerga Pal Singh.

9. She has also relied upon the judgment of the Coordinate Bench of this Court in the case of **ASI Rajender Parsad v. Union of India and Ors., W.P.(C) 11279/2004** decided on **November 1, 2006**, wherein, as per her, it was held that the petitioner therein having participated in a friendly volleyball match between India and USSR, would not mean participation in International Games and as such, the said petition was dismissed.

10. On the other hand, Mr. Chandra Shekhar, learned counsel appearing for the respondent would submit that respondent has achieved excellence in sports, more particularly as an ace trap shooter. He has participated in several National Shooting Championship competitions and won several medals and positions. In the 40th National Shooting Championship, held in Chennai in the year 1997, he won three gold medals in the individual events. According to him, he has also participated in 42nd National Shooting Championship held in Chennai in the year 1999 and there also, he won various medals.

11. It is his submission that keeping in view the medals won by the respondent in the afore-mentioned championships, he is entitled to out of turn promotion. He has also tried to justify the impugned order of the Tribunal primarily on the same grounds, which were taken by him before the Tribunal. According to him, the impugned order of the Tribunal does not call for any interference and as such, the petition is liable to be dismissed.

12. Having heard the learned counsel for the parties, at the outset, we may state, that the present petition is a third round of litigation, inasmuch as, the respondent had earlier filed two petitions, one of the petitions being **OA 1135/2010** which was decided on April 5, 2011, whereby the Tribunal upheld the action of the petitioners in withdrawing the out of turn promotion granted to the respondent, vide order dated February 8, 2010. The said order became the subject matter of challenge before this Court in **W.P.(C) 7593/2011**, whereby the order dated February 8, 2010 was set aside and the

Commissioner of Police was directed to reconsider the representation of the respondent for out of turn promotion, afresh, in accordance with law. Pursuant thereto, the impugned order dated April 10, 2013 was passed by the petitioners, wherein, following has been stated:

“F. R. Representation submitted by SI (Exe.) Azam Khan No. D/2104 for out of turn promotion on sports basis in terms of Hon’ble High Court’s order dated 8.3.2013.

Vide F.R. SI (Exe.) Azam Khan No. D/2104 has submitted a representation addressed to the Commissioner of Police, Delhi for grant of out of turn promotion on sports basis in terms of Hon’ble Delhi High Court order dated 8.3.2013 in W.P.(C) No. 7593/2011.

Since the representation is addressed to the Commisioner of Police, Delhi, if approved, we may forward it to Addl. DCP / Estt. for processing the same and taking further necessary action.

Submitted please.

Spl. CP/Int.

Addl. DCP/Estt.

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XXXXX

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To become a Sub-Inspector in the Delhi Police, a candidate has to figure in the merit of all India Competition which is conducted by SSC and is quite tough. But SI Azam Khan was appointed as direct Sub-Inspector, without such competition, on sports basis. The officer is expected to perform well, win medals in shooting events and bring laurels to the department. He is supposed to justify his privileged appointment in the rank of Sub-Inspector. Each winning of medal will not entitle him to a promotion. The performance of the petitioner was not of such an exceptional order so as to earn him out of turn promotion within two years of availing the benefit of sports quota at the training stage of initial recruitment. Even Govt. of India, DOPT's instructions provide that in making an appointment to any post under the government by promotion, no preference shall be given to a meritorious sportsman though that fact may be taken into account in assessing his overall merit.

After going through the facts of the case as discussed above, the case of Sub- Inspector (Exe.) Azam Khan, No. D2104 is found not covered under the purview of Standing Order No.4/1989 read-with Rule 19(ii) of Delhi Police (Promotion & Confirmation) Rules, 1980. Accordingly, the representation is rejected being devoid of merits. SI(Exe.) Azam Khan, No.D2104 may be informed accordingly.

*(NEERAJ KUMAR)
COMMISSIONER OF POLICE:
DELHI.”*

13. The afore-mentioned order became the subject matter of challenge before the Tribunal, wherein the impugned order has been passed.

14. The issue involved in the present petition is whether the medals won by the respondent in the 40th National Shooting Championship can be considered equivalent to medals won in the National Games to enable him to get out of turn promotion. This we say so, for the reason, that for a Sub-Inspector to become eligible for promotion to the rank of Inspector, the following becomes relevant:

“(1) He qualifies for the final found in Olympics., Or

(2) He wins a Medal in the Common Wealth/Asian Games, Or

*(3) **He wins Gold Medal in the National Games** Or*

(4) He wins three Gold Medal in All India Police Games.”

(emphasis supplied)

15. The aforesaid would reveal that, it is only when a SubInspector wins a gold medal in the National Games, he becomes eligible for promotion to the rank of Inspector. It is the conceded case of the respondent that, he won the gold medal in the 40th National Shooting Championship and the same is not in dispute. But at the same time, National Games cannot be equated with National Shooting Championship, specifically as far as, this particular sport is concerned.

This we say so, in view of the stand taken by the petitioners before the Tribunal, which has been noted by the Tribunal in the impugned order and reproduced by us above.

16. It is clear from the stand taken by the petitioners that the National Games are held as per the ISU Rules, (now called as ISSF Rules), unlike the National Shooting Championship, which is held as per the rules framed by NMRAI, i.e., under the NR. So, in that sense, it is only when a Sub-Inspector wins a gold medal in a competition which is held in the National Games under the ISSF Rules, he becomes eligible for out of turn promotion and such is not a case here. In fact, Sports Authority of India in its letter dated August 6, 1999 has drawn a distinction between the National Games and National Shooting Championship in the following manner:

18. So, it necessarily follows that any event which is held under NR and not under ISSF Rules cannot be given same status as contemplated under the Standing Order. In other words, any gold medal won in the National Shooting Championship will not fall within the parameters of the Standing Order.

19. If that be so, we are of the view that the petitioners are justified in rejecting the representation made by the respondent, vide order dated April 10, 2013. The Tribunal has clearly erred in not appreciating the distinction, in the manner done by us, in the aforesaid paragraphs. In fact, the Tribunal in paragraph 7 of the impugned order, which we have reproduced above, has disagreed with the distinction drawn by the petitioners, by holding that the events held in National Shooting Championship are equivalent to events held in National Games. With respect, such equivalence could not have been drawn by the Tribunal, more so, when the petitioners themselves had brought the difference between National Games and National Shooting Championship. 20. Insofar as, reliance placed by the respondent in the case of one ASI Dheerga Pal Singh is concerned, though the petitioners have tried to justify, that his promotion was only an *ad hoc* promotion from ASI to SI and he had participated in different events, in any case, in view of our observation qua Standing Order, the petitioner cannot seek the benefit of out of turn promotion only on the ground that, one ASI Dheerga Pal Singh has been given the same benefit, as there cannot be any negative equity, specially when the terms of the Standing Order are very clear.

21. Though, Mrs. Ahlawat has also relied upon certain judgments in respect of her submission that the out of turn promotion is not a matter of right, we are of the view, that the issue has to be seen in the context of the Standing Order which governs the out of turn promotion in Delhi Police and as already held above, the case of respondent is not covered by the Standing Order.

22. If that be so, in view of our discussion above, the Tribunal has clearly erred in allowing the OA of the respondent. Accordingly, the order of the Tribunal is set aside. The petition is disposed of. No costs.

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