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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.3323 of 2002

New Delhi, this the 2nd day of August, 2004

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)
HON'BLE MR.S.A. SINGH, MEMBER (A)

Hari Mitra Bhandari
S/o Shri Y.P. Bhandari
Aged 61 years (DOB: 1/8/1941)
Flat No.60 Vishal Apartments
Plot No.5 Vasundhara Enclave,
Delhi-110 096.

...Applicant

(By Advocate: Shri D.C. Vohra)

Versus

1. Union of India
Through the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-110 011.

2. The Director,
Intelligence Bureau,
Ministry of Home Affairs,
Man Singh Road,
New Delhi-110 011.

..Respondents

(By Advocate: Shri S.M. Arif)

O R D E R(ORAL)

By Hon'ble Mr.Kuldip Singh, Member(Judl)

The applicant has filed this OA in which he has assailed an order dated 20.3.2002 and another order dated 8.4.2002 issued by respondent No.2 rejecting the representation of the applicant.

2. The case of the applicant is that he had rendered 11 years of service as Assistant Director/Technical with respondent No.2 and was eligible for promotion as Deputy Director in terms of the Recruitment Rules but the financial upgradation given to him is lower than the one given to his juniors.

3. Facts, as alleged by the applicant in brief

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are, that the applicant was employed with respondent No.2 for the period 15.11.1965 till his superannuation on 31.7.2001. On 1.12.1989 he was promoted as Assistant Director/Technical in which post he had rendered a total service from 1.12.1989 till his superannuation. The post carried the revised pay scale of Rs.10,000-15,200 effective from 1.1.1996.

4. The next promotional post under the Recruitment Rules was that of Deputy Director/Technical which carried the pay scale of Rs.16,400-20000. The eligibility criteria for promotion to the said higher post was 10 years service as AD/Technical and the applicant had become eligible for the said post since 1999 when he was still in service as per the Recruitment Rules which is at Annexure A-2.

5. It is further submitted that since there was acute stagnation in the office of respondent No.2 and in order to ameliorate the lot of stagnating employees, the Government had introduced the system of special allowance and applicant was also paid Rs.400/- per month and was amongst the first 8 incumbents of the post of AD/Technical who was eligible for promotion to the post of Deputy Director/Technical.

6. It is further stated that during 1996-1997 the 5th CPC submitted its report which was accepted by the Government as per the recommendations vide the DOP&T OM dated 25.5.1998 which dealt with the merger of pay scales as to provide promotion from the feeder grade to the

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merged grade according to the revised qualifying service as per Annexure A-3. However, the respondent took no action at all for almost three and a half years as this required amendment of the Recruitment Rules nor did it consider persons like the applicant under the existing Recruitment Rules.

7. It is further submitted that the Government neither implemented the merged structure scales nor did it amend the Recruitment Rules and despite the fact that the applicant was eligible for promotion to the post of Deputy Director no steps were taken for that also. However, in terms of an executive order dated 5.2.2001 two new grades of JDD/Technical and ADD/Technical were introduced between the statutory existing posts of AD/Technical and DD/Technical. The 32 posts of AD/Technical were distributed in the said grades as under:-

| Existing | | Revised | |
|-----------------------|--|-------------------------------|----------------------------|
| Name and No. of posts | Revised Pay pay scale | Revised Titles | Proposed pay scale |
| AD/Tech (32) | 10000-15200 + Rs.400 as Spl. Pay | JDD/Tech (24) ADD/Tech (8) | 12000-16500 14300-18300 |
| DD/Tech (10) | 16400-20000 | DD/Tech | 16400-20000" |

8. In terms of paras 2 and 3 of the circular dated 5.2.2001 while the lower post incumbents were given the financial upgradation w.e.f. 1.1.1996 the higher post incumbents were given upgradation w.e.f. 5.2.2001

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and thus it has not only discriminated but also wiped out 6 years from the total of 11 years service of incumbents like the applicant without any regard for rule of law and without any compunction or compassion for their legal rights.

9. Even in the truncated scheme the applicant was to be placed in the pay scale of Rs.14300-18300 but he was given the pay scale of Rs.12500-16500 against the rules. The respondents also determined the pensionary benefits of the applicant on the basis of pay drawn by the applicant as AD/Technical. Representation of the applicant had also been rejected vide Annexure A-1.

10. The applicant submits that since under the existing rules he was eligible for the post of Deputy Director and was, in fact, to be placed in the pay scale of Rs.16400-20000. He was in fact considered for the post by the DPC when he was still in service but for lack of vacancies, he could not be given promotion to the post of Deputy Director/Technical.

11. The applicant further stated that the order of the respondents denying him the pay scale of Rs.14300-18300 is also wrong because even in the scale of financial upgradation to the post of JDD/Technical and ADD/Technical introduced vide Executive Instructions dated 5.2.2001 the applicant was first among the eight of the 32 incumbents in the feeder category of AD/Technical and thus had the legal right of being placed in the pay scale of Rs.14300-18300 instead of having been placed in the lower pay scale of Rs.12000-15200 w.e.f. 1.1.1996 or

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at least from the date of the order viz. 5.2.2001. Thus the applicant have been treated with a hostile discrimination when he was not placed in the pay scale of Rs.14300-183000 whereas his juniors had been given the said pay scale.

12. The respondents who are contesting the OA have pleaded that as per the scheme of 5.2.2001 the two pay scales of JDD/Technical in the scale of Rs.12000-16500 and ADD/Technical in the pay scale of Rs.14300-18300 were introduced but the actual placement of JDDs/Tech (Rs.12000-16500) was in the higher pay scale of Rs.14300-18300 and its redesignation as ADD/Tech is against subject to fulfilment of residency requirement of 5 years and on completion of such formalities as have been prescribed by the Government of India, DOP&T. The residency required for placement of officers holding pay scale of Rs. 10000-15200 in the scale of Rs.12000-16500 is 5 year and as such only those ADs/Technical who had completed 5 years in the pay scale of Rs.10000-15200 as on 5.2.2001 qualified to be placed in the pay scale of Rs.12000-16500. The applicant, the then AD/Technical, was also accordingly placed in the higher scale of Rs.12000-16500 and designated as JDD/Technical w.e.f. 5.2.2001 so his pay was also fixed in the scale of Rs.12000-16500. He could not be placed in the pay scale of Rs.14300-183000 as the same was again subject to fulfilment of residency requirement of 5 years and completion of such formalities as prescribed by the DOP&T so the eligibility period for promotion from

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JDD/Technical to the rank of ADD/Technical is again 5 years which the applicant did not fulfil so he could not be placed in the pays scale for Rs.14300-18300.

13. The learned counsel for the applicant submitted that the order dated 5.2.2001 is an executive order and not based on recruitment rules because the recommendations of 5th Pay Commission also required that the statutory requirement of rules are to be modified for this restructuring. Since statutory rules had not been modified, the applicant was eligible for a much higher post of Deputy Director instead of Additional Deputy Director though for lack of vacancy he could not be considered but he could not be placed in the post of JD/Technical. Once he was amongst one of the first 8 candidates in the cadre of 32 officers and out of which 8 posts had been kept for ADD/Technical in the pay scale of Rs.14300-18300 and 24 posts were kept in JDD/Technical, so the applicant being one of the first 8 candidates was entitled to be placed in the pay scale of Rs.14300-18300.

14. The learned counsel for the applicant has also submitted that recently vide an order dated 20.7.2004 the Government has itself delinked the requirement of residency and since the applicant had already superannuated probably his case has not been considered. The applicant has submitted across the bar the letter dated 20.7.2004 the recital to the letter reads as under:-

" In the matter of restructuring of Technical Cadre posts in IB, MHA, vide their Order No.12/Est@/97(3)/IV/IB/PF-II-621 dated 18/23.6.2004 have now clarified that MOF had approved redistribution of 32

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posts of AD/Technical in the pay scale of Rs.10,000-325-15,200/- plus special pay of Rs.400/- p.m. as JDD/TEchnical of Rs.12000-375-16500/- (24 posts) and ADD/Technical in pay scale of Rs.14300-18300 (8 posts) without linking it to the requirement of residency.


2. Consequently, the following ADs/Technical who were AD/Technical as on 5.2.2001 and were not redesignated as JDD/TEchnical w.e.f. 5.2.2001 are granted the replacement pay scale of Rs.12000-375-16500 with designation as JDD/Technical as per their position in the existing seniority list of ADs/Technical without linking it to the residency requirement (emphasis supplied)".

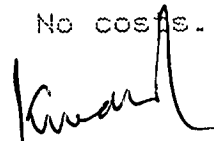
15. The perusal of this letter would go to show that the Government has delinked the requirement of residency so the applicant is also entitled to the benefit of the same. Even otherwise we may mention that the requirement of residency did not have nay sanction of the statutory rules so the same could not have been enforced and the seniormost persons should have been placed in the pay scale of ADD/Technical Rs.14300-18300 out of the 32 posts and the remaining 24 persons could have been placed in the scale of JDD/Technical in the scale of Rs.12000-16500. The excutive could not assume the power of legilative to put residency of 5 years for placing in the scale of Rs.14300-18300.

16. In view of the above, we are also of the opinion that the department could not insist upon the linking of the requirement of residency and since there is no dispute that the applicant being one of the seniormost 8 persons and had been considered for the post of Deputy Director and was required to be placed in the pay scale of JDD/Technical in the pay scale of Rs.14300-18300.

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17. Thus we allow the OA and grant the relief as prayed in para 3(2) above. Accordingly his pay and other retiral benefits be revised and pension be also revised. This may be done within a period of 4 months from the date of receipt of a copy of this order. No costs.


(S.A. SINGH)
MEMBER (A)


(KULDIP SINGH)
MEMBER(JUDL)

/Rakesh