

CENTRAL ADMTNSTRATIVE TRIBUNAL,
PRTNCPAL BNCH

O.A. No.2915 OF 2002

(2)

New Delhi, this the 25th day of August, 2003

**HON'BLE SHRI SHANKER RAJU, JUDICIAL MEMBER
HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER**

1. Sh. R S Dwivedi S/o Late Sh. S L Dwivedi,
R/o 103, Sector 3, Type IV, Sadiq Nagar,
Presently posted as:
Superintendent of Police,
CBI Special Crime Branch-T,
CGO Complex, Block-A,
Lodhi Road, New Delhi
2. Sh. P. S. Nair, S/o Late Sh. K. Krina Pillai,
R/o 1150, Sector 12,
B k Puram, New Delhi
Presently posted as
Superintendent of Police,
CBI, STF, New Delhi
3. Sh. Kripal Singh S/o Sh. Kashi Singh,
Presently posted as:
Superintendent of Police,
CBI, STU, XVI, Jammu
4. Sh. Raj Kishore Singh
S/o Sh. Sarva Narain Singh,
Presently posted as
Superintendent of Police,
CBI, ACB, Jammu (J&K)
STU - XV Chandigarh.

....Applicants

(By Advocate : Shri Shyam Babu)

Versus

1. Union of India through
Secretary,
Department of Personnel & Training
Min. of Personnel, Public Grievances and
Pension , North Block, New Delhi
2. Director,
Central Bureau of Investigation,
4th Floor, CGO Complex, Lodhi Road,
New Delhi 110001.
3. Union of India
through Secretary,
Expenditure, Ministry of Finance,
New Delhi.

....Respondents

(By Advocate : Shri N.S. Mehta)

Signature

ORDER (ORAL)

SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER:

This application under section 19 of the Administrative Tribunals Act, 1985 has been filed jointly by four applicants, who are Superintendent of Police in Central Bureau of Investigation (in short 'SP, CBI'), assailing the order of 27.9.2002 (Annexure AA) rejecting the representation submitted by the applicants, order dated 17.11.1998 (Annexure E) prescribing replacement pay scale of Rs.12000-375-16500 (pre-revised Rs.3700-5000) for the post of Superintendent of Police and order dated 9.3.2001 (Annexure A) being an order of promotion by OL which the applicants have been promoted as SP, CBI in the scale of Rs.12000-16500.

2. It is claimed that all the four applicants were appointed regularly as Deputy Superintendent of Police (in short 'DSP') in April, 1954. The applicants after rendering eight years of regular service as Deputy Superintendent of Police were eligible for promotion as SP, CBI as per Recruitment Rules of 1963. These Rules were superseded by Recruitment Rules of 31.1.1997 (Annexure B). As per these Rules, the post of SP, CBI carries a pay scale of Rs.1100-5300. 50% of the vacancies were to be filled up by promotion and remaining 50% by transfer on deputation basis. The qualifying service for such regular promotion has been prescribed as DSP with 13 years of regular service. It is claimed that there were certain vacancies in the promotion quota relating to the years 1996, 1997 and 1998. These

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posts were filled up by Departmental Promotion Committee (in short 'DPC') convened in the year 2001. Pending regular promotion against these vacancies, some DSPs were promoted as SPS, CBT on ad hoc basis in the year 1995 initially for six months and the period was extended from time to time. Such ad hoc SPS, CBT promotees were placed in the pay scale of Rs.4100-5300. The claim of the applicants is that this pay scale as Rs.4100-5300 remained in operation till new Recruitment Rules effective from 7.9.2000 were notified by which the pay scale was reduced to Rs.12000-16500 (pre-revised Rs.3700-5000). Some of the DSPs, who were promoted as SPS, CBT on ad hoc basis in the year 1995, had filed an Original Application being OA No.1335/1998, which was disposed of by an order dated 6.9.2000 by this Tribunal. The reliefs claimed in that Original Application was that DPC for vacancies of 1995, 1996, 1997 and 1998 on annual basis should be held for promotion on regular basis. The said Original Application was disposed of with the following directions:-

"11. In view of the foregoing discussion, upholding the contentions of the learned counsel for the applicants, we hold that the respondents being obligated under law to have filled up the vacancies arising from 1995 till date as and when they arose, had failed in their obligation and the respondents could be compelled to fill up the vacancies. The OA, therefore, succeeds. The respondents are directed to hold DPCs to fill up the vacancies that occurred in 1995, 1996, 1997, 1998 and thereafter till date in accordance with the rules existing on the date when the vacancies arose and to consider the cases of the applicants and others for promotion

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to the posts of SP on regular basis for the vacancies of 1996 and 1997 and the vacancies arising from 1998 onwards on ad hoc basis subject to review after the recruitment rules of 1997 are amended and pass orders, granting all consequential benefits to the applicants within a period of three months from the date of receipt of a copy of this order. The O.A. is accordingly allowed with costs of Rs. 5,000/- (Rupees Five Thousand Only)."

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3. The claim of the learned counsel of the applicants is that the applicants have been promoted on regular basis against the posts available for the years 1997 and 1998 when Recruitment Rules notified on 31.1.1997 (Annexure B) were in force. Learned counsel of the applicants invited attention to the impugned order of promotion dated 9.3.2001 (Annexure A) wherein it has been stated that the officers shown at Srl. No.1 to 10 and 20 and 21 already working as Superintendents of Police on ad hoc basis and drawing pay in the scale of Rs.14300-18300 as personal to them shall on their promotion were allowed the scale of Rs.14300-18300. The remaining officers, who included the applicants, shall on their promotion to the posts of Superintendent of Police, draw their salaries in the scale of the post, i.e., Rs.12000-16500. According to the learned counsel, this impugned order is a case of hostile discrimination so far as the applicants are concerned. As per order of this Tribunal dated 6.9.2000 in OA 1335/1998, the promotions were to be made in the year when the vacancies arose. If the respondents failed to promote the applicants either on ad hoc basis or regular basis at the time the vacancies arose and the

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applicants were eligible for being promoted, they cannot be denied the benefit of scale of pay admissible to them. It is further submitted by the learned counsel that the Recruitment Rules dated 31.1.1997 prescribed the scale of Rs.4100-5300. However, by an administrative order dated 17.11.1998 (Annexure F), the scale of SP, CBT was brought down to Rs.12000 - 16500 (pre-revised Rs.3700-5000). According to the learned counsel, this administrative order cannot curtail rights available under the Recruitment Rules of 31.1.1997 till the same were replaced by fresh Recruitment Rules w.e.f. 17.9.2000. Therefore, this administrative order of 17.11.1998 being contrary to the provisions contained in the Recruitment Rules should be quashed and set aside.

4. The respondents have opposed this Original Application. The learned senior counsel of the respondents stated that the scale of Rs.12000-16500 has been allowed to the applicants on the recommendations of the Vth Central Pay Commission as notified by the DOP&T vide their order dated 1.7.1998 read with corrigendum dated 17.11.1998. The existing SPs of CBT in the pre-revised scale of Rs.4100-5300 were given the revised scale of Rs.14300-18300 corresponding to pre-revised scale of Rs.4100-5300/4500-5700 as personal to them w.e.f. 1.1.1996. Those SPs who were promoted after 2.7.1998 have been allowed the pay scale of Rs.12000-16500. The learned senior counsel of the respondents pointed

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out that the applicants were promoted in the year 2001 when the pay scale of Rs.12000-16500 was applicable to the post of SP, CBT. Therefore, this scale was given to them correctly as per the Rules applicable on the date of their promotion. It is further pointed out that the applicants discharged the duties of promotion post, i.e. Superintendent of Police in the year 2001. Therefore, they were not entitled for the pay scale of Rs.4100-5300 (pre-revised) applicable in the year 1997 as they did not work as Superintendent of Police in the said years, i.e., 1997 and 1998.

5. In the rejoinder, the learned counsel of the applicants stated that the DPC was held for the vacancies of the years 1996, 1997 and 1998, according to the Recruitment Rules which were prevalent at that time. The Recruitment Rules provided for pay scale of Rs.4100-5300 for the post of SP, CBT during the year 1996 and 1997 onwards till the same were revised by the Recruitment Rules w.e.f. 7.9.2000. Learned counsel of the applicants reiterated his contentions regarding promotion of the applicants against the vacancies when the Recruitment Rules of 31.1.1997 were in operation. According to him, the delay on the part of the respondents is responsible for not allowing the applicants to work as SP, CBT. Therefore, the impugned orders, being contrary to the provisions in the Recruitment Rules, should be declared not applicable and the claims of the applicants should be allowed.

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6. We have heard learned counsel for the parties and have perused the materials available on record.

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7. There is no dispute that the applicants were promoted to the rank of Superintendent of Police in the year 2001 against the vacancies of the years 1997 and 1998. This Tribunal by order dated 6.9.2000 in OA 1335/1998 had directed the respondents to make regular promotion to the posts of Superintendent of Police by holding the DPCs to fill up the vacancies that occurred in 1996, 1997 and 1998 and thereafter till date in accordance with Rules existing on the date when the vacancies arose. In view of the fact that the vacancies against which the applicants have been promoted pertain to the year 1997 and 1998, the Recruitment Rules of 31.1.1997 were applicable. These Rules provided scale of pay of Rs.4100-5300 (Revised to Rs.14300-18300) for the post of SP, CBT. The Recruitment Rules providing for lower pay scale of Rs.3700-5000 (Revised to Rs.12000-16500) were notified only w.e.f. 7.9.2000. We are of the view that the delay in convening the DPC cannot deprive the applicants of their legitimate rights to higher pay scale of Rs.14300-18300 which was admissible to them when the vacancies arose. We, therefore, direct the respondents to allow them the same pay scale as has been allowed in the cases of certain SPs, CBT, who were earlier promoted on ad hoc basis.

8. In view of the above, this OA is allowed. The respondents are directed to give consequential

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benefits to the applicants within a period of three months from the date of receipt of a copy of this order. In the facts of this case, there will be no order as to costs.

R.K. Upadhyaya

(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER

S. Raju

(SHANKER RAJU)
JUDICIAL MEMBER

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