

Central Administrative Tribunal, Principal Bench

O.A. 163/1999

New Delhi, this the 14th day of November, 2000

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mr. M.P. Singh, Member (A)

(10)

K.C. Behera S/o Late Shri Arikhit Behera
R/o C-170 Nanak Pura, Moti Bagh-II,
New Delhi. , , Applicant

By Advocate: Shri G.C. Chaman.

Versus

1. Union of India
Through Secretary,
Ministry of Home Affairs,
Govt. of India, :
North Block,
New Delhi.
2. Director Intelligence Bureau,
Ministry of Home Affairs,
Govt. of India,
North Block,
New Delhi. , , Respondents

By Advocate: Shri N.S. Mehta.

ORDER

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

The applicant is aggrieved of being deprived of promotion to the higher grade of Dy. Director with retrospective effect for which his appointment was approved by the Appointments Committee of Cabinet (ACC) and duly notified, but by a verbal order he was superseded by his juniors and was subjected to loss of pay, humiliation and loss of retirement benefits and pension.

2. The facts in brief are that the applicant was working as Assistant Director and was posted in the set up of Police Advisor to the Royal Govt. of Bhutan as Assistant Director/Superintendent of Police. Later on he was approved for promotion for the post of Dy. Director

h

along with two others vide Annexure A-3. The case of the applicant is that on receiving the promotion order he was expected to hand over charge to the next junior and to come over to Delhi for taking over charge of the next higher post of Dy. Director. But since there was no one working as junior to him who could be handed over charge and his next junior was only a PS who was not from the set-up of police and, therefore, charge could not be handed over to him. Although a post of Dy. Director-DIG of Police was lying vacant in the police set-up of PA Bhutan but applicant was not allowed to take over charge of the said post for the reasons best known to the respondents and he was compelled to continue as Assistant Director in the set-up of PA Bhutan and thus he was prevented to join as Dy. Director on promotion and could not retain his seniority over his juniors who were placed on probation then as Dy. Director while he remained on deputation with the setup of P.A. Bhutan.

(11)

3. It is further stated that he has also been writing letters and making representations but he was not told in categorical terms to whom he has to hand over charge and whether to join and not and later on in April, 1997 another promotion order was issued vide which 3 juniors to the applicant had been promoted to work as Dy. Directors and his juniors had taken charge on 14.3.97, whereas the applicant is relieved on October, 20, 1997 and assumed the charge of the post of Dy. Director on 20.11.1997 which has rendered him to become junior to his colleagues, who were promoted by second order of promotion and who had taken charge on 14.3.97, so the applicant has prayed that the respondents should be directed to grant

k

the applicant promotion with retrospective effect as per the order Annexure A-3, i.e., the date from when his two other colleagues were promoted along with him and taken charge of the senior post. As such it is prayed that the applicant should be allowed consequential benefits along with 18% interest.

(12)

4. The application is contested by the respondents. In the reply it is stated that the applicant had requested for change of posting vide his letter dated 7.10.1996. Accordingly vide order dated 1.11.1996 his posting to I.B. Headquarters was issued and he was asked to hand over charge to his next junior and join at I.B. Headquarters vide message dated 6.1.1997. However, Shri Behera, the applicant did not comply with the order. In October, 1997 another letter was issued and thereafter applicant handed over charge to PA to Bhutan set-up and joined at I.B. Headquarters at Delhi as Deputy Director. It is denied that applicant has sent any communication between 6.1.1997 to 8.10.1997, as contended by him.

5. It is further submitted that as regards NBR benefits is concerned it is stated that there should be at least one officer junior to him who has been given promotion in the cadre. The benefit of NBR is not admissible when a person is deputed to regularly constituted ex-cadre post abroad and since the applicant was holding an ex-cadre post at Bhutan and was juniormost in the panel approved in September, 1990, so he is not entitled for NBR benefits. The request of the applicant

h

was duly considered whenever he represented for relief on the subject, but the same could not be accepted as the Rules do not permit.

(3)

6. We have heard the learned counsel for the parties and have gone through the records of the case.

7. Shri G.S. Chaman appearing for the applicant submitted that since his two colleagues who were promoted along with him vide Annexure A-3 had taken over charge from an earlier date, so he is also entitled for being given the benefits of promotion from the date when his juniors along with whom his promotion orders were issued, as such the applicant should be allowed the same benefit. However, from a perusal of the order Annexure A-3 we find that this order itself shows that the persons mentioned in the promotion list are to officiate as Dy. Directors from the dates they assume the charge of the post against the places indicated against each. In the said panel dated 20.9.96, the applicant is shown at S.No.3 and his two other colleagues were at S.Nos.1 and 2 and the promotions were to take effect from the date they assume the charge. Since the applicant could not assume charge of the post of Dy. Director SIB Bhopal along with his two other colleagues and he had been entering into correspondence and had also made a representation for transfer to Delhi on compassionate grounds, so that will not entitle him to the benefits of the posts of Dy. Director from the date when his two other senior colleagues had taken charge. Even the NBR as contended by Shri Chaman does not apply to such like circumstances. The NBR envisages that there should be at least a person junior to the applicant who

h

(A)

had assumed the charge of the higher post earlier to the applicant himself. Since none junior to the applicant had assumed charge of the higher post than the applicant as his two other colleagues who were senior to him, so the applicant could not be given the benefit of the NBR when Shri K. Krishnan and S.L. Prakash had assumed the charge of the post of Dy. Director. It is only by the subsequent order when three other persons who were appointed as Dy. Director on 14.3.97 though junior to the applicant had assumed charge of the post, so the applicant can have legitimate grievance under the NBR rules when his junior had assumed the charge.

8. In this case though the applicant had assumed charge of the post of Dy. Director on 20.10.97 almost after a period of 7 months from the date when his junior colleagues were promoted to the post of Dy. Director vide order dated 1.4.97 Annexure A-16, whereby three persons were shown to have assumed charge on 14.3.97, so at best the applicant can claim the benefit of NBR w.e.f. 14.3.97.

9. Even against this Shri N.S. Mehta appearing for the department submitted that it is the applicant who himself had not assumed charge of the post of Dy. Director earlier because he was getting some foreign allowance and he has taken a plea that there was no one else junior to him to whom he could have handed over the charge but the document on record (Annexure A-18) show that the applicant had handed over the charge at Siliguri office and had assumed charge on 20.10.1997 at Delhi. Thus he could have joined earlier also. Now he cannot raise the plea that there was no one to whom he could have handed over the charge so the applicant is not entitled

k

for the benefits of NBR.

10. However, to our mind, this contention of the learned counsel of the respondents has no merits because the correspondence on record clearly shows that after the promotion order Annexure A-3 was issued, he had sent a communication seeking instructions as to whom he had to hand over the charge and he was asked to wait as per Annexure A-6 and no clear instructions were sent to him to hand over the charge at Siliguri since no immediate junior was available at Shutan. Thus, to our mind, the applicant is entitled for promotion at least from the date, when his juniors had assumed the charge of Dy. Director as per subsequent order vide Annexure A-16 which shows that the second batch of the officers had assumed charge on 14.3.97 who were all juniors to the applicant, so the applicant we hold that the applicant is also entitled for all the consequential benefits for the post of Dy. Director w.e.f. 14.3.97 and he should be given all the consequential benefits from that date when his juniors had taken over charge within a period of 2 months from the date of receipt of a copy of this order. Yours in D.A. is partly allowed to be extent as stated above in
 11. No costs.

M.P. Singh
 (M.P. Singh)
 Member (A)

Kuldip Singh
 (Kuldip Singh)
 Member (J)

Rakes