

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 199/99

New Delhi, this the 25 day of ~~October~~ November, 2000

Hon'ble Mr. Justice V.Rajagopala Reddy, VC (J)
Hon'ble Sh. Govindan S. Tampi, Member (Admn)

1. K.K.Bhardwaj s/o Pyare Lal
r/o 438 Chiragh Delhi, New Delhi - 17.
2. Rajinder Kumar s/o A.N.Thakkar
r/o J-136 Patel Nagar-I, Ghaziabad
3. Ashwani Kumar s/o Rameshwar DAss
r/o Sector VIII/440 R.K.Puram, N.Delhi
4. Mrs. Mythili Sharma w/o Anil Sharma
r/o 31 Sharda Aptts. 1st Floor
5. Miss Poonam Dahara d/o R.D.Dahara
r/o 195 Vinoba Puri, Lajpat Nagar-II New Delhi-24
6. S.V.Navani s/o K.D.Navani
r/o LIG 1200/Sector 31 Gurgaon
7. Anand Kr. Srivastava s/o B.Prasad
r/o 382 Bazaria, Ghaziabad - 9
8. Anupam Bhowal s/o Sh. A.L.Bhowal
K-2116 C.R.Park, New Delhi-19

...Applicant

(By Advocate : Sh. Deepak Verma)

V E R S U S

Union of India through

1. The Secretary
Ministry of Home Affairs
North Block, New Delhi
2. The Director
National Crime Records Bureau
East Block-7, R.K.Puram, New Delhi
3. Shri Manoj Kumar Mittal
s/o Late Sh. O.P.Mittal
r/o G1/33, Sec-15, Rohini
New Delhi.
4. Shri S.K.Tanwar
s/o Late Sh. Tota Ram
r/o WZ-578A/1 Naraina Village,
Delhi - 28.

....Respondents.

(By Advocate : Sh. Gajender Giri)

O R D E R

By Hon'ble Sh. Govindan S. Tampi, Member (Admn)

In this application, the relief sought is for the recomputation of the seniority of the applicants along with consequential benefits.

2. Sh. K.K.Bhardwaj and seven others who are the applicants in this case have joined the National Crime Records Bureau (NCRB) as direct recruits holding the grade of Rs. 1600-2660 (DPA-A) having joined during February 1991 to January 1992. On the other hand, respondents 3 & 4 had come on deputation to NCRB on 1-11-88 and 2-8-89 respectively and working as DPA-B on ad hoc basis. They were holding the scale of 1320-2040 and have got themselves absorbed as Sub-Inspectors (SI) on 14-11-91 and 31-3-93 respectively. In terms of DOPT OM No. 14017/71/89-Estt (RR) dated 3-10-89, seniority of a person who is initially taken on deputation and absorbed later, will normally be counted from the date of absorption. If he has, however, been holding on the date of absorption, the same or equivalent grade on a regular basis in his parent department, such regular service also shall be taken on the account in fixing the seniority subject to the condition that he will be given seniority from the date he has been holding the post on deputation or the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department whichever is later. The respondents had opted for the grade of 1600-2660 w.e.f. 6-2-98 while on deputation and prior to their absorption though the grade of Rs. 1320-2040 they were holding was neither the same nor equivalent

to their new scale. Still the department had given them the benefit against the rules and the procedure of DOPT in OM dated 3-10-89. The respondents 1 & 2 thus by assigning wrong seniority to the respondents No. 3 & 4 from an date earlier than their absorption in the grade of 1600-2660/- in NCRB have acted incorrectly, as they could not have been assigned such seniority before they had held the post on regular basis.

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3. In the reply filed by the respondents, it is pointed out that the applicants had joined in NCRB as SIs in the scale of 1320-2040 on direct recruitment in 1991. With the adoption of EDP scales in NCRB, persons working in C & S Division of the bureau were placed in the scales and the post of SI in the scale of 1320-2040 was redesignated as Data Processing Assistant Gr. 'A' in the scale of 1600-2660, (now revised to 5500-9000), from the date of the joining of NCRB. The respondents on the other hand were on deputation in the Bureau since 1988, were given the benefit of the fresh scales only from the date of the absorption. They were re-designated as DPA Gr. 'A' from the said date in the scale of Rs. 1600-2660/-. This has been done in terms of DOPT's OM dated 3-10-89. Infact, those like the respondents who had come on deputation were first absorbed as SI and only thereafter their seniority was fixed; from the date of their absorption as they were holding an analogous post in their parent department. Following the decision of the C.A.T. in OA No. 643/97, the request of the SIs who were appointed on deputation and absorbed as SIs in NCRB and redesignated as DPA (A)

was considered by the Government and it was decided to them the revised EDP scales w.e.f. 11-9-89 or from the date of their joining whichever was later. The applicants made a representation against it, which as was found not to have any merit. It is further stated that the respondents No. 3 & 4 were holding the post in the scale of 1300-2040 in their parent department at the time of their absorption and their seniority was fixed in terms of the DOPT's OM dated 3-10-89 as they were holding same/equalant grade in their parent department. This was in tune with the directions in DOPT's OM dated 3-10-89. Following the decision to extend the benefit of EDP scales to the deputationists also from the date of deputation or from 11-9-89 whichever was later and on their option to draw pay on EDP scales, they were given EDP scale and designation as DPA 'A' on the scale of 1600-2660 from the date of their absorption. It was not felt necessary to effect any change in the seniority, as the seniority once fixed as on the date of absorption, with reference to the relevant day cannot be changed mrely because of the retrospective revision of the pay scale of the post in which a person has been absorbed. The grant of seniority has been done strictly in terms of the DOPT's OM of 3-10-89. The same did not warrant any revision as sought by the applicants is the plea made by the respondents.

4. In their rejoinder, the applicants reiterates their position and state that the action taken by the department was incorrect and that they should be assigned seniority over the deputationists, who have been given the benefit improperly.

5. Heard the learned counsel for the applicant and for the respondents. Sh. Deepak Verma, the learned counsel for the applicant, argues that on the proper interpretation of the instructions contained in DOPT's OM dated 3-10-89, the placement of the deputationists who were absorbed subsequently above the applicants who were direct recruits as DPA (A) was not at all correct and has to be set aside. On the other hand, Sh. Gajender Giri, learned counsel for the respondents, states that the action of the respondents was totally correct as the action was fully covered by the instructions of DOPT dated 3-10-89 referred to by the applicants themselves, as the deputationists were holding similar or analogous posts.

6. We have carefully considered the matter. The issue for determination in this case revolves around only the interpretation of the instruction contained in OM No. AB 14017/71/89-Estt (RR) dated 3-10-89. The relevant para 11.2 of the same is abstracted below :-

"Even in the type of cases mentioned above, i.e., where an officer initially comes on deputation, and is subsequently absorbed the normal principle that the seniority should be counted from the date of such absorption, should mainly apply. Where, however, the officer has already been holding on the date of absorption the same or equivalent grade on regular basis in his parent Department, it would be equitable and appropriate that such regular service in the grade should also be taken into account in determining his seniority subject only to the condition that at the most it would be only from the date of deputation to the grade in which absorption is being made. It has also to be ensured that the fixation of seniority of a transferee in accordance with the above principle will not

affect any regular promotion made to the next higher grade prior to the date of absorption. Accordingly, it has been decided to add the following sub para (iv) to para 7 of principles communicated vide OM dated 22-12-59:

"iv) In the case of a person who is initially taken on deputation and absorbed later (i.e., where the relevant Recruitment Rules provide for Transfer on Deputation/Transfer), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent Department such regular service in the grade shall also be taken into account in fixation of his seniority, subject to the condition that he will be given seniority from

- the date he has been holding the post on deputation.

OR

- the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department.

whichever is later". (Emphasize supplied)

It would mean, therefore, that while normally the seniority of a deputationist who is absorbed subsequently would count only from the date of his/her absorption, if he has been holding on the date of deputation the same equivalent on regular basis in his parent department; such regular service shall also be taken into account, either from the date he has been holding the post on deputation or the date from which he was appointed to the same or equivalent grade in his parent department whichever is later. Therefore, if the respondents 3 & 4 in this case have been holding the equivalent post in their parent department on regular basis, he would get the benefit atleast from the date of his deputation. Therefore, what is to be seen is the actual from which the deputationist namely the Respondents 3 & 4 have been holding same or equivalent posts.

7. In the instant case, it is found that the applicants were given the grade of 1600-2660/- on regular basis on their joining as direct recruits DPA (A) on various dates between 8-2-91 to 8-1-92 while the respondents were absorbed as Sub Inspectors on 14-11-91 and 31-3-93 and though they had come on deputation in NCRB on 1-11-88 and 2-8-89 respectively. The applicants were also originally recruited as Sub-Inspectors in the pay scale of Rs. 1320-2040 and their posts were subsequently re-designated as Data Processing Assistant with the revision of scale Rs. 1600-2660 in EDP scheme. The respondents also were Sub- Inspectors in their parent organisation when they came on deputation in 1988 at NCRB and they were re-designated as DPA Gr.'A' in the scale of Rs. 1600-2660 from the date of their absorption. This was granted as they were holding the grade of SI which was analgous to the post in the parent department as well. Follwing decision of the C.A.T. in OA No.643/97, the deputationists represented and their request was granted by the Department in consultation with the Ministries of Home Affairs and of Finance w.e.f. 11-9-89 or the date of joining whichever was later. They were accordingly given the higher scale. The plea of the applicants against this arrangement is not correct as even before deputation, respondents No. 3 & 4 were holding the analgous post of SI in which they came NCRB. Further, before the re-designation both the applicants and the respondents 3 & 4 were on the same scale and the respondents from an earlier date. If follows, therefore, the respondents have correctly been given the benefit of the revised scale and.

(A)

seniority from the date of which they were holding the post on deputation, which is later to the date on which they have been appointed on regular basis to the equivalent post in their parent department. It is be the case of the applicant that the respondents were holding any post less than the post of SI in their parent organisation at the time of the deputation. Therefore, they were correctly entitled to the revised scale in EDP of Rs. 1600-2600, which came on a subsequent date i.e. 11-9-89. They also have to rank in seniority above the applicants all of whom are appointed only in 1991. Applicants, therefore, cannot have any legitimate grievance against the respondents 3 & 4, who were their seniors in fact and in law. Respondents 1 & 2 have correctly accorded seniority to respondents 3 & 4 above the applicants. The said decision cannot be assailed.

8. In the above view of the matter the application devoid of merits fails and is accordingly dismissed. They are also ordered to pay cost, quantified at Rs. 2,000/- which shall be made over to C.A.T. Bar Association for the purpose of its Library.

(GOVINDAN (S. TAMPI)
MEMBER (ADMN)

(V. RAJAGOPALA REDDY)
VICE-CHAIRMAN (J)

/VIKAS/