

6

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A. No.610/99  
M.A. No.1472/99

Hon'ble Shri Justice V. Rajagopala Reddy, VC(J)  
Hon'ble Shri R.K. Ahooja, Member(A)

New Delhi, this the 17<sup>th</sup> day of August, 1999

Diwan Singh Bisht  
S/o Shri M.S. Bisht  
Aged about 53 years  
R/o 85-B, Sector IV,  
Pushp Vihar, New Delhi 110 017

...Applicant

(By Advocate: shri B.B. Raval)

Versus

1. UNION OF INDIA  
Through the Secretary  
Ministry of Home Affairs  
Govt. of India  
North Block, New Delhi 110 001
2. The Director, Intelligence Bureau  
Ministry of Home Affairs  
Govt. of India  
North Block, New Delhi 110 001

...Respondents

(By Advocate: Shri Madhav Panikar)

O R D E R

[ Hon'ble Shri R.K. Ahooja, Member(A) ]

The applicant who was working as a Sepoy (Constable) in Border Security Force (BSF) since 21.7.1967, came on deputation to the Intelligence Bureau (IB) on 18.11.1975 as a Security Assistant. He was absorbed in the same position in IB with effect from 1.1.1982. On completion of eight years service in the IB, he was promoted to the post of Junior Intelligence Officer (JIO) Grade-II w.e.f. 30.4.1990. The grievance of the applicant is that for considering his promotion as JIO, the respondents have not taken into account his service rendered in the BSF as also while on deputation and thus deprived him of promotion from the due date. The applicant claims that one Shri Ram Singh Rawat, who like him had also come as a Security Assistant,

Or

was absorbed with effect from 1.1.1982. Just like the applicant he had made a similar claim. On his representations having been rejected he filed an O.A. before this Tribunal which also came to be dismissed. Thereafter, Shri Rawat went to the Supreme Court in an SLP which was allowed. Consequently, Shri Rawat was given the benefit of his past service in the ITBP as well as IB and not only his promotion as JIO Grade-II was antedated, he was given further promotions as JIO and ACIO-II in 1988. Some other persons similarly situated as Shri Rawat who had also filed representations with Shri Rawat, were also given revised seniority and promotions after the case of Shri Rawat was decided by the Supreme Court. The applicant submits that he was also entitled to the same benefits but his representations to the same effect have either been rejected or not replied to by the respondents.

2. The respondents, in their reply, have raised a preliminary objection that the O.A. is barred by limitation. The applicant had been absorbed as far back as on 1.1.1982 and his promotion as JIO-II had also taken place in 1990. He has, however, come to the Tribunal only in 1999. Therefore, even if the applicant had a case, the same has been lost by the delay in seeking relief. The respondents have also opposed the miscellaneous application filed by the applicant for condonation of delay.

3. On merits, the respondents have distinguished the case of Shri Rawat from that of the applicant. They submit that Shri Rawat was holding a higher post in the ITBP when he was appointed as Security Assistant in the IB and it was on consideration of this fact that the Apex Court had directed that the service in the ITBP as well as

On

(8)

on deputation in the IB prior to his permanent absorption should be taken into account even though, at the same time, the Supreme Court had held that the absorption of Shri Rawat as JIO Grade-II with effect from 1.1.1982 was correct.

4. We have heard the counsel. Shri B.B. Raval, learned counsel for the applicant, as per the submissions made in M.A. No.582/99 relied mainly on the ratio of Supreme Court's decision in K. Madhavan and Anr. Vs. Union of India and Others JT 1987 (4) SC 43. On the question of limitation, Shri Raval submitted that the applicant had a recurring cause of action and the respondents cannot take a technical objection, more so when the case of the applicant was based on judicial proceedings in the case of a colleague.

5. We are not convinced by the arguments advanced by the learned counsel for the applicant. Shri Rawat had filed an O.A. No.1486/90 before the Tribunal, which was dismissed by its order dated 3rd December, 1994. The Civil Appeal No.7847/96 was also decided by the Supreme Court on 19.4.1996. The applicant, however, kept silent all these years. As held by the Supreme Court in Bhoop Singh Vs. Union of India JT 1992 (3) SC 322, the judgments and other orders of the court do not give a cause of action and the cause of action has to be reckoned from the actual date. Even otherwise the applicant had waited for more than two years after the judgment in Shri Rawat's case. The ground for condoning the delay in submission of the O.A. is, therefore, not valid.

Dr

6. Even otherwise, ~~or otherwise~~, we find no merit in the case of the applicant. As submitted by the respondents, Shri Rawat had been holding a higher post in the ITBP than that of the Security Assistant in the IB. The basis of the relief granted to him was that he had rendered service in the same or higher grade in a substantive capacity in his parent department. In K. Madhavan and Anr. Vs. Union of India and others (supra), on which Shri Raval has placed such heavy reliance, the same principle was enunciated. While dealing with Petition No.7847/1996 the question before the Supreme Court was that the length of service of the petitioner Dwarka Nath in the BSF should be taken into account for the purpose of deciding his seniority in the rank of S.P. in I.B. Shri Dwarka Nath had been regularly promoted to the post of deputy Commandant on 19.6.1976 and came to the CBI on deputation as S.P. on 20.7.1976 and was permanently absorbed on the rank of S.P. on 28.10.1983. The Supreme Court held that Dwarka Nath's seniority should be counted from 19.6.1976 on which date he was regularly promoted to the post of Deputy Commandant in the BSF.

7. In the present case, the applicant was holding the post of Sepoy (Constable) in the BSF at the time he came on deputation to the post of Security Assistant. It has been pointed out by the respondents that the post of Security Assistant is equal to the post of Naik in the BSF. The line of promotion for Constable is to the post of Lance Naik and then to Naik. The applicant was thus not holding an equivalent post to that of Security Assistant in the BSF and, therefore, the ratio of the case of Shri Rawat as well as Shri K. Madhavan did not apply in this case. In this situation, the seniority of the applicant can only be

On

counted from the date of his regular appointment as Security Assistant in the I.B., i.e. with effect from 1.1.1982. There is, therefore, no merit in the contention that his past service before his absorption should be counted for the purpose of his seniority and promotion.

8. In the result, the O.A. is dismissed. There will be no order as to costs.

*Rkala*  
(R.K. AHOOJA)  
MEMBER (A)

*Mr. Jayaram*  
(V. RAJAGOPALA REDDY)  
VICE CHAIRMAN (J)

sc\*