

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1174/98

199

T.A. No.

(3)

DATE OF DECISION 10-11-99

Sh.L.R.Dahiya

....Petitioner

Sh.S.K.Gupta

....Advocate for the
Petitioner(s)

VERSUS

VOI & Ors

....Respondent(s)

Sh.Gajender Giri

....Advocate for the
Respondents.

CORAM

The Hon'ble Shri S.R. Adige, Vice-Chairman (A)

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 1174/98

(A)

New Delhi this the 10 th day of November, 1999

Hon'ble Shri S.R. Adige, Vice Chairman (A).
Hon'ble Smt. Lakshmi Swaminathan, Member (J).

L.R. Dahiya,
S/o late Shri Sher Singh,
R/o Q.No. 38, (M/S)
Timarpur, Delhi-54. Applicant.

By Advocate Shri S.K. Gupta.

Versus

1. Union of India through
Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Director General,
Directorate General of NCC,
West Block-IV, R.K.Puram,
New Delhi-66.
3. Deputy Director General (Delhi),
MCC Directorate, Delhi,
Old Secretariate Building,
Delhi-110 054. Respondents.

By Advocate Shri Gajender Giri.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member (J).

The applicant is aggrieved by the orders passed by the respondents dated 1.12.1997 and 22.5.1998 (Annexures A-1 and A-2) rejecting his claim for ante-dating the date of his promotion to the post of Office Superintendent Grade-II (OS-II) with consequential benefits. The applicant has filed this O.A. claiming this relief i.e. to ante-date his promotion either from 1.11.1995 or 16.11.1995 with consequential benefits by way of revision of pensionary benefits with interest @ 18% p.a.

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2. The relevant facts of the case are that the applicant, who was working as Upper Division Clerk (UDC) in the office of Respondent 3 was given charge as OS-II w.e.f. 1.11.1995 on the retirement of one Shri Kalyan Singh, OS on 31.10.1995 by order dated 20.10.1995. Respondent 2 by order dated 16.11.1995 had promoted the applicant on regular basis to the post of OS-II and posted him to NCC, Women Officers Training School (WOTS), Gwalior against an existing vacancy. The applicant had addressed a letter to the Director, NCC Directorate Delhi, dated 24.11.1995 requesting that he may be relieved to join his duties on promotion at NCC, WOTS, Gwalior in terms of the promotion order dated 16.11.1995. The applicant relies on the Note of the DD Administration below his letter (Annexure A-5) in which it has been recorded that "Since you are dealing with National event i.e. RDC as well as you are doing the duties of Office Supdt., it is not possible to relieve you at this stage. In this connection your case is being taken up with DG HQ (Respondent 2)". He also relies on the letter from the Director, NCC, Directorate Delhi dated 15.12.1995, wherein it has been stated that the applicant may be retained in the NCC Directorate, Delhi on promotion against the existing vacancy of OS for the reasons set out in paragraphs 2-4 of the letter.

3. Subsequently, Respondent 2 had issued another letter promoting the applicant to the post of OS-II and posted him at NCC, Directorate, Delhi by order dated 3.1.1996. He assumed the post of OS-II with effect from the next date i.e. 4.1.1996. The applicant has since retired from service on 31.10.1997. The applicant had submitted a number of representations in which he has, inter alia, submitted that as he had already been promoted on 16.11.1995 against a vacancy at Gwalior, there was no need for another promotion order on

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3.1.1996 against a vacancy at NCC Directorate, Delhi against which post he was already officiating since 1.11.1995. He has submitted that since he could assume the charge of the post of OS-II on 4.1.1996 after the second promotion order dated 3.1.1996 was issued, his pay fixation against the revised pay scales could be given effect to only w.e.f. 4.1.1996 because of which his pension has been fixed at a lower rate ~~which~~ ^{from what} he would otherwise be eligible, if he had been relieved on promotion at NCC, WOTS, Gwalior immediately in November, 1995 on his promotion by order dated 16.11.1995. Learned counsel for the applicant has, therefore, submitted that as the applicant had never refused his promotion to the post of OS-II at Gwalior in terms of the letter dated 16.11.1995, but was, in fact, not relieved by the respondents in public interest, he should not be made to suffer. He has also submitted that even after the promotion order was passed posting him to Gwalior, he continued to hold the post of OS-II in Delhi. In the circumstances, Shri S.K. Gupta, learned counsel, has submitted that a direction should be given to the respondents to ante-date the applicant's promotion to the post of OS-II w.e.f. 16.11.95 and revise the pensionary benefits accordingly.

4. We have seen the reply filed by the respondents and heard Shri Gajender Giri, learned counsel. The respondents have submitted that the proposal of Respondent 3 for granting officiating promotion to the applicant to the grade of OS-II in NCC Directorate was rejected by the competent authority i.e. Respondent 2 since the applicant already stood posted on promotion to NCC, WTOS, Gwalior where the regular vacancy existed. However, in paragraph 4.3 of the reply, they have submitted that subsequently Respondent 3 requested the higher authority for retaining the applicant at

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NCC Directorate Delhi in the organisational interest because of the impending Republic Day Camp (RDC) and the Prime Minister's rally, etc. This was considered by Respondent 2 who agreed to it. They have stated that accordingly, the earlier order transferring the applicant to Gwalior was cancelled and he was promoted and retained at NCC, WOTS, Delhi by order dated 3.1.1996. They have further submitted that the applicant, however, did not approach Respondent 2 for getting himself relieved to join duties at NCC, WOTS, Gwalior. Subsequently, when a regular vacancy became available in Delhi in December, 1995, the Directorate Projected a case for retention of the applicant on organisational interest in view of his experience in dealing with the RDC matters on which the competent authority had agreed to retain the applicant in NCC Directorate, Delhi on promotion by order dated 3.1.1996. Shri Gajender Giri, learned counsel, has submitted that in the circumstances of the case since the applicant was not holding the post of OS-II till he assumed the appointment of OS-II in the NCC Directorate, Delhi, there is no question of granting the applicant any monetary benefits by way of any salary or revision of the pensionary amounts. He has, therefore, submitted that the O.A. may be dismissed.

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. On a careful perusal of the documents on record, in particular, Annexures A-5 and A-6, read with the counter affidavit filed by the respondents, it is seen that on request of Respondent 3 for retention of the applicant at NCC, Directorate, Delhi in the organisational interest, the competent authority, Respondent 2, had agreed to it. The respondents have stated that accordingly the earlier order

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transferring the applicant was cancelled and the applicant was subsequently promoted and retained in the NCC Directorate, Delhi by order dated 3.1.1996 when the regular vacancy arose in December, 1995. Although the respondents have submitted that the applicant had not approached Respondent 2 for getting himself relieved to join his duties at NCC, WOTS, Gwalior in pursuance of the order dated 16.11.1995, from the respondents' own reply it cannot be stated that Respondent 2 was not aware that the applicant had submitted a letter to Respondent 2 that he may be relieved to join his duties on promotion at NCC, WOTS, Gwalior on 24.11.1995. It is no body's case that Respondent 3 had on his own requested the competent authority to allow the applicant to be retained in the organisational interest in respect of RDC, Prime Minister's rally, etc. The relevant portions of the letter from the Director, NCC Directorate, Delhi dated 15.12.1995, addressed to the Directorate General, NCC (Pers/C) with copy to the applicant, reads as follows:

"4. It is further to state that Shri L.R. Dahiya, UDC has been dealing with the subjects of NCC RDC/PM's Rally duties since previous years and he is very conversant with these subjects. In addition, he is officiating as Office Supdt duties since Nov 95 against the existing vacancy. It's felt that at present, no suitable relief of Shri Dahiya is available in this Directorate who could deal with these subjects.

5. Keeping in view of the above deficiencies of clerks and in the interest of urgency of services, Shri LR Dahiya, UDC may please be retained in this Directorate on promotion against the existing vacancy of Office Supdt."

7. From the facts referred to above, it is seen that the respondents had in the organisational interest decided to retain the applicant in the NCC Directorate, Delhi and had also cancelled the earlier promotion order transferring him to NCC, WOTS Gwalior. In the circumstances of the case, the contention of the applicant's counsel that the applicant should not be deprived of the benefits of the

promotion which he was given by the earlier order to which post he was not relieved in spite of his request because of the organisational interests of the respondents, is not only reasonable but correct, taking into account the averments made by the respondents themselves. The applicant has also contended that he had continued to work as OS-II and in the respondents' letter dated 15.12.1995, the Director, NCC Directorate had also requested that the applicant may be retained in the NCC, ~~WOTS~~, ^{Directorate} Delhi on promotion against the existing vacancy of OS-II which admittedly has arisen in December, 1995 against which he was later promoted by order dated 3.1.1996.

8. In the facts and circumstances of the case, we see force in the contentions of the learned counsel that the applicant's date of promotion as OS-II may be ante-dated. However, as the applicant has sought permission to be relieved only by his letter dated 24.11.1995, the relevant date for promotion can only be considered as on or after 24.11.1995. The respondents have also submitted that the vacancy in the post of OS-II had arisen in Delhi sometime in December, 1995 against which they have promoted him by order dated 3.1.1996. Taking into account the relevant facts, including the fact that the respondents have themselves admitted that the applicant could not be relieved to assume his promotional post as OS-II at NCC, WOTS, Gwalior in November, 1995 in public interest, the applicant's claim for ante-dating his promotion in the same grade of OS-II at Delhi should be considered at least from the date when the regular vacancy arose at NCC, Directorate, Delhi in December, 1995. The applicant has also been found fit for promotion to the post of OS-II earlier and his promotion and posting order had been cancelled by the respondents in organisational interests. The respondents have

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also not denied that the applicant was officiating as OS-II in the Delhi office from November, 1995 as seen from their letter dated 15.12.1995.

9. In the result, for the reasons given above, the O.A. succeeds and is allowed with the following directions:

- (1) Respondents to ante-date the applicant's promotion to the post of OS-II from the date when the regular vacancy became available in NCC Directorate, Delhi;
- (2) Applicant shall be entitled to the higher pay and allowances of the post of OS-II from the aforesaid date with revision of pensionary benefits, from the date of his superannuation.
- (3) The above action shall be taken within three months from the date of receipt of a copy of this order.
- (4) In the circumstances of the case, the claim for interest on the above amounts @ 18% p.a. is rejected.

Parties to bear their own costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

S.R. Adige
(S.R. Adige)
Vice Chairman (A)

"SRD"