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Central Administrative Tribunal, Principal Bench

Original Application No. 1278 of 1998

New Delhi, this the 11th day of September, 2000

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mrs. Shanta Shastri, Member (A)

Shri M.S. Ritu
S/o Shri Budh Singh
Retired Deputy Superintendent-II,
Central Jail,
Tihar
R/o B-11, Central Jail, Tihar,
New Delhi-110 059.

- Applicant

(By Advocate - Shri S.K. Sawhney)

Versus

1. Govt. of NCT of Delhi through
Principal Secretary (Home),
5, Sham Nath Marg,
New Delhi-110 054

2. Deputy Secretary (Home) (General),
5, Sham Nath Marg,
Delhi-54.

- Respondents

(By Advocate - Shri Vijay Pandita)

O R D E R

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

The applicant in this OA has prayed as
under:-

(i) Direct the respondents to grant the
applicant the pay and allowances for the post of
Deputy Superintendent II in the scale of Rs.550-900
equated to Rs.1640-2900 w.e.f. 12.1.1982 with yearly
increments and interest at the rate of 12% per annum
upto the date of payment.

(ii) Direct the respondents to consider the
applicant for promotion to the post of Deputy
Superintendent I scale Rs.650-1200 equated to
Rs.2000-3500 and grant consequential benefits from

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20.8.1987, when persons junior to the applicant were promoted and also grant interest @ 12% upto the date of payment.

(iii) Grant arrears for consequential revision of pension and retiral benefits."

2. The applicant alleges that the act of the respondents in denying him promotion to the post of Deputy Superintendent-II (hereinafter referred to as DS-II) w.e.f. 15.6.81 and Deputy Superintendent-I (hereinafter referred to as DS-I) w.e.f. 15.1.1984 on withdrawal of criminal case against the applicant is illegal, arbitrary and he is entitled for consequential reliefs.

3. The facts in brief are that the applicant had joined as Assistant Store Keeper in the scale of Rs.110-180 in ITI, Arab Ki Sarai on 6.7.1964. He was further promoted as Storekeeper in the scale of Rs.130-300 and was posted in the College of Pharmacy under Directorate of Technical Education on 30.6.72. Thereafter, he was further promoted to the post of Caretaker in the scale of Rs.210-425 in the College of Arts, New Delhi on 15.10.1973 on which post he was regularised on 13.1.1975. The post of Caretaker was redesignated as Assistant Security Officer (hereinafter referred to as ASO) in the College of Arts w.e.f. 15.6.76.

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4. It is further pleaded that the Delhi Administration vide their letter dated 4.9.73 issued Recruitment Rules for the post of Assistant Superintendent Central Jail (hereinafter referred to as ASCJ) and the post of ASCJ and ASO in the College of Arts were clubbed together as one cadre w.e.f. 18.3.80 with the result that the services rendered by the applicant as ASO became equivalent to the services rendered to the post of ASCJ and it became the feeder cadre for the post of DS-II in the pay scale of Rs.550-900 (revised scale Rs.1640-2900 w.e.f. 1.1.1986) a Group 'B' post. The qualification for DS-II was 5 years regular service in the post of ASCJ or ASO in the College of Arts. The educational qualifications prescribed for this post was a graduate from a recognised university which was relaxable in the case of persons who had rendered 3 years regular service on the date of clubbing of the post. Since the applicant has completed 5 years of service in the feeder cadre in the year 1981 (15.6.1981), so he became entitled to be considered for DS-II. A vacancy was also available in the Central Jail when the applicant was working in Tihar Jail and he was entitled to be considered for the same. For this purpose a note was also put up on 16.4.82 by the respondents recommending the promotion of applicant as he was the senior-most eligible person. But despite these recommendations, the respondents did not constitute any Departmental Promotion Committee with the result that the applicant was compelled to file a Writ Petition before the Hon'ble Supreme Court and the

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Hon'ble Supreme Court directed the respondents to promote the applicant within 2 months from 6.8.1987 to the post of DS-II.

5. However, instead of promoting the applicant the respondents accorded sanction for initiating criminal proceedings against the applicant as such he was denied promotion. But ultimately, the Hon'ble Supreme Court decided the Writ Petition on 15.9.87 and directed the respondents that the petitioner be promoted subject to the result of the criminal case and the Writ Petition was accordingly disposed of. The criminal case was dismissed vide order dated 7.6.1997.

6. The applicant further alleges that before sending the proposal of the applicant vide note dated 24.5.82, the respondents had also directed the applicant to take charge of DS-II post vide order dated 12.1.1982 and on the said post the applicant had continuously worked as DS-II till his superannuation on 31.10.97. However, he was denied the benefits of pay and allowances admissible to him. The respondents cannot deny him the benefits of pay and salary of DS-II post from which date he has continued to perform the duties of DS-II, more so because the DS-II post was vacant since 12.1.1982.

7. Six posts of DS-I were created on 17.4.86 and the applicant was entitled to be considered for one of these posts being the seniormost eligible person but the respondents instead of processing the

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5. case of the applicant for promotion, issued the orders of promotion for certain other officials, namely, S/Shri Chander Pal, S.C. Gupta, D.S. Rana and J.M. Sharma who belonged to DASS cadre and were not eligible to hold the post of DS-I as a matter of right. On these facts applicants has prayed for reliefs as set out in para 1 above.

8. The respondents contested the O.A. They have stated that the applicant was promoted to the post of DS-II with effect from 1.7.1987 subject to the outcome of the criminal case as per the orders of the Hon'ble Supreme Court and after his acquittal, he had been given promotion w.e.f. 1.7.87. Respondents also admit that vacancy of DS-II existed in the Central Jail Tihar in 1981 but till that date there was no separate cadre for Assistant Superintendent which was the feeder cadre for promotion to DS-II for which reason the DPC could not be constituted and the process for constitution of DPC for considering promotion from AS to DS-II was started in 1986 when Assistant Superintendent in the feeder cadre became eligible for promotion after putting in 5 years of regular service in the feeder cadre.

9. As regards the post of DS-I is concerned it is stated that the applicant was not entitled for DS-I post since this post was only meant for DANI officer or officers holding analogous post who could be considered for promotion as DS-I.

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10. In view of the above it is submitted that the application has no merits and the same is liable to be dismissed.

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

12. As regards the claim of the applicant for grant of pay and allowances for the post DS-II in the scale of Rs.550-900 equivalent to Rs.1640-2900 w.e.f. 12.1.1982 is concerned, the learned counsel appearing for the applicant on this aspect has referred to an order dated 12.1.1982 when the applicant was asked to take over the charge of the post of Deputy Superintendent-II post vice Shri H.C. Verma and submitted that since the applicant had been directed to work as DS-II, so the respondents cannot deny him the pay and salary of that post.

13. He further submitted that as per the respondents own counter-affidavit in para 4.4. where the respondents have themselves admitted that a vacancy in the grade of DS-II existed since 1981 but the respondents had simply stated that merely asking the applicant to take over charge as DS-II does not entitle the applicant to claim the pay scale of DS-II since the proper procedure, i.e., DPC etc. has to be constituted only then he would have become entitled to claim pay of DS-II. However, we find that the order dated 12.1.1982 as per Annexure A-7 does show that the applicant has been asked to take over the charge of DS-II, on which post he started working w.e.f.

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12.1.1982. Hence, we find no reason to deny him the benefit of pay scale of DS-II with effect from the date he had taken over the charge. Thus the Government as model employer cannot ask a person to work on a higher post and to pay him a lesser pay scale particularly so when the order dated 12.1.1982 (Annexure A-7) does not lay down any condition or embargo that the applicant was not to be paid the pay and allowances of a particular post for which he had been asked to take over the charge and once a person takes over a charge of a higher post, then he is supposed to exercise the functions of the said post. In view of this, the applicant is entitled for the pay scale of DS-II post w.e.f. 12.1.1982.

14. . . . As regards the regular promotion to DS-II post is concerned, the applicant in this case had already been granted promotion w.e.f. 1.7.87. The applicant is claiming that respondents should be directed to consider him for promotion to the post of DS-I w.e.f. 20.8.87 when persons junior to the applicant were promoted.

15. The learned counsel for the applicant referred to Annexure AA-3 which shows that vide AA3, the Recruitment Rules to the post of DS-I were amended and in Column No.11 which provides for mode of recruitment whether by direct recruitment or by promotion, which shows as under:-

(a) By promotion 50 %

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(b) By transfer on deputation 50%

16. On the basis of this, the learned counsel urged that first method is by promotion and for this purpose officer of the DS-II grade with 3 years regular service in the grade is eligible and the essential qualifications of the same are degree from a recognised university or equivalent and 3 years experience in Administration/Maintenance of law and order/security. The applicant claimed that since six posts of DS-I were created vide letter dated 17.4.1986 (Annexure A-11), so he was entitled to be considered for one of the post being the only eligible person. The respondents instead of processing the case of the applicant for promotion issued the order of promotion of S/Shri Chander Pal, S.C. Gupta, D.S. Rana and J.M. Sharma of the DASS cadre. According to the respondents the applicant was not eligible as this post was only for DANI or DASS officers.

17. We have gone through the record on this aspect and we find that the applicant has not shown from the record that who are the persons appointed as DS-I who were junior to him as per seniority list belonging to the cadre of Assistant Superintendents. The applicant has simply alleged that S/Shri Chander Pal, S.C. Gupta, D.S. Rana and J.M. Sharma of DASS cadre had been appointed as DS-I. This goes to show that all these persons belonged to different cadre which is a separate source for appointment to the post of DS-I but the applicant has not named even a single officer who had been promoted from DS-II to DS-I who

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may be junior to the applicant in his cadre. In view of this, the applicant has no claim to promotion from 20.8.87 as DS-I.

18. We find that for the post DS-I prior to the amendment of the rules in the year 1994 the posts were being filled under the rules issued by the Government in 1979. The applicant had placed on record Annexure AA-3 which is a letter dated 3.6.94 which shows that certain amendments were made and Column 12 which recognises promotion as one of the mode of appointment to the post DS-I, but this amendment seems to have been introduced on 3.6.94. The applicant is claiming promotion to the post of DS-I w.e.f. 20.8.87. For that purpose the department has clearly stated that the applicant was not eligible for promotion to the grade of DS-I as per the existing Recruitment Rules since at that time the post was only for DANI officers. The applicant has failed to place on record the Recruitment Rules for the post of DS-I which were applicable as on 20.8.87 from which date the applicant is claiming promotion. Since the amendment has come only w.e.f. 3.6.94 so we have no reason to disbelieve the averments of the respondents that as on 20.8.87 the post DS-I was only available to DANI officer or officers holding analogous post and it was only those officers who could be considered for appointment as DS-I.

19. In the rejoinder applicant has relied upon a letter dated 12.9.97 Annexure AA-4 to show that the papers of the applicant were called for the post of

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DS-I and the papers were placed. But this letter shows that the same was issued on 12.9.97, i.e., after the amendment in the Recruitment Rules had been made in the year 1994 and that shows that the applicant must have been considered at that time for being promoted to the post of DS-I. In these circumstances, we are of the considered opinion that the applicant has failed to establish that in the year 1987 he was eligible for being considered for the post of DS-I as per the Recruitment Rules and he had been denied promotion to the post of DS-I from 20.8.87 in violation of the rules.

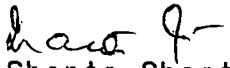
20. In view of the above, we hold that the applicant is entitled to the pay scale of Rs.550-900 w.e.f. 1.12.1982 on ad hoc basis since he had been asked to work as DS-II vide Annexure A-11 to take charge of the post of DS-II. Since this letter does not show that he was given any regular appointment of DS-II so we treat it that he had been given only an ad hoc appointment as DS-II and since he had worked on that post so he is entitled to the salary of the post on which he had worked w.e.f. 12.1.1982 till his regular appointment as DS-II in the year 1987.

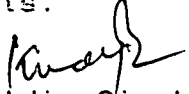
21. As regards his prayer for promotion to the post of DS-I w.e.f 20.8.87 is concerned since the applicant has failed to show that anyone of his juniors in the cadre had been promoted to the post of DS-I so we hold that he has no case for the same. Further his

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case has been considered for DS-I after the amendment of Rule in the year 1997, so no directions can be given on this aspect.

22. In the result the OA is partly allowed to the extent that the applicant is entitled to be paid salary in the scale of Rs.550-900 w.e.f 1.12.1982 till his regularisation in the post of Deputy Superintendent-II. He will also be entitled for arrears, if any. The above directions should be complied with within a period of 3 months from the date of receipt of a copy of this order. As regards the relief for promotion from DS-II to DS-I is concerned, same cannot be granted. No costs.


(Mrs. Shanta Shastri)
Member(A)


(Kuldip Singh)
Member(J)

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