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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 80/1978

New Delhi, this ^{12th Feb} 5th day of February, 2001

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

R.K. Mandal
O 430, Sewa Nagar
New Delhi-110 003

.. Applicant

(By Shri B.B. Raval, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Home Affairs
New Delhi
2. Director General
BPR&D, MHA, CGO Complex
Lodi Road, New Delhi
3. Kalu Ram) Office of BPR&D,
4. Ghale Ram) Lodi Road, New Delhi .. Respondents

(By Shri R.N. Singh, proxy counsel for Shri R.V. Sikha, Counsel)

ORDER

By Shri M.P. Singh

This application is filed under section 19 of the Administrative Tribunals Act, 1985 against the action of official respondents No.1 & 2 in promoting R-3 and R-4 to the post of Head Constable (HC) with effect from 4.4.85 ignoring the superior claim of the applicant.

2. Brief facts of the case as stated by the applicant are that he was appointed as Constable in Border Security Force on 6.1.75. Thereafter he came on deputation to the office of R-2 and joined the Branch of Government Examiner of Questioned Document, Calcutta on 20.3.81 wherein he was absorbed on 6.4.84. Thereafter he was transferred to Delhi on promotion to the post of HC vide order dated 24.1.91. He observed from the



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seniority list of Constables dated 30.4.88 that while his name figured at Sl.No.6 his Junior Choto Ram figured below him, who is working as HC since 1986. Thereafter applicant submitted his representation to R-2 requesting him to promote him to the post of HC, consequent to which R-2 issued order dated 18.9.91 promoting the applicant as HC w.e.f. 30.1.86 i.e. the date on which Choto Ram was promoted. However, the applicant was not given any arrears as a result of promotion. He submitted another representation stating that R-3 and R-4 have been given promotion as HC w.e.f. 31.9.85 whereas he being the SC candidate should have been promoted against Point No.1 of 40-Point roster, reserved for SC.

3. Applicant also submits that R-4 was absorbed along with him on the same date by the same order but R-4 was promoted as HC earlier to him. According to him, there were two vacancies of HC to be filled up for the first time out of which the first vacancy should have been given to him being SC candidate. Later on R-4 was promoted to the Technical post of Assistant Sub Inspector (ASI).

4. Applicant came to know through order dated 16.2.85 by which R-3 who was on deputation in the year 1973 from UP Police was appointed as SI w.e.f. 16.2.85. He was given promotion to the post of HC on deputation in the year 1976 and thereafter he was promoted as ASI w.e.f. 25.1.84 and again as SI from 15.2.85. He was absorbed in the office of R-2 from 18.4.85. It is alleged by the



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applicant that undue favour was shown to R-3 and at the same time applicant was not promoted as HC even after completion of 10 years service. According to him, if this promotion was given to him on completion of 10 years service, he would have been promoted as SI prior to R-3, he being a SC candidate.

5. Applicant made representation to R-2 and requested him for personal interview in connection with his promotion against reserved point but without any success. On the other hand, he was reverted to the post of Constable vide order dated 23.4.93. He filed OA No.1096/93 and this Tribunal vide its order dated 11.4.97 quashed and set aside the reversion order dated 23.4.93. As there was no direction in the Tribunal's order, he preferred RA No. 124/97 which was disposed of on 16.5.97 granting him liberty to re-agitate if there was any relief left. Thus, he has filed the present OA seeking directions to the respondents to produce original records for promotion to the post of HC in respect of R-3 and R-4, quash and set aside their orders, hold review DFC for promotion to the post of HC and in the event he is found fit on the basis of his being SC candidate he should be given promotion from 4.4.85 with consequential benefits and further promotions to the posts of SI and Inspector.

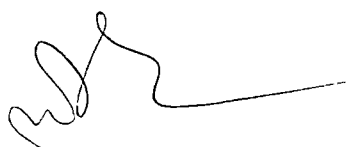
6. Respondents have contested the case and stated that arrears were not payable to the applicant because he was given notional promotion from the date of promotion of his junior, that there was only one vacancy of HC against which R-4 was promoted, that as per instructions



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regarding maintenance of roster for giving effect to reservation in services, when there is only one vacancy in the initial recruitment year the same stands automatically dereserved and ~~given to general category candidates~~ ^{but} as per recommendations of the DPC R-4 was promoted as he had put in 26 years of service on the date of absorption as compared to the applicant absorbed on 6.4.84 and completed only 9 years of service on the date of absorption and hence applicant was not eligible for promotion as HC. As regards R-3, it has been stated that R-3 was absorbed as SI in BPRD on 18.4.85 and as such there was no comparison between R-3 - absorbed as SI - and the applicant who was absorbed as Constable.

7. As regards R-3, holding a technical post of ASI, respondents contend that as per R/Rules for the post of SI, HCs (other than deputationists) having 6 years of service in the grade are eligible to be considered for promotion. Since R-3 was promoted as ASI (Store-keeper) from the feeder post of HC, he had a claim for promotion as SI as the post of HC is a feeder post for both the posts of ASI and SI. Respondents further stated that R-3 was on deputation with R-2 from 1970, permanently absorbed as SI on 18.4.85 prior to which he was not a permanent staff of R-2 and hence the question of any clash of interest between the applicant and R-3 does not arise. Since the applicant was absorbed as Constable in April, 1984, he was eligible for promotion as HC on completion of 10 years service after his absorption and he became due to be considered for promotion only in April, 1994 and prior to that date he had no claim whatsoever for promotion to the post of HC. In this



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connection respondents have drawn our attention to the OM dated 29.5.86 of the DoPT to contend that prior to the issue of this OM, the officials who initially came on deputation and subsequently permanently absorbed were to be assigned seniority from the date of permanent absorption in the particular rank. In view of this position, the OA is liable to be dismissed being devoid of merit.

8. We have heard the learned counsel for the contesting parties and perused the records.

9. During the course of the argument, learned counsel for the applicant submitted that there were two posts of HC out of which first one, falling at No.1 of the 40-point roster reserved for SC, should have been given to the applicant who belongs to SC category. He further submitted that R-3 was promoted to the post of HC, ASI and SI while he was on deputation. He was not qualified for promotion as he did not have the basic training, which was pre-requisite for promotion under UP Police promotion rules.

10. On the other hand, respondents submit that as regards R-3, he was promoted as HC, ASI and SI while on deputation as his juniors in UP Police were approved for promotion to the post of HC and ASI. His promotion to these ranks was as per rules and applicant cannot have any grievance on this account. Respondents further submitted that R-4 was promoted against a single vacancy of the year, which was to be treated as unreserved as per instructions of DoPT as there cannot be 100%



reservation against a single vacancy. R-4 being senior to the applicant was rightly considered and promoted and therefore no injustice has been caused to the applicant.

11. We have gone through the file relating to promotions made to the posts of HC, ASI, SI etc. made available to us by the respondents. We find from this file that R-3, who belonged to UP state Police service came on deputation under R-2 in 1970. He was also given promotion as HC from 6th January, 1977 in the UP Police. He was permanently absorbed under R-2 with effect from 18.4.1985. In any case R-3 was much senior to the applicant as HC. On the other hand, applicant joined government service on 6.1.75 and came on deputation under R-2 in 1976. It is because of this reason he could not be promoted as HC earlier to R-3. As per letter of January, 1985 from UP Police, it was mentioned that a number of juniors to Kalu Ram have already been approved as HC and also for officiating promotion as SI, Kalu Ram should be deemed to have been approved for promotion even when on deputation. It was further stated therein that Kalu Ram was fit for promotion u/p 191 Office Manual. Thus it is quite clear that R-3 was much senior to the applicant in the grade of HC and therefore he got subsequent promotions. Although he had been absorbed under R-2 two months after the absorption of the applicant. There were only two vacancies of HC against one Bhale Ram (R-4) was appointed and thereafter the applicant has been appointed from January, 1985. In view of this no injustice has been caused to the applicant by the promotion of R-3 or R-4 which have been made in accordance with the rules on the subject.

Therefore, applicant should have no grievance on this count. Hence his prayer for quashing the promotion orders of R-3 and R-4 is not tenable and therefore rejected.

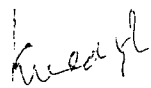
12. In so far as applicant's prayer for payment of arrears of salary etc. It is evident from the notings (page 50 of File No.13/8/80-Admn.1 Vol.I) of the aforesaid file that applicant was absorbed under R-2 from 6.4.84 whereas Shri Chotu Ram was absorbed on 28.6.84. As per the instructions on seniority and promotion, if a person who is initially taken on deputation and absorbed later his seniority in the grade in which he is absorbed will be counted from the date of absorption. In view of this it is beyond doubt that applicant is senior to Chotu Ram. While examining the representation of the applicant, it has been observed by the respondents themselves on page 50 of the aforesaid file that Shri Chotu Ram's promotion as HC in January, 1986 was void ab initio because on the date of promotion, Shri Mandal (applicant) was senior and it is great injustice with the applicant. It is because of this fact the applicant was promoted as HC w.e.f. 31.1.1986 and was placed in the pay scale of HC. We, therefore, find that the applicant was not at fault but he was wrongly denied the promotion w.e.f. January, 1986. In other words when it was decided by the respondents themselves that the applicant was to be given seniority at par with Chotu Ram in the rank of HC by ante-dating his promotion, he should not have been denied arrears of salary etc. In view of this position, his prayer for payment of arrears of salary from the

date of his promotion to the HC is justified. Respondents are directed to settle the same within a period of three months from the date of receipt of a certified copy of this order.

13. In so far applicant's prayer for promotion to the next higher posts of ASI/SI, the same shall be considered by the respondents in his turn, of course subject to availability of vacancies and applicant's fulfilling the eligibility criteria for the same as per rules on the subject.

14. The OA is partly allowed to the extent above. There shall be no order to costs.


(M.P. Singh)
Member(A)


(Kuldip Singh)
Member(J)

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