

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A.NO.871/95

Hon'ble Shri A.V.Haridasan, Vice-Chairman(J)
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 05th day of September, 1995

Sridhar Prakash
s/o Shri Bholadutt Kukreti
aged 47 years
r/o 15/293, Lodhi Colony
New Delhi - 110 003.

... Applicant

(By Shri A.K.Behra, Advocate)

Versus

Union of India through:

1. The Secretary,
Ministry of Home Affairs
North Block
New Delhi - 110 001.
2. The Director
National Crime Records Bureau
Ministry of Home Affairs
East Block - 7
R.K.Puram
New Delhi - 110 066.

... Respondents

(By Shri M.K.Gupta, Advocate)

O R D E R (Oral)


Hon'ble Shri A.V.Haridasan, Vice-Chairman(J)

The applicant while working as a Junior Intelligence Officer Grade-I in the Intelligence Bureau w.e.f. 07.10.1971 was appointed by on transfer on deputation in the Directorate of Coordination Police Computers (DCPC) now known as National Crime Records Bureau (NCRB) as Sub-Inspector (Non-Technical) w.e.f. 10.2.1982. He was absorbed on regular basis as Sub-Inspector w.e.f. 25.8.1984. The next higher post in the direct line of promotion is that of Inspector. The requisite qualification for promotion according to the recruitment rules of the year 1980 was five years regular service in the grade of Sub-Inspector. The recruitment rules were amended in the year 1988 wherein, on the educational qualifications required for direct recruitment, ^{now} ~~the~~ graduation was also made applicable to promotion. The DPC for promotion to the post of Inspector after the applicant got

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absorbed in the Department in the organisation was held for the first time in the year 1989. Finding that the applicant was not promoted while persons juniors to him were promoted, on account of the change of recruitment rules, which should not affect him the applicant approached this Tribunal in OA No.998/90. The above said application was disposed of vide judgment on 13.1.1995 in which it was declared that in respect of vacancies of Inspectors which occurred prior to 31.12.1988 i.e. when the new recruitment rules (i.e. in the year 1988) came into force, recruitment has to be made in accordance with the 1980 rules, and that a direction was also given to the respondents to hold a review DPC to consider the case of the applicant in the light of the 1980 rules for the vacancies which arose in 1987 and 1988 and before 31.12.1988 to consider the applicant and to promote him if he is found fit and suitable. It was also observed that in considering the applicant by the DPC, the respondents may also take into account whether the applicant had the requisite length of service which is eligibility criteria for promotion. Pursuance to the above directions, the applicant's case was considered and the respondents have communicated to the applicant a letter dated 10.3.1995 (Annexure-A/I) by which he was informed that he could not be promoted as Inspector as he did not have the requisite length of regular service. Impugning this order, the applicant had filed this application for a declaration that the applicant is eligible for consideration for the post of Inspector against the vacancies for the year 1987 and 1988, and a direction to the respondents to consider him for promotion to the grade of Inspector in respect of the vacancies in the grade of Inspector for the year 1987 and 1988 and to promote him to the said grade with all consequential benefits including arrears of pay and allowances w.e.f. the date on which he should have been recommended by the original DPC of 1989.



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2. The respondents contest the application and have filed a detailed reply statement. We have perused the pleadings of the case and heard the learned counsel on either side. The respondents opposed the grant of claim on two grounds. (1) that the application is not maintainable as the applicant is barred by the Principles of Constructive resjudicata and estoppel. (2) that the applicant did not have the requisite length of regular service in the grade, as he was appointed/absorbed to the post on regular basis only w.e.f. 25.8.1984 and that before such appointment, he was not holding a post equivalent in grade to the post of Sub-Inspector in his parent organisation.

3. Though, it is not clearly stated as to how the Principles of Constructive Resjudicata arise in this case, at the time of the arguments, the learned counsel for the respondent brought to our notice that in the earlier Original Application, the respondents have raised the issue that the applicant was not eligible for promotion as he did not have the requisite length of service. Since that question was not adjudicated in the earlier Original Application, the question of Principles of Constructive Resjudicata would not arise. In his earlier application, the applicant had not alleged anything about his length of service. Therefore, the **point** raised in the reply that the application is barred by either Principles of Constructive Resjudicata or estoppel cannot stand.

4. The learned counsel for the respondents have argued that the applicant having been appointed in the organisation on regular basis only w.e.f. 25.8.1984, he has not completed five years regular service in the grade which is an eligibility criteria under the recruitment rules. That the applicant has been appointed in the organisation w.e.f. 10.2.1982 on transfer on deputation as Sub-Inspector is not disputed. The question is

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whether the services rendered as a deputationist having been appointed by way of transfer on deputation, before he was regularly absorbed can be treated as regular service. Learned counsel for the respondents argued that this cannot be treated as a regular service. In support of this position, the applicant placed some reliance on the instructions of the Department of Personnel and Training contained in OM No.20020/7/30-Estt.(D) dated 29.5.1986. It is not necessary to reproduce the said OM because it deals with the the fixation of seniority and does not consider the question of eligibility. Going by the recruitment rules, the post of Sub-Inspector in the organisation is filled up by promotion failing which by transfer on deputation. Therefore, transfer on deputation is one of the recognised methods of recruitment according to the recruitment rules. A person appointed by way of transfer on deputation cannot be considered to be an adhoc employee. Transfer on deputation is also a method of recruitment according to the rules. Therefore, the applicant though on transfer on deputation was appointed regularly to the post of Sub-Inspector which carried a pay scale of Rs.380-560. Though the applicant was absorbed in service only on 25.8.1984 and probably entitled to seniority in that grade only with effect from that date his services rendered prior to absorption as a deputationist being regular service has to be treated as regular service in determining eligibility for promotion. Even if the applicant was holding ^{a leave on} a post in the **parent department** which has a different pay scale does not alter the position. We are therefore of the considered view that the five years period for determining his eligibility should be reckoned from 10.2.1982 and not from 25.8.1984. We are supported in taking this view by the dictum of the ruling of the Hon'ble Supreme Court in Shri K.Madhavan Vs. UOI held in 1987 Vol.(2), SCC 566 where it was

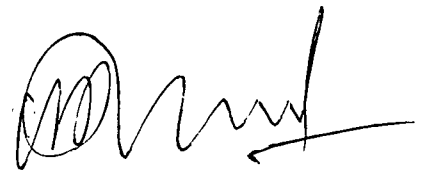
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held that the services rendered on deputation prior to regular absorption can be treated as regular service for the purpose of eligibility for promotion.

5. In view of what is stated above, we are of the considered view that the view taken by the respondents that the applicant did not have the requisite length of service for being considered for the post of Inspector for which the vacancies arose in the year 1987 and 1988 is fully unsustainable. Therefore, we set-aside the impugned order dated 10.3.1995. We also direct the respondents to consider the applicant for promotion to the post of Inspector against the vacancies for the year 1987 and 1988 by a review DPC. In case he is cleared by the DPC and if he is otherwise not found unsuitable, to promote him with effect from the date on which his immediate junior was promoted. If the applicant is so promoted, his seniority will be fixed from the date when his immediate junior was promoted on the basis of the recommendations of the original DPC and he shall be entitled to all consequential benefits. The entire process shall be completed within four months from the date of receipt of a copy of this order by the respondents. There shall be no order as to costs.


(R.K. AHOOJA)
MEMBER(A)

/RAO/


(A.V. HARIDASAN)
VICE-CHAIRMAN(J)