

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

CP No.82/2002 in
OA No.276/1997
OA No.127/1998

New Delhi this the 21st day of May, 2002.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Mahabir Singh,
Dy. Superintendent Grade-I,
R/o Qr. No.669, Type-IV,
New Residence Complex,
Central Jail, Tihar,
New Delhi.

-Applicant

(By Advocate Shri Satish Kumar)

-Versus-

1. Sh. Seilja Chandra,
Chief Secretary,
Delhi Admn.,
Govt. of NCT Delhi,
Sachivalaya Bhawan,
I.P. Estate, ITO, New Delhi.
2. Sh. Ramesh Narain Swamy,
Home Secretary,
Delhi Admn.
Govt. of NCT of Delhi,
Sachivalaya Bhawan,
I.P. Estate ITO, New Delhi.
3. Sh. G.L. Meena,
Dy. Home Secretary (General),
Govt. of NCT of Delhi,
Sachivalaya Bhawan,
I.P. Estate, ITO, New Delhi.
4. Shri Ajay Aggarwal, IPS,
ADG/IG (Prison),
Prison Head Quarters,
Central Jail, Tihar,
New Delhi-64.

-Respondents

(By Advocate Shri Mohit Madan, proxy for Mrs. Avnish
Ahlawat, Advocate)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant assails wilful disobedience of the directions of this Court in OA-276/1997 as well as in OA-127/98 in so far as the respondents have not promoted the applicant to the post of Superintendent Grade-I from 1.7.90 in place of 23.12.94 and also having not considered

33

him for promotion to the post of Superintendent Jail w.e.f. 1.7.95 with all consequential benefits.

2. By an order dated 22.8.1997 in OA-276/1997 having regard to the fact that the applicant has been exonerated in all the charge-sheets, following directions have been issued to the respondents:

"The respondents on the other hand submitted that the applicant has been given an ad hoc promotion to the post of Dy. Supdt. Grade-I w.e.f. 9.10.96 without stating whether between 1998 and 1996 any other DPC has been held to consider the promotion to the post of Dy. Supdt. Grade-I. If it has not been held in accordance with the extant rules, the promotion should have been considered yearwise according to the number of vacancies arose in a given year. In the circumstances, the only direction that this Tribunal will have to issue now is that the applicant shall be considered by a review DPC any time after 1.7.90 by the next DPC which has considered the promotion of any of the persons to the post of Dy. Supdt. Grade-I in accordance with rules. It goes without saying that the said consideration shall be in accordance with the Recruitment Rules including the rules governing reservation.

Thereafter the applicant shall be given the benefit of the result of the said DPC and further promotion at the time when he becomes due for consideration and in such cases the respondents shall hold a review DPC to the post of Superintendent as and when the applicant became due in accordance with the rules and subject to rules on reservation. Liberty is given to him to challenge the Recruitment Rules regarding the post of Supdt. Jail. With these orders this OA is disposed of. No costs."

3. CP-29/2001 in OA-276/97 and OA-127/98 was disposed of by an order dated 10.1.2001 on the statement of the respondents that the minutes of the DPC which was held on 3.1.2001 for consideration of eligible officers for promotion from the post of Deputy Superintendent Grade II to Grade-I are awaited.

4. Learned counsel for the applicant contended that as per the recruitment rules Assistant Superintendents are eligible for next higher promotion as Dy. Superintendent Grade-II the applicant moved OA-489/88 for regularisation of his promotion as Deputy Superintendent Grade II. Aforesaid OA was disposed of on 10.6.94 with the direction to the respondents to promote the applicant as Deputy Superintendent Grade-II with effect from the date from which any person junior to him was promoted and also consider him for further promotion. According to him after having served as Deputy Superintendent Grade-II w.e.f. 1.7.90 due to the inaction of the respondents and non-responding to his grievance and on filing the OA the respondents not complying with the directions OA-276/98 was filed for direction to the respondents to regularise him in the post of Superintendent Grade-I w.e.f. 1.7.90 and for amendment in the existing recruitment rules for making provision for filling up the posts of Deputy Superintendent Grade II from Jail cadre and not to fill up the post on 'deputation. This Court in OA-276/97 by an order dated 22.8.97 restrained the respondents from filling up the post of Deputy Superintendent Grade-I and Superintendent, Central Jail Tihar on transfer or on deputation etc. unless the candidature of the applicant is considered provisionally alongwith other eligible candidates. MA-1429/98 was filed for vacation of the interim order. The same was vacated on 17.11.98. It is contended that the Chief Minister has also recommended the promotion of the applicant and CP-29/2001 was dismissed, with a direction to the respondents to take further action within six weeks. Applicant thereafter was promoted as Superintendent Grade-I from 23.12.94. It is in this backdrop contended that he is

35

entitled for promotion w.e.f. 1.7.90 as vacancies existed for that year. It is contended that he is entitled for promotion w.e.f. 1.7.90 as vacancies existed for that year. It is contended that by not considering his case from the due date the respondents have committed a contempt of court.

5. On the other hand, respondents' counsel denied the contentions and stated that in view of the decision in J.S. Parihar v. Ganpat Duggar & Ors., 1997 (1) SLJ 236 = JT 1996 (9) SC 611 a new cause of action cannot be gone into and further placing reliance on the decision of the Apex Court in Hukum Raj Khinsara v. Union of India & Ors., 1998 (1) SLJ 226=1997 (4) SCC 284 stated that besides an execution petition even an original petition is barred by time within one year of the order of the Tribunal. As such the case of the applicant is barred by limitation.

6. On merits, learned counsel for the respondents stated that the earlier contempt petition was dismissed. Recruitment rules for the post of DSP were notified on 23.11.94 and officers senior to the applicant have been given promotion. In so far as promotion to the post of Superintendent (Jail) is concerned, the same is to be filled up as per the notified recruitment rules in existence from 4.1.79 which is to be filled by transfer on deputation. In the recruitment rules Dy. Superintendent Grade I (Jail) is not entitled for promotion to the post of Superintendent (Jail). The promotion cannot be given dehors the rules. Liberty was given to the applicant to challenge the recruitment rules, as such there is no wilful

36

or contumacious disobedience of the directions of this court dated 22.8.97. The post of Deputy Superintendent of Police Grade-I has been filled on regular basis w.e.f. 23.12.94 from the date of the notification of the recruitment rules. Applicant's immediate junior was promoted on regular basis w.e.f. 23.12.94, as such he was promoted from the same date and he has no right to be promoted w.e.f. 1.7.90.

7. We have carefully considered the rival contentions of the parties. In our considered view the applicant has been promoted in accordance with the existing rules and no junior has been promoted earlier to the applicant. As far as promotion to the post of Superintendent Grade-I and Superintendent (Jail) is concerned, the same has to be in accordance with the recruitment rules in vogue. As the applicant has not challenged those recruitment rules, it does not lie within our jurisdiction to issue a direction out of the context of the decision against which contempt was filed and also in view of J.S. Parihar's decision (supra) no new cause action can be gone into in a contempt petition.

8. In this view of the matter, finding no disobedience or contempt on the part of the respondents, CP is dismissed. Notices are discharged. However, it is open to the applicant to assail his surviving grievance, flowing from the order passed by the respondents, in accordance with law. No costs.

S. Raju

(Shanker Raju)
Member (J)

'San.'

V.K. Majotra

(V.K. Majotra)
Member (A)