

CENTRAL ADMINISTRATIVE TRIBUNAL:
PRINCIPAL BENCH
NEW DELHI

O.A.No.388/1994

(9)

Thursday this the 22nd day of July, 1999

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. S.P. BISWAS, ADMINISTRATIVE MEMBER

Inspector Gambhir Singh No.D.1118
Resident of G.116/117, School Road,
Uttam Nagar,
Delhi-110059.

...Applicant

(Through Advocate Mrs. Avanish Ahlawat)

Vs.

1. Union of India through Lt.Governor
of Delhi, Raj Nivas, Rajnias Marg,
Delhi.

2. Commissioner of Police,
Delhi Police,
Police Headquarters,
M.S.O. Building.
I.P.Estate,
New Delhi-110 002.

3. Deputy Commissioner of Police (CID/SS)
Delhi Police,
Police Headquarters,
M.S.O. Building,
I.P.Estate,
New Delhi-110 002.

...Respondents

(Through Advocate Anil Singhal proxy for Anoop Bagai)

The application having been heard on 15.7.1999 the
Tribunal on 22.7.1999 delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant, Gambir Singh was appointed as Sub Inspector of Police in the Delhi Police on 27.3.1991. After a departmental enquiry by order dated dated 18.7.1981 (Annexure.A) the applicant was awarded a penalty of permanent forfeiture of two years approved service. In the year 1986 four criminal cases in FIR Nos.333/86, 335/86, 336/86 and 282/86 of Police Station Tilak Nagar and Janakpuri were registered against the applicant, according to him

falsely at the instance of the then Assistant Commissioner of Police Mr. Kanchi Singh because of enmity. In two cases the applicant was discharged by the court and the other cases no charge sheet was led before the court. Though the applicant was initially placed under suspension during the pendency of the Criminal Cases, he was reinstated in service on 8.12.1987. The applicant was not considered for promotion to the rank of Inspector of Police in the year 1987. In 1988 when the batchmates of the applicant were considered for promotion and included in the list 'F' the recommendations in the case of the applicant was kept in sealed cover as departmental proceedings were pending against him. Though the departmental proceedings came to an end on 26.2.1988 and 2.3.1990 exonerating the applicant, he was not considered for promotion at the appropriate time. Though the applicant's name was placed at Sl.No.10 in the List 'F' in the meeting of the departmental promotion committee held on 12.2.91 his name ^{was not} ~~✓~~ shown in the list ^{alongwith} ~~✓~~ some other ^{Sub} Inspectors placed under the heading "decision in respect of the following Sub Inspectors (Executive) has been kept in sealed cover in accordance with Rule 5 (iii) of Delhi Police (Promotion and confirmation) Rules, 1980 which will be announced after finalisation of the departmental proceedings and criminal cases etc. pending against them (Annexure.E). However, on 12.2.91 there was no departmental enquiry nor was there any criminal case pending against the applicant. The applicant was going

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on making representations to the competent authority to open the sealed cover in his case and to give effect to his promotion with effect from the date on which his immediate junior was promoted. The applicant was thereafter transferred frequently. Finding that the applicant was not being promoted while juniors were promoted for no reason, the applicant in a fit of anxiety and anger wrote to the Commissioner of Police (Respondent No.1) on 29.12.90 a letter (Annexure.G) which reads as follows:

"The Commissioner of Police, Delhi.
Through Proper Channel.

Subject: Voluntary Retirement due to withheld
of promotion.

Sir,

The applicant most respectfully submits as under:

1. That, my name was admitted for F list w.e.f. 16.2.87 but I have not so far been promoted to the rank of Inspector.
2. That I was enrolled in Delhi Police on 27.3.1971 as a Sub Inspector.

3. That, I have decided hence preferred to retire voluntarily from Delhi Police as a period of 20 years of continuous service is being compelled.

4. That, all usual benefits may kindly be provided to me.

5. That, the date of voluntary retirement may also be fixed for the period of 20+5 years.

Be pleased either to promote me or accept my above request please.

Dated: 29.12.90

Yours sincerely
Sd/- S.I.Gambhir Singh
No.D/1118, OPS Cell (SB)
N.Delhi."

2. The applicant received a note dated 25.1.91 issued from the Office of the Deputy Commissioner of Police (SB) Delhi directing him to attend the Establishment Branch on 28.1.91 at 10.30 am. The said note was received by the applicant at 10.30 am on 29.1.91. The applicant on the same note recorded that he requested for his promotion to the rank of Inspector and if he was not ^{to be} promoted his date of retirement after twenty years approved service might be fixed and he be informed so that he could submit a three months' notice after completion of 20 years qualifying service. The Deputy Commissioner of Police (Respondent No.3) issued the impugned order dated 26.2.91 (Annexure.I) stating that the short notice submitted by the applicant was accepted and he would be deemed to have retired from service w.e.f. 31.3.91. As the applicant would have given a valid notice of voluntary retirement under Rule 48-A of the CCS (Pension) Rules only after completion of twenty years of qualifying service and the notice given by the applicant was premature, conditional and defective, according to the applicant, it could not have been accepted while he had even before the impugned order was issued on 29.1.91 indicated that if he would not be promoted he might be informed of the date of his eligibility to retire voluntarily. Although the applicant challenged the order before the Commissioner of Police, the applicant was compelled to proceed on voluntary retirement without deciding the issue of his promotion. However, the Commissioner of Police on 3.5.91 passed an order bringing the name of

of the applicant in the List 'F' (Executive) with effect from 20.2.89 and promoting him as Inspector with effect from that date. Coming to know of the order, the applicant made a representation on 17.5.91 informing the respondents that he never submitted a request for voluntary retirement but for promotion only and seeking withdrawal of the Annexure.I order in the light of the promotion given to him (Annexure.K). The applicant again informed the Dy.Commissioner of Police that as he has been promoted by the Commissioner of Police, Delhi he may be permitted to assume duties. On 10.5.91 on behalf of the Additional Commissioner of Police, DCP H.Q. an order was issued (Annexure.O) whereby alongwith posting of two other officers, the applicant was on promotion/^{as Inspector} posted from Special Branch to VIIItth Bn of DAP. When the applicant went to join duty at VIIItth Bn DAP on the basis of the Annexure.O order, he was not allowed to join duty on the ground that the order retiring him issued on 26.12.90 had not been recalled. The applicant therefore, addressed the Commissioner of Police on 12.6.91 by a letter informing that he was not being allowed to join duty. In the meanwhile, the applicant's representation dated 17.5.91 (Annexure.M) was considered and rejected by order dated 15.6.91 (Annexure.Q) by the Deputy Commissioner of Police and he was advised to fill up the pension papers for early settlement of his pension. The representation submitted by the applicant again to the Commissioner of Police on 11.11.91 (Annexure.R) aggrieved by refusal on the part of the authorities to allow him to join in the promoted post was rejected by Annexure.S order and he was again advised to fill up and submit his pension papers. To the appeal submitted

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by the applicant to the Lt.Governor, Delhi the applicant received an order dated 5.2.93 (Annexure.U) which reads as follows:

"With reference to your application dated 6.1.92 on the subject cited above, I am to state that your request has been sympathetically considered with Delhi Administration, Delhi and rejected and you may kindly fill up the pension forms so that your pension case is decided from Pay and Accounts Officer, No.IV, Tis Hazari, Delhi."

This communication was sent from the Office of the Deputy Commissioner of Police. Aggrieved by the premature retirement of the applicant with effect from 31.3.91 vide Annexure.I order and the order passed by the Commissioner of Police on 9.12.91 rejecting his appeal and the order of the Lt. Governor communicated on 4.2.93 (Annexure.U) the applicant has filed this application seeking to have these orders set aside and for a direction to the respondents to take the applicant in service as Inspector with all consequential benefits including pay and allowances, seniority, promotion etc. declaring that he is entitled to his pay and allowances for the period he has been given promotion with effect from 21.2.89 till he is reinstated in service with all consequential benefits.

3. The respondents in their reply statemnt contend that the period of two years forfeited approved service would count for computing the qualified service for pension to the applicant, that he had completed twenty years of service on 27.3.91, that the applicant had

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written on the back of the notice of voluntary retirement submitted by him on 29.12.90 when called by his senior officers that as he would be completing 20 years of service on 27.3.91 his voluntary retirement be treated/accepted with effect from 31.3.91 and that therefore, the acceptance of the voluntary retirement of the applicant with effect from 31.3.91 by Annexure.I order was perfectly valid and justified. They further contend that though the applicant was promoted with effect from 20.2.89 since he had retired from service before the order was issued he would be entitled to only pensionary benefits according to the promoted order. The respondents, therefore, contend that the applicant is not entitled to the reliefs sought for. The respondents have along with the reply statement produced Annexure.R.C, xxxxxxxxx the notice submitted by the applicant on 29.12.90 which is seen scored ^{off} and on the back of it, written xxxxxxxxxxxx under applicant's signature as follows:

"The 20 years of my service are being completed on 27.3.91 and my voluntary retirement may kindly be treated/accepted w.e.f. 31.3.91. This may kindly be treated as notice of my voluntary retirement please. I am not in possession of any Govt. accommodation."

4. The applicant has filed a rejoinder in which he has stated that he never scored ^{off} the notice dated 29.12.90 but had only written on the back as the dealing clerk wanted that a definite date should be indicated, and that in other respects his request made in Annexure.H for promotion stood intact. Further he has contended that it was after the above endorsement made by the applicant on Annexure.H notice that a

promotion order was issued to him on 25.1.91 from the Office of the Deputy Commissioner of Police by which the applicant was advised to attend the office on 28.1.91 and the applicant had on 29.1.91 noting the contents of the memo written on the same memo that he had asked for his promotion to the rank of Inspector of Police and if he was not being promoted his date of retirement after 20 years approved service might be fixed and informed, so that he would be able to submit the three months notice after completion of 20 years of qualifying service for voluntary retirement. The applicant has produced a typed copy of the above as Annexure.A to the rejoinder and at the time of hearing produced a photo copy. The applicant states that it would be evident from Annexure.A to the rejoinder that the applicant has withdrawn his request for voluntary retirement with effect from 31.3.91 and had requested the authorities to inform him whether he would be promoted or to fix the date on which he would become eligible for voluntary retirement on completion of 20 years of service so that he could submit a proper notice giving three months time.

5. We have gone through the pleadings and the other materials available on record and have heard at length the arguments of Smt. Avnish Ahlawat, learned counsel for the applicant and Shri Anil Singhal proxy for Anoop Bagai for the respondents. Questions that arise for consideration in this application are whether the order passed by the Deputy Commissioner of Police on 26.2.91 (Annexure.I) retiring the applicant voluntarily with effect from 31.3.91 and the subsequent action on the part of the respondents in disallowing the applicant to join the post of Inspector of Police

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to which he was promoted by order of the Commissioner of Police dated 3.5.91 (Annexure.L) and posted as Inspector of Police, VIII Bn.DAPare justified and if not what relief the applicant is entitled.

6. The impugned order Annexure.I was passed by the Deputy Commissioner of Police on the basis of an alleged notice for voluntary retirement submitted by the applicant. According to the applicant the notice submitted by him seeking voluntary retirement due to withholding of promotion made on 29.12.90 could not have been accepted for two reasons, (i) he did not make an unequivocal request for retirement but mainly claimed promotion and only if that be not given to him to accept his voluntary retirement fixing a date for the period of 20+5 years and xxxxx (ii) on the date on which Annexure.G letter was written by him, he had not become eligible to apply for voluntary retirement. Learned counsel for respondents on the other hand argued that the applicant had on 29.1.91 on the back of Annexure.G application submitted by him on 29.12.90 written as is seen from Annexure.R(c) that 20 years of his service were being completed on 27.3.91 and voluntary retirement might be treated/accepted with effect from 31.3.91 and that it might be treated as notice of his voluntary retirement, the action of the respondents in accepting that as a ^{short} notice of voluntary retirement and granting voluntary retirement to the applicant was perfectly in order. The retirement of the applicant appears to be having effected in accordance with the provisions of FR.48.A. Therefore, before dealing with the validity of the ^{order of} retirement, it would profitable to extract FR 48-A, which reads as follows:

"48-A (1) At any time after a Government servant has completed twenty years qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.

....

(2) The notice of voluntary retirement given under Sub Rule (1) shall require acceptance by the appointing authority.

In terms of Rule 48-A a Government Servant after he has completed 20 years of qualifying service may retire at any time after giving three months notice. A mere look at Annexure.G letter written by the applicant addressed to the Commissioner of Police would clearly establish that the applicant was highly agitated over he being not promoted and had therefore requested that he be promoted and if not promoted to accept his request for voluntary retirement fixing the date of his voluntary retirement for the period 20+5.

This letter under no stretch of imagination can be construed as a valid application under Rule 48-A of the Central Civil Services (Pension) Rules. The applicant had requested for accepting his voluntary retirement only if he would not be promoted as Inspector. The representation/letter Annexure.G was addressed to the Commissioner of Police only. The Commissioner of Police has by Order dated 3.5.91 promoted the applicant with retrospective effect from the year 1989. There was, therefore, no question of the applicant retiring voluntarily as his grievance was redressed. The Deputy Commissioner of Police in the meanwhile was not at all justified and obtaining from the applicant on 23.2.91 on the back of Annexure.G letter that his date of retirement be 31.3.91 and then issuing the impugned order retiring the applicant with effect from 31.3.91. How the Annexure.G. letter addressed to the Commissioner of Police came to be dealt with and decided by the Deputy Commissioner of Police is not clear from the records.

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In Annexure.G. notice the applicant had not shown the date of his intended retirement as 31.3.91. This date according to the respondents was indicated by the applicant only at the back of Annexure.G dated 23.2.91. It is seen from Annexure.A to the rejoinder that on 29.1.91 the applicant had written to the Commissioner of Police as follows:

"I have requested for my promotion to the rank of Inspector at first and if I am not promoted my date of retirement of 20 years approved service may be fixed and informed so that I may be able to submit three months notice after completion of 20 years qualifying service for voluntary retirement."

It is evident that even the Annexure.G. letter and the endorsement made on 23.2.91 has been withdrawn by the applicant by the above endorsement. Therefore, in any case after the applicant has made the endorsement on 29.1.91 the Annexure.G and the endorsement made thereunder on 23.2.91 should have been treated as cancelled. Instead it appears that the Dy.Commissioner of Police has shown undue haste and extra interest in seeing off the applicant from the department just because in frustration the applicant had requested the Commissioner of Police to promote him and if not to accept his retirement. Normally an application like Annexure.G. which is conditional and vague would not be treated as an application for voluntary retirement. Instead of leaving it to the Commissioner of Police to take a decision on the request of the applicant for promotion or rejecting the same on the ground that it was conditional and vague the Dy.Commissioner got an endorsement made by the applicant that his retirement be accepted w.e.f. 31.3.91. We are of the view that the impugned order Annexure.I cannot be sustained for what is stated above.

7. From Annexure.O dated 3.5.91 of the Commissioner of Police promoting the applicant as Inspector w.e.f. 21.2.89 treating the period between 2.12.89 to 30.4.91 as proforma promotion and the order at Annexure.O dated 10.5.91 against of the Additional Commissioner of Police posting the applicant as Inspector of Police under the VIIIth Bn DAP would clearly show that the Additional Commissioner of Police treated that the applicant continued in service. As the Additional Commissioner of Police has posted the applicant as Inspector of Police in VIIIth Bn. DAP the action on the part of the respondents in not allowing the applicant to join as Inspector of Police on the basis of Annexure.O order is absolutely illegal and unjustified. Despite several representations made the request of the applicant for permission to rejoin duty as Inspector of Police has been rejected by the respondents without any application of mind unjustifiably and his appeal to the first respondent was rejected without a speaking order in a capricious manner. We are of the considered view that the impugned orders dated 26.2.91 (Annexure.I) of the Deputy Commissioner of Police and the Appellate Order dated 9.12.91 (Annexure.S) rejecting his representation and the order of the Lt. Governor, Delhi intimated vide order dated 4.2.93 (Annexure.U) are liable to be set aside.

8. Having found that the order of retirement of the applicant is to be set aside, we have to consider what relief the applicant is entitled. On the basis of the Annexure.O order of posting, the applicant

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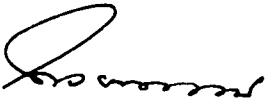
had requested the Dy. Commissioner of Police by his letter dated 17.5.91 to allow him to join his duties as Inspector of Police at VIIItth Bn DAP. This request was rejected and therefore, the applicant was kept out of service. We are of the considered view that the interests of justice would be met if the respondents are directed to take the applicant on duty as Inspector of Police forthwith and treat that he continued in service and joined the post of Inspector of Police VIIItth Bn. DAP on 17.5.91. The applicant will be entitled to pay and allowances with effect from 17.5.91. The period ^{during which he was out of service} upto 17.5.91 shall be treated as leave of any kind due and if no leave was due as Extra Ordinary Leave.

9. In the result, in the light of what is stated above, the application is allowed and the respondents are directed to reinstate the applicant as Inspector of Police in Delhi Police and to give him a posting immediately. It would be treated that the applicant joined the post of Inspector of Police, VIIItth Bn. DAP on 17.5.91 on the basis of Annexure.0 ^{posting} order and the applicant shall be paid the entire pay and allowances of the post of Inspector of Police with effect from 17.5.91 till the date of his reinstatement. The period upto 17.5.91 during which the applicant was out of service shall be regularised by grant of leave of any kind due or if no leave is due as Extra Ordinary Leave. The applicant shall be treated to have continued

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in service despite the impugned order Annexure.I and shall be entitled to all consequential benefits of seniority, consideration for promotion etc. The above order shall be complied with by reinstating the applicant as Inspector of Police forthwith and by making available to him the monetary benefits flowing from the directions as above within a period of three months from the date of receipt of a copy of this order. There is no order as to costs.

Dated this the 22 day of July, 1999


S.P. BISWAS
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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