

Central Administrative Tribunal
Principal Bench

O.A. No. 1453 of 2000

(19)

New Delhi, dated this the 6th February, 2002

HON'BLE MR. JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

1. Akhtar Ali Farooqui,
Dy. Commissioner of Police,
Delhi Armed Police, Delhi Police,
R/o Flat No.1, P.S. Rajouri Garden,
New Delhi-110027.
2. Dinesh Bhatt
3. Naresh Kumar
4. Mahabir Singh
5. D.P. Verma
6. R.K. Sharma
7. D.L. Kashyap
8. Keshav Dwivedi
9. U.K. Chaudhary
10. Paldan
11. V. Ranganathan
12. Ashok Chand
13. Anil Kumar Ojha
14. V.V. Chaudhary
15. R.S. Ghumanan
16. A.A. Siddiqui
17. S.B.S. Tyagi
18. Dr. P.S. Bhushan
19. D.S. Norwat
20. Amarjeet Singh Cheema
21. Ranvir Singh
22. A.K. Kampani

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23. Alok Kumar .. Applicants
 24. Ajay Kumar

(By Advocate: Shri Raju Ramachandra,
 Sr. Advocate with Shri S.K.Sinha
 and Shri Vikrant Yadav)

Versus

1. Union of India through
 the Secretary,
 Ministry of Home Affairs,
 North Block, New Delhi.
2. Lt. Governor, Delhi,
 Raj Niwas, Delhi.
3. Govt. of NCT of Delhi through
 the Chief Secretary,
 5, Sham Nath Marg, Delhi.
4. Govt. of NCT of Delhi through
 the Principal Secretary (Home),
 5, Sham Nath Marg, Delhi.
5. Dept. of Personnel & Training through
 the Secretary,
 North Block, New Delhi.
6. Union Public Service Commission
 through the Secretary,
 Dholpur House,
 Shahjahan Road, New Delhi. .. Respondents

(By Advocate: Shri K.C.D. Gangwani)

ORDER (Oral)

S.R. ADIGE, VC (A)

Applicants impugn Respondents' promotion order dated 1.5.2000 (Annexure A-1) and seek a direction to Respondents to declare them to have been regularly promoted to the rank of Dy. Commissioner of Police in the pay scale of Rs.12000-16500 (pre-revised Rs.3700-5000) in Junior Administrative Grade) with effect from their respective initial date(s) of officiation as Dy. Commissioner of Police/Addl.DCP in Delhi Police. Consequential benefits have also been

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prayed for.

2. We have heard both sides.

3. On the basis of IAS etc. Examination in 1976-1977 applicants were allocated to Delhi, Andaman and Nicobar Islands Police Service (DANIPS) and were appointed to the post of Assistant Commissioner of Police/Dy. Superintendent of Police in the years 1978 and 1979 with the allotment years 1977-78. The pay scale at entry level was Rs.650-1200 (pre-revised), (subsequently revised to Rs.2000-3500) which was called Grade II. They served in that capacity in next 10-12 years upon which they were promoted to the next higher grade i.e. Grade I (Selection Grade) and were posted as Dy. Commissioner of Police in the pre-revised scale of Rs. 1100-1500 (Rs.3000-5000) on ad hoc basis from 1987 onwards.

4. Normally the further promotion of DANIPS officers was to the IPS, but because of relatively meagre opportunity for promotion to the IPS rank, and consequent acute stagnation in DANIPS, Respondents have under consideration a proposal for creation of a new grade namely Junior Administrative Grade (JAG) in the pay scale of Rs.3700-5000 in DANIPS itself. A decision to create JAG in DANIPS was taken vide Ministry of Home Affairs O.M. dated 2.6.1995 (Annexure R-3), and as per Respondents' additional affidavit dated 4.2.2002, the specific posts to be operated in the said grade were identified in 1996 with designation of Addl. DCP and the

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eligible officers were considered and given promotion to the said grade w.e.f. 28.6.96, pending inclusion of said post in the cadre of DANIPS through necessary amendment to DANI Police Service Rules, 1971. Respondents in their additional affidavit state that the identified posts in JAG were encadred in the said service through amendments in the aforementioned service rules which came into force on the date of its publication in the official gazette on 14.8.1998. The DPC for regular promotion in the said grade were held in the year 2000 and promotions were made prospectively from 25.4.2000 vide impugned orders of said date.

5. On behalf of applicants it was contended that they are entitled to consideration for grant of seniority as DCP/Addl. DCP in JAG w.e.f. the date of their ad hoc promotion on 28.6.96 (Page 156 of OA). In this connection support was sought from the Hon'ble Supreme Court's ruling in Director Recruits Class II Engineering Officers Association Vs. State of Maharashtra 1990 (2) SCC 715. It has been contended on behalf of applicants that they are squarely covered by Conclusion (B) of the aforesaid ruling which reads as follows:

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with rules, the period of officiating service will be counted."

6. It has been contended on behalf of applicants that they have continued uninterruptedly in JAG w.e.f. 28.6.96 till they were eventually regularised w.e.f. 25.4.2000 & therefore, they are

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entitled to count their seniority from the date of their ad hoc appointment in JAG in the background of aforementioned Conclusion (B). Reliance has also been placed on CAT, Calcutta Bench order dated 30.4.90 in R.K. Gangopadhyaya & Others Vs. Union of India & others and connected case as well as para 2 (1) of the Chapter No.20 on Ad hoc Appointments and Promotion in Swamy's Complete Manual on Establishment and Administration 6th Edition 1997 printed by Nathan & Company.

7. In this connection We have also perused the Hon'ble Supreme Court's ruling in State of West Bengal & others Vs. Aghore Nath Dey & Others and connected cases 1993 (3) SCC 371. This ruling which was delivered by a three Judge Bench of the Hon'ble Supreme Court, and in which the Direct Recruits' case (supra) has been extensively discussed lays down that Conclusion (B) allows benefit of service in cases where there was procedural irregularity in making appointments according to rules and this irregularity was subsequently rectified. In our considered opinion Conclusion (B) would operate in a situation where the rules themselves were in existence, but where there were certain procedural irregularities in making appointments according to those rules, those irregularities being subsequently rectified. In the present case, the rules themselves providing for J.A.G. came into force only w.e.f. 14.8.1998, and it therefore cannot be said that while making the ad hoc appointment of applicants to JAG w.e.f. 28.6.96, the rules providing for JAG were themselves in

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existence and the ad hoc appointments were made merely as a result of some procedural infirmities which were subsequently rectified.

8. Shri Ramchandran argued that even if the present case did not come squarely within Conclusion (B) of the Direct Recruits' case (supra), in the light of the foregoing discussion, Conclusion (B) should be logically and reasonably extended to cover situations like the present one, where the term 'procedural irregularity' may cover even absence of the Rules. In our opinion when Hon'ble Supreme Court in Aghore Nath Dey's case (supra) has clearly and unequivocally held that Conclusion (B) operates where there were procedural irregularities in making promotions, according to rules (emphasis supplied), and those irregularities are subsequently rectified it presupposes the existence of rules, and covers only those cases where certain procedural infirmities have occurred (which are subsequently rectified) within the ambit of the rules. This, as discussed earlier, presupposes the existence of rules, and aforesaid ruling cannot be extended to cover cases where the rules themselves are not in existence at the relevant point of time.

9. Furthermore we notice that in Aghore Nath Dey's case (supra) it has been stated that Conclusion (B) would operate in case where the initial appointment was made against an existing vacancy not limited to a fixed period of time or purpose by the appointment order itself. The order dated 28.6.96



appointing applicants on ad hoc basis, is for a fixed period of time i.e. six months. No doubt that period of six months was extended from time to time till the Recruitment Rules were framed, the DPC was held to consider promotion of applicants, and applicants were eventually appointed to JAG, but there can be no doubt that the initial appointment order was made for a fixed period of six months.

10. Even if the latter argument was not taken into consideration, we have no difficulty in holding ~~on~~ that in the background of Hon'ble Supreme Court's ruling in A.N. Dey's case (supra), the claim of applicants for grant of seniority in JAG from a date prior to 14.8.1998, which was the date the amendment to the DANIPS Rules came into being, whereby identified posts in JAG were encadred in the DANI Police Service, cannot be granted.

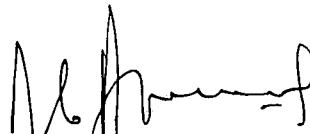
11. The CAT ruling in R.K. Gangopadhyaya's case (supra) relied upon by Shri Ramchandran obviously has to give way before the Constitution Bench's decision in Direct Recruits' case (supra) nor the Supreme Court's decision in Aghore Nath Dey's case (supra) and does not help applicants. Nor does para 2(1) of Chapter 20 on Adhoc Appointments/Promotions in Swamy's Manual on Establishment and Administration because that talks of a situation when in the absence of Recruitment Rules there are overriding compulsions for filling up any Group 'A' or Group 'B' post in which case a reference is to be made to UPSC for deciding the mode for filling up these posts and

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further action is to be taken according to UPSC's advice and all such appointments are to be treated as regular appointments. In the present case no such overriding compulsions have been brought to our notice to warrant this paragraph being attracted.

12. Under the circumstances, while applicants cannot be granted counting of seniority in JAG prior to 14.8.98. Respondents should have no difficulty in allowing applicants to count their seniority in JAG of DANIPS w.e.f. 14.8.1998 i.e. the date on which the identified posts in JAG were encadred, as applicants were working on ad hoc basis in JAG right from 28.6.1996 onwards.

13. In the result the O.A. succeeds and is allowed to the extent that Respondents are directed to allow applicants to count their seniority in Junior Administrative Grade on regular basis w.e.f. 14.8.1998 i.e. the date on which the identified posts were encadred in DANIPS cadre. No costs.



(ASHOK AGARWAL)
Chairman



(S.R. ADIGE)
Vice Chairman (A)

karthik