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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1515 of 2000

New Delhi, this the 9th day of August, 2002

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL.)  
HON'BLE MR. S. A. T. RIZVI, MEMBER (A)

Kiran Pal Singh  
S/o Shri Ram Gopal  
Aged about 35 years,  
R/o S-178A, Pandav Nagar,  
Delhi-110 092.

And employed as

Security Assistant (General)  
PIS No. 103398  
In the Intelligence Bureau,  
Ministry of Home Affairs,  
Petrol Pump,  
North Block,  
New Delhi.

APPLICANT

(By Advocate: Shri B.B. Raval)

Versus

1. Union of India  
Through the Secretary,  
Ministry of Home Affairs,  
Government of India,  
North Block,  
New Delhi-110 001.
2. The Director,  
Intelligence Bureau,  
Ministry of Home Affairs,  
North Block,  
New Delhi-110 001.

-RESPONDENTS

(By Advocate: Shri R.V. Sinha)

ORDER

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant by filing this OA has prayed for quashing of Annexure-A whereby his representation for cancellation of his transfer order and also his representation for promotion based on his claim for counting his past service which he had rendered with CRPF as Constable.



2. The present OA deals with counting of past service and based on that seniority is claimed for promotion.

3. The facts relevant to the present OA are that the applicant had joined the service of CRPF as constable on 2.6.83 where he worked upto 31.5.1986 and from 2.6.86 he came on deputation with the IB and ultimately he was absorbed in the IB as Security Assistant (General) w.e.f. 2.3.1993.

4. The applicant claims that eligibility for consideration for the next promotion to the post of Junior Intelligence Officer Grade-11 (JIO Grade-11) is 8 years whereas he has rendered nearly 17 years of service yet he has not been considered for promotion to the post of JIOG-11. Applicant has been making representations for taking his seniority properly.

5. Applicant further claims that even on the date of his absorption he had already completed 10 years of total service and was, therefore, eligible to be promoted and absorbed w.e.f. 1991 itself. The applicant also claims that on his representation the Deputy Director (VIP Security) had also made an endorsement stating that his case may be examined on merits and he may be the only SA in IB with 13 years of service yet no promotion. However, on his meeting the higher officials over his promotion, the Ministerial staff got annoyed and instead of putting his case for promotion had put up his case for transfer. Thus in nutshell it is submitted that he is not entitled to seniority by counting his past service as Constable in the CRPF.

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6. The applicant further states that as per the the Memo No.2/Est/C/71(2)dated 20.1.1986 issued by Shri H.B.Saxena, Assistant Director, Intelligence Bureau the equivalent post of Security Assistant in the Intelligence Bureau is Constable in Central Police Organisations. The relevant portion of the said Memo which is at Annexure A-5.

7. Thus the applicant submits that since he had already rendered service in an equivalent post so he is entitled to reckoned his seniority by counting his past service.

8. The applicant also relies upon a judgment reported in (2000) 1 SCC 644 entitled as Sub-Inspector Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi and Others wherein it is observed as follows:-

"B. Service Law - Equation of - Posts - Criteria for determination of - Law on this point discussed and held, question of equivalence could not be resolved solely on the basis of pay scales.

C. Service Law - Absorption - Permanent Absorption - Deputationist, held in the context, if were not to be given benefits of service rendered by them on equivalent post in their parent department, should have been informed of it so that they could decide to seek or not to seek permanent absorption - Option".

9. Thus the applicant submits that rejection of his representation is totally arbitrary and mala fide. He has, therefore, prayed that the impugned order rejecting his representation be set aside and the applicant be given seniority in accordance with law and the judgment cited by him.

10. The respondents are contesting the OA. The fact that the applicant had earlier worked in CRPF and then came on deputation to IB and then absorbed is not



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disputed. Even the relevant dates are admitted.

11. The respondents have taken a plea that applicant is eligible to count his seniority in the rank of SAG only from the date of his permanent absorption, i.e., 26.3.1993 as per the instructions by the DOP&T OM dated 29.5.86, as amended from time to time.

12. It is further stated that no junior to the applicant in the seniority list of SAs has been promoted to the grade of J10 Grade-1.

13. As regards the applicant's promotion is concerned, the respondents have taken a plea that the applicant was absorbed in IB w.e.f. 26.3.93 on his own request so he is entitled to count his seniority from 27.3.93. Besides that the pay scale attached to the post of SA(G) was higher than that of the Constable in CRPF, i.e., his parent department, so his seniority on deputation is reckonable only from the date of his absorption and since the applicant would be completing the eligibility condition of 8 years in March 26, 2001 only then he would be considered for promotion subject to the availability of vacancies and as such no injustice has been done to him and his promotion case would be considered in its own turn.

14. Thus it is pleaded that the request for counting of seniority and promotion has been rightly rejected and the OA has no merits and the same should be dismissed.

15. We have heard the learned counsel for the parties and gone through the records of the case.

16. At this stage it will not be out of place to

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mention that this case was first heard by a Division Bench comprising Hon'ble S.R. Adige, Vice-Chairman and Dr. A. Vedavalli, Member (J) but on the point of the interpretation of the judgment in the case of Roop Lal, the Bench found another Co-ordinate Bench's judgment earlier passed in the case of Sh. Mehar Singh Vs. UOI & Others wherein while determining equivalence of post it was suggested that if the deputationists was informed before hand that he was not to be given the benefits of service rendered on a post in his parent department and he had given his willingness then notwithstanding its equivalence with the post he was presently holding in terms of the above criteria, he could not claim the benefit of service rendered by him in the parent department. The Bench disagreed with the said order and recorded a separate order on 16.10.2001. The later Bench was of the view that the judgment of Roop Lal's case prescribe certain tests for determining equivalence of posts and if those tests are satisfied and the two posts are declared equivalent, then the deputationist has to be given the benefit of service rendered by him in his parent department notwithstanding the fact that at the time of his absorption he was informed and he had given his willingness not to claim those benefits. The Bench relied on para 13 of the judgment in Roop Lal's case wherein the Hon'ble Supreme Court has observed as under:-

" [T]hat any rule, regulation of executive instruction which has the effect of taking away the service rendered by a deputationist in an equivalent cadre in the parent department while counting his seniority in the deputed post would be violative of Articles 14 and 16 of the Constitution and what has been held unconstitutional, does not become constitutional or legal even if the parties gave their willingness to the same".

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17. Thus the matter came up in reference to the Full Bench. The Full Bench after hearing both the parties, came to the conclusion:-

" In our considered opinion, for the reasons already given by the Division Bench in its order dated 16.10.2001 in cases where the equivalence of two posts is established in terms of the criteria laid down by the Hon'ble Supreme Court in SI Roop Lal's case (Supra) deputationist cannot be denied the benefits of the service rendered by him on an equivalent post in his parent department even if he had been informed at the time of his permanent absorption that he would not be granted that benefit and he accepted that position. The reference is answered accordingly".

18. So now the only question to be seen before this Court is whether the post of Constable in CRPF is equivalent to the post of SA(G) in IB or not. In this regard we may mention that the Full Bench has also noted down that the Hon'ble Supreme Court in para 17 of the judgment in SI Roop Lal and Others had held as Under:-

" Their Lordships after noticing several previous rulings, had held in para 17 of their judgment that equivalency of two posts was not to be judged by the sole fact of equal pay. Facts to determined equivalency were:

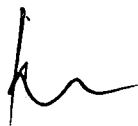
(i) the nature and duties of the post;

(ii) the responsibilities and powers exercised by the officer holding a post, the extent of territorial or other charge held or responsibilities discharged;

(iii) the minimum qualifications if any prescribed for recruitment to the post ; and

(iv) the salary of the post".

19. In the light of these observations of the Full Bench, we have to consider whether the post of Constable in CRPF is equivalent to the post of SA (G) or not. The four points criteria, as mentioned in the Full Bench pertaining to the determination of equivalency is, as under:-



(i) the nature and duties of the post;

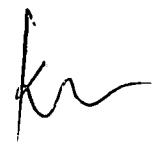
(ii) responsibilities and powers exercised by the officer holding a post, the extent of territorial or other charge held or responsibilities discharged;

(iii) the minimum qualifications if any prescribed for recruitment to the post ; and

(iv) the salary of the post.

20. As regards the nature and duties of the post, the responsibilities and powers discharged and qualifications are concerned, the counsel for the applicant submitted that there is no dispute with regard to point Nos. 1, 2 and 3. The respondents have rejected the claim of seniority on the ground that the salary of the applicant as a Constable in CRPF is less than the salary of SA(G). That could not have been taken into consideration when there is no dispute about the first three points. Besides that the applicant has also referred to a memo dated 20.1.86 issued by the Department of IB, Ministry of Home Affairs, Government of India where it is stated that equivalent post of SA in the IB Headquarters is that of Constable. This memo in the last says as under:-

" In this regard to deputationist SAs from Central Police Organisations, if the persons concerned draw salary in the scale of Rs.225-308, he may be declared as Group 'C', while those drawing salary in the pay scale of Rs.210-270 may be treated as Group 'D'."



21. The reading of the entire memorandum would go to show that the IB recruits SA on deputation basis but the fact that equivalent post of SA in the IB in the police organisation is Constable. But as regards their classification whether they belong to Group 'C' or Group 'D' is concerned, depending upon their salary they could be treated as Group 'C' or Group 'D'. Thus it is to be seen whether they are Group 'C' or Group 'D' but there is no denial to the fact that the equivalent to the post of SA in these organisation is constable. There is no dispute about the basic qualifications for entering into the service and about the the nature of duties and responsibilities. So the only question is of salary. To that extent we may mention that the observations of the Hon'ble Supreme Court in Roop Lal's case is quite relevant. In that case the petitioner an employees working with BSF was absorbed in the Delhi Police and while fixing his seniority in Delhi Police, service rendered by him was not taken into consideration on the ground that the pay scale of SI in Delhi Police was not equivalent to that of BSF so he was not entitled to count his seniority. This plea of the department was repelled and the view taken by the Tribunal based on the on respondents plea also did not find favour with the Hon'ble Supreme Court and since in this case also the department had taken the plea that because of the pay scales the post of Constable in CRPF is not equivalent to SA(G) he is not entitled to count seniority, which cannot be accepted and Full Bench had given a clear direction to the extent that if equivalence of post is established



then the deputationists cannot be deprived of the seniority on equivalent post even at the time of his permanent absorption.


22. Shri Sinha appearing for the respondents submitted that since the option of the applicant was taken before being absorbed and he was informed that he would not be given the benefit of past service so he cannot claim. But in our view this contention of the learned counsel for the respondents has already been repelled by the Full Bench as they had held that if the equivalence of post is held then a deputationist cannot be denied the benefit on a equivalent post in his parent department if he had been informed at the time of permanent absorption that he was not eligible and he accepted that position. So the plea urged by Shri Sinha is contrary to the law laid down by the Full Bench in this particular case and as such the same cannot be sustained.

23. In view of the above, we are of the considered opinion that the applicant is entitled to count his past service as per the criteria laid down in Roop Lal's case (Supra). Accordingly, the OA is allowed and respondents are directed to refix the seniority of the applicant and consequently he is also entitled to get his seniority modified and further after modification of the seniority, he is also entitled to be considered for promotion from the date his junior had been promoted to the post of J10 Grade-II in accordance with the rules, instructions and



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judicial pronouncements on the subject. This may be done within a period of 4 months from the date of receipt of a copy of this order. No costs.

  
(S. A. T. RIZVI)  
MEMBER (A)

  
( KULDIP SINGH )  
MEMBER (JUDL.)

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