

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 2440/2000

New Delhi this the 28th day of March, 2001

Hon'ble Mr. V.K. Majotra, Member (A)
Hon'ble Mr. Shanker Raju, Member (J)

Shri Paldan,
Dy. Commissioner of Police,
L&B, PHQ, Delhi.

-Applicant

(By Advocate: 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. Government of NCT of Delhi,
Through the Administrator/Lt. Governor,
Raj Niwas, New Delhi.
3. The Commissioner of Police,
Delhi Police, P.H.Q.,
I.T.O., New Delhi.
4. Union Public Service Commission,
Through its Secretary,
Dholpur House, Shahjahan Road,
New Delhi.

-Respondents

(By Advocate: Shri J.B. Mudgil)

ORDER (Oral)

Mr. V.K. Majotra, Member (A)

The applicant, a DANIP Officer of 1981 batch presently posted as DCP/L&B PHQ, Delhi, was deployed in Bosnia and Herzegovina from 25.3.96 under the U.N. Task Force vide PHQ's order dated 22.3.1996 (Annexure A-1). In the meantime 25 DANIP Officers including the applicant were appointed to the Junior Administrative Grade (for short "JAG") vide M.H.A's letter dated 28.6.96 in the pre-revised pay scale of Rs. 3750-5000/- (Annexure A-2). The applicant's name figured at Serial No. 13 therein. The applicant being on deployment in

Bosnia was neither informed of the said order nor was any option sought ^{from him} whether he intended continuing on mission or returning to back over as JAG Officer. According to him, on learning about the said order, he made a request for proforma promotion. On repatriation from UN Mission on 27.6.97, he resumed his duty and was posted to JAG post w.e.f. 31.7.97 (Annexure A-3). His pay was fixed from 1.8.97 at Rs. 12,000/- in the grade of JAG while his juniors have already earned one increment. He has been making representations for placement in JAG scale w.e.f. 31.7.96 i.e. when his immediate junior was promoted and also for proforma promotion ^b from the same date but his representations have remained unresponded. One such representation is stated to be at Annexure A-4. The applicant has alleged action of the respondents in not according him proforma promotion from the date his junior was promoted as violative of Sections 14 & 16 of the Constitution of India. The applicant has sought direction to the respondents to grant proforma promotion to the applicant to the post of Additional Dy. Commissioner of Police in the J.A.G. w.e.f. the date his immediate junior was promoted as per next below rule with all consequential reliefs including refixation of pay and arrears with interest.

2. In their counter, the respondents have stated that in order to improve the career prospects of the members of DANIPS, it was decided in 1995 to increase the number of posts in Grade-I (Selection Grade) from 13% to 20% of the authorised strength and to create a

new grade called Junior Administrative Grade (JAG) in the scale of Rs. 3700-5000. Subsequently, in 1996, 29 specific posts included in the service were identified for upgradation to the level of JAG. 25 Officers were approved for promotion to the JAG vide order dated 28.6.96 (Annexure-A-2) ^b The applicant was one of them. According to the respondents, as these officers were promoted on ad hoc basis, it does not confer any right for benefit under NBR on the applicant. The applicant was ultimately promoted on a regular basis to JAG on 25.4.2000. The respondents have admitted not to have disposed of applicant's representation at Annexure A-4.

3. We have heard the learned counsel of both sides and perused the material available on record.

4. Shri S.K. Sinha, learned counsel of the applicant contended that whereas the applicant was deputed on UN Mission, he continued to be on the strength of Delhi Police and was also drawing his pay from Delhi Police, of course, in addition to certain allowances in Bosnia. He stated that whereas his name was included among those promoted though on ad hoc basis in JAG in the scale of Rs. 3750-5000 vide order dated 28.6.96 (Annexure A-2), the applicant was never informed nor was his option sought ^b for repatriation etc. in order to avail himself of the opportunity of placement in JAG alongwith his colleagues. The learned counsel drew our attention to K.B.K. Jain Vs. Union of India & Ors., 1992 (20) ATC 671 and V.K.D. Rajyalakshmi (Smt.) Vs. Regional Director, Employees' State Insurance Corporation, Hyderabad wherein when the juniors had an

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opportunity of officiating on promotional post on ad hoc basis and the applicant was denied the same opportunity and the juniors were drawing higher salary, the applicants were held entitled to stepping up of pay. The learned counsel drawing our attention to FR-22 contended that the applicant should be accorded the benefit of next below rule. The rule reads as follows:-

"Rule- When an officer in a post (whether within the cadre of his service or not) is for any reason prevented from officiating in his turn in a post on higher scale or grade borne on the cadre of the service to which he belongs he may be authorised by special order of the appropriate authority proforma officiating promotion into such scale or grade and thereupon be granted the pay of that scale or grade if that be more advantageous to him, on each occasion on which the officer immediately junior to him in the cadre of his service (or if that officer has been passed over by reason of inefficiency or unsuitability or because he is on leave or serving outside the ordinary line or forgoes officiating promotion of his own volition to that scale or grade then the officer next junior to him not so passed over) draws officiating pay in that scale or grade:

Provided that all officers senior to the officer to whom the benefit under the substantive part of this rule is to be allowed are also drawing, unless they have been passed over for one or other of the reasons aforesaid, officiating pay in the said or some higher scale or grade within the cadre:"

5. He also relied on order dated 24.3.2000 in OA-2186/98 Purushottam Dass Vs. Union of India in which it was held that "the applicant shall be deemed to have been promoted on ad hoc basis to JAG of DANIPS with effect from the date his juniors were so promoted i.e.

28.6.96 and shall be entitled to all consequential benefits including difference of pay and allowances to the higher post.....".

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6. The learned counsel of the respondents contended that the ratio in the matter of Purushottam Dass (supra) is not applicable to the facts of the present case as in that case the applicant had been proceeded against in a departmental enquiry and the recommendations of the DPC were kept in a sealed cover. As the applicant was ultimately exonerated in a departmental enquiry, the aforesated directions were made. The learned counsel further drew our attention to ~~Para-2~~ the following portion of Annexure R-1 "if a senior joins the higher post later than the junior, for whatsoever reasons, whereby he draws less pay than the junior in such cases senior cannot claim stepping up of pay at par with the junior".

7. In this connection, we will relate applicant's case to Para-2 (b) of Annexure R-1 which states "if a senior forgoes/refuses promotion leading to his junior being promoted/appointed to the higher post earlier, junior draws higher pay than the senior. The senior may be on deputation while junior avails of the ad hoc promotion in the cadre. The increased pay drawn by a junior either due to ad hoc officiating/regular service rendered in the higher posts for periods earlier than the senior, cannot, therefore, be an anomaly in strict sense of the term". In the present case, the applicant had neither forgone nor refused promotion leading to his junior being promoted/appointed to the higher grade.

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The expression "whatsoever reasons in Clause-(c) of Annexure R-1 is not applicable to the facts of the present case because the applicant had not forgone or refused promotion. As a matter of fact, he was not at all informed about the orders of promotion i.e. order dated 28.6.96 (Annexure A-2). Certainly, if the applicant had not been with UN Mission to Bosnia and Herzegovina, he too would have availed of the opportunity of ad hoc promotion like his colleagues and juniors w.e.f. 28.6.96. In our view, the applicant is certainly entitled to the benefit of next below rule as per the ratio of the cases cited above as well as the provisions of FR-22(i) readwith Annexure R-1 Para-2(b).

8. Having regard to reasons and discussion made above, the OA is allowed directing the respondents to grant proforma promotion to the applicant to the post of Additional Dy. Commissioner of Police in JAG w.e.f. the date of his immediate junior was promoted to the same with all consequential benefits including re-fixation of his pay from 22.6.96 to 30.7.97 on a notional basis and from 31.7.97 on actual basis. No costs.

S. Raju
(Shanker Raju)
Member (J)

cc.

V.K. Majotra
(V.K. Majotra)
Member (A)