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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.1453 of 1989

New Delhi this 29th April, 1994.

CORAM:

Hon'ble Mr. J.P. Sharma, Member(J)

Hon'ble Mr. S.R. Adige, Member(A)

Shri D.N. Pandit,
s/o Shri J.R. Pandit,
r/o 8A/31, WEA Pusa Road, New Delhi,
last employed as Asstt. Director of Inspection
in the office of the Director General, Supply &
Disposals,
New Delhi.
By Advocate Shri S.C. Anand Applicant.
Versus

Union of India through
1. The Addl. Secretary to the Govt.
of India, Department of Supply,
New Delhi.

2. The Director General,
Supply & Disposals,
New Delhi.

By Advocate Shri V.S.R. Krishna Respondents.

JUDGMENT

By Hon'ble Mr. S.R. Adige, Member(A)

In this application, Shri D.N. Pandit, a
retired Assistant Director of Inspection in the
Office of Director General, Supply & Disposals,
New Delhi has prayed for the following main
reliefs:-

- a) to quash Annexure A9 and to direct the respondents to treat the applicant appointed/promoted to Grade III of the Indian Inspection Service (Engg. Branch) on regular basis w.e.f. 27.8.71 (Annexure-A-8) and failing that w.e.f. 15.2.72 instead of 3.4.72, as shown in notification dated 18.4.88;
- b) to recast applicant's seniority in the seniority list of Grade III of IIS (Engg. Branch) as on 1.7.80 and as on 1.4.75, as reflected in circular no. A. 32013/2/88-A-6 dated 16.6.88 and to issue necessary corrigendum/amendment therefore ;

- c) to direct the respondents to consider the applicant for promotion/appointment as Dy. Director of Inspection in Grade II of IIS from the date on which his junior officers were so considered and promoted to this grade and to promote/appoint the applicant also from that date or from an earlier date when he was due on promotion as DDI with reference to Annexures A-2, A-12 etc.;
- d) to direct the respondents to fix applicant's pay in the grade of DDI, revise his pension and pensionary benefits consequent upon notional promotion as per(c) above and to allow all arrears on this account together with interest at market rate and arrange payment thereof to the applicant;"

2. The applicant joined the office of Director General, Supply and Disposals, New Delhi as an Examiner of Stores (Engg.) on 21.11.53 and was subsequently promoted as Asstt. Inspecting Officer (Engg) on 13.10.59 in the Central Civil Services (Class II)-Gazetted by selection through UPSC. The recruitment from the grade of Asstt. Inspecting Officer (AIO) to that of Asstt. Director of Inspection/Inspecting Officer Grade III of Indian Inspection Services (IIS) is made partly by direct recruitment through UPSC, and partly by promotion from amongst the departmental Asstt. Inspecting Officers. For departmental officers, the post of ADI/IO is a selection post to be filled on the basis of select list drawn by UPSC. The applicant who was then working as AIO (Engg.) at Jabalpur, was directed by DG SD letter dated 3.3.72 (Annexure-A4) to join duties as IO at Jalandhar on his being relieved by one Shri A.M. Mathur, AIO (Engg.). The applicant

contends that as Shri Mathur did not report at Jabalpur, he could not move to take over as IO at Jalandhar immediately, though he stood promoted to the Grade of IO vide DG S&D O.M. dated 15.2.72 and he finally assumed charge at Jalandhar only on 3.4.72. The applicant contends that as the delay in his taking over charge as IO at Jalandhar was on account of fact beyond the control, he should not be denied the benefit of higher pay and seniority etc. consequent to his next promotion from 15.2.72.

3. It is further stated that the promotion from Grade of ADI/IO to the grade of Dy. Director of Inspection is as per seniority/fitness. In 1978, the applicant along with four others moved the Delhi High Court vide C.W. No. 1277/78 praying, inter alia, that the petitioners should be deemed to have been promoted/appointed on regular basis as ADI/IO in Grade III of Indian Inspection Services with effect from the dates of their respective continuous officiation in that grade on adhoc basis. That writ petition was transferred to the Tribunal as T.A.No. 428/85, which after hearing, was disposed of by judgment dated 27.2.87 (Annexure-A6) with a direction that the petitioners should be deemed to have been regularly appointed as ADIs/IOs in Grade III of IIS with effect from the dates of their respective continuous officiation even on adhoc basis in that grade and should be so appointed and given all the consequential benefits of seniority, pay, pension etc. In compliance of the said judgment, the respondents vide their circular dated 16.6.88 (Annexure-A1) amended

the seniority list of grade III of IIS(Engg) as on 1.4.75 and 1.7.80, whereby the applicant's seniority in the said grade was fixed at Serial No.40A of the seniority list as on 1.4.75 and at Serial No.32A of seniority list as on 1.7.80, and the applicant's date of regular appointment to the Grade III was shown as 3.4.72. The applicant contends that if his date of deemed promotion as ADI/IO is taken as 15.2.72, on which date he stood promoted to this grade, his seniority in the seniority list as on 1.7.80 would be at Serial No.29A instead of 32A. The applicant further contends that the Department of Supply vide notification dated 21.9.87 had notified his regular appointment to Grade III of IIS(Engg.Branch) w.e.f. 27.8.71 but on 18.4.88 (Annex ure-A9), an amendment was issued notifying the applicant's regular appointment to Grade III of IIS as on 3.4.72. It is contended that no reasons were intimated to the applicant nor any explanation was given.

4. The applicant further contends that with the fixation of his seniority vide impugned order dated 16.6.88(Annexure-A1), even taking his date of appointment to ADI/IO in Grade III of IIS w.e.f. 3.4.72, he became senior to Sarv Shri A.K.Satwah-Sl.No.34, V.K.Sridhar-Sl.No.35, and P.K.Mishra-Sl.No.37, and would have been promoted as DDI in Grade II of IIS from 1979 onwards, but he was neither considered for promotion nor was given benefit of deemed promotion from 1979 or from an earlier date in compliance of the Tribunal's judgment dated 27.2.87.

5. The applicant superannuated on 29.2.84 as officiating ADI while CW 1277/78 was still subjudice

in the Delhi High Court.

6. The respondents have challenged the contents of the O.A. in their counter affidavit. As regards the applicant's prayer ^{for an} the deemed date of his promotion as IO should be 15.2.72 and not 3.4.72, it has been pointed out that promotion/appointment takes effect from the assumption of charge of the office and not from the date of issue of the order. Since Shri Pandit assumed the charge of IO on 3.4.72, his appointment to the Grade of IO on adhoc basis became effective only from that date, and as per the Tribunal's judgment dated 27.2.87 in T.A. No.428/85, he was given regular appointment in Grade III, IIS w.e.f. 3.4.72. In the notification dated 21.9.87, a typographical mistake was committed by showing the appointment of the applicant as IO on 15.2.72 which was subsequently corrected as 3.4.72 by notification dated 18.4.88, and the applicant cannot take advantage of this typographical error which the respondents are fully entitled to correct.

7. As regards the prayer for amending the seniority list of Grade III as on 1.7.80, it is stated that the applicant's seniority had been fixed strictly in accordance with the Tribunal's judgment dated 27.2.87 in T.A.No.428/85 and no change is warranted. As regards his claim for promotion as DDI, it is stated that the same is a selection post, and the panel for promotion to that grade was prepared by DFC in its meeting held on 22.12.84, while the applicant had superannuated on 29.2.84 itself.

8. We have heard Shri Anand, learned counsel for the applicant and Shri V.S.R.Krishna, learned counsel for the respondents.

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9. In so far as relief (a) prayed for is concerned, it hardly requires reiteration that the promotion can be claimed only from the date of assumption of the charge of the office and not from the date of issue of the orders, the applicant himself admits that he assumed charge of I.O at Jullandhar on 3.4.72. In this connection, our attention has been invited to the O.M. dated 3.3.72 (Annexure-A4) promoting the applicant on temporary adhoc basis as Inspecting Officer vide D.G.S.&D O.M. dated 15.2.72 and transferring the applicant to Jullandhar. The O.M. dated 3.3.72 clearly states that the applicant's promotion as I.O will take effect from the date he takes over charge of the office of the I.O. Jullandhar. On behalf of the applicant, it was argued that the earlier notification dated 21.9.87 stating that the applicant stood promoted on regular basis as I.O. w.e.f. 27.8.71, was a Presidential notification but the amending notification dated 18.4.88 (Annexure-A9) was issued at the level of Deputy Direction (Admn.), and hence was vitiated. The respondents have pointed out that the notification dated 21.9.87 was a typographical error which was corrected vide notification dated 18.4.88, and in terms of judgment of the CAT, Madras Bench (O.A. No. 27/85 decided on 20.6.86) in 'Raja Gopalan & others Vs. Union of India', a typographical error in the date of notification cannot give the applicant a status which he does not own. This is the correct legal view and merely because the amending notification was issued at the level of Dy. Director (Admn) is not a sufficient reason to vitiate it. Hence the prayer for relief 'a' fails.

10. In so far as relief(b) is concerned, the applicant emphasises that he is senior to Shri Uboveja as Asstt. I.O. but the later was promoted as Asstt. Director (equivalent to I.O) w.e.f. 27.8.71. However, as this promotion was on adhoc basis, the applicant admits that it did not give him any right for promotion from that date but claims that that right accrued only after the said Uboveja was about to regularise from 27.8.71 as Asstt. Director under the 'next below rule' as well as a number of court decisions. Hence he claims that the respondents correctly issued notification dated 21.9.87 giving him the deemed date of promotion as 27.8.71, which was subsequently illegally amended vide notification dated 18.4.87. We have separately noted that the applicant assumed charge of the post of I.O on 3.4.72, and hence the prayer for counting his promotion from a prior date does not arise. The fact that Shri Uboveja was junior to the applicant as I.O. is not very relevant to the issue, because Shri Ubeveja was promoted as Asstt. Director on adhoc basis on 27.8.71, while the applicant assued charge as I.O on adhoc basis on 3.4.72. The applicant admits that Shri Uboveja's promotion as Asstt. Director on adhoc basis gave no right for promotion from that date and the right accrued only after Shri Uboveja was regularised w.e.f. 27.8.71.. This regularisation, and the applicant's own regularisation w.e.f. 3.4.72 was in pursuance of the specific direction of the Tribunal in its judgment dated 27.2.87 in T.A.No. 428/85, wherein a direction was issued that the petitions, including the applicant should be deemed to have been regularly appointed as ADs/I.Os in Grade III of the IIS, with effect from the dates of their respective

continuous officiation even on adhoc basis in that grade and they should be given consequential benefits of seniority, pay, pension etc. As a co-ordinate Bench, we are bound by that decision, which is correctly reflected in the Circular dated 16.6.88 and no corrigendum/amendment is, therefore, called for. The prayer for relief (b) also fails.

11. In so far as reliefs (c) and (d) are concerned, the applicant has pointed out that with the fixation of his seniority vide impugned order dated 16.6.88, he becomes senior to Sarv Shri A.K. Satwah, V.K. Sridhar, and P.K. Mishra, all of whom were promoted as Deputy Director in 1979-80, but the applicant was not given the benefit of adhoc promotion as Deputy Director. He has also cited the judgment of this Tribunal dated 18.1.90 in O.A.No. 1272/88 'R.P. Sehgal vs. Union of India & another. Shri Sehgal while working as Dy. Director in that office, had filed an application praying that his seniority should be refixed in the light of the judgment dated 27.2.87 in T.A.No. 428/85 and that he should be given all consequential benefits. The Tribunal in its judgment dated 18.1.90 held that the applicant was entitled to seniority in the grade of Asstt. Director from the date from which he was continuously officiating in that grade, and the respondents were directed to accord his seniority on that basis and consider his case for promotion to the posts of Dy. Director and Director and if found fit, to promote him to such posts accordingly from the due dates when his immediate juniors were so promoted. In that judgment, it was noted that the applicant had superannuated on 31.8.89.

12. In their counter-affidavit in the present case, the respondents state that the applicant was not considered for promotion to the post of Deputy Director, because the applicant superannuated on 29.2.84 whereas a panel for promotion to the Deputy Director was prepared by the DPC at its meeting held on 22.12.84. However, in the light of the judgment of this Tribunal in Sehgal's case (Supra) which we are bound to follow, we direct the respondent to hold a review DPC meeting, and consider the applicant's case for promotion to the post of Deputy Director and if found fit to promote him to that post from the due date when his immediate junior was so-promoted. The applicant will not be entitled to any arrears of pay and allowances consequent to such notional promotion, but will be entitled to refixation of his pension with effect from the date of his retirement together with arrears of such revised pension, but without any interest. These directions should be complied with by the respondents, within four months from the date of receipt of a copy of this order.

13. This application is, therefore partly allowed to the extent contained in paragraph 12 above.

14. No costs.

S.R. Adige
(S.R. ADIGE)
MEMBER(A)

J.P. Sharma
(J.P. SHARMA)
MEMBER(J)
29/4/84