

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
New Delhi

O.A.No.196/1989

New Delhi, this 11th day of February, 1994

Hon'ble Shri C.J.Roy, Member (J)

Hon'ble Shri P.T.Thiruvengadam, Member (A)

Sh. M.M. Rai S/o, Late R.N. Rai,
Deputy Supdt. of Police,
Central Bureau of Investigation,
A.C.U.(VII) Branch,
8th Floor, Lok Nayak Bhavan,
Khan Market, New Delhi - 3.

.... Applicant

(By Shri K.K.Rai, Advocate)

Vs.

1. The Union of India,
through Department of Personnel
& Trg. MHA, GOI, North Block,
New Delhi.
2. The Director, Central Bureau of
Investigation, Block No. 3, CGO
Complex, Lodhi Road, New Delhi.
3. Sh. G.S. Kapila,
Dy. Supdt. of Police, CBI, Raj Bagh
Feroze Manzil, Sri Nagar - 190008.
4. Sh. O.P. Chatwal,
Dy. Supdt. of Police, SIC I,
~~Cell, SIU, Block No. 3, CGO Complex,~~ Hutments Dalhousie
Road, New Delhi.
5. Sh. Vidya Bhushan,
Dy. Supdt. of Police, CBI, SIC,
Punjab Cell, CGO Complex, Block
No. 3, Lodhi Road, New Delhi.
6. Sh. N.N. Singh,
Dy. Supdt. of Police, SIC I,
O-1 Hutments Dalhousie Road,
New Delhi.
7. Sh. A.K. Malhotra,
Dy. Supdt. of Police, Banking
Cell, SIU, Block No. 3, CGO Complex,
Lodhi Road, New Delhi.
8. Sh. S.K. Choudhary,
Dy. Supdt. of Police, Banking
Cell, SIU, Block No. 3, CGO
Complex, New Delhi.
9. Sh. B.N. Mishra,
Dy. Supdt. of Police, CBI, ACU(III),
Block No. 3, CGO Complex, Lodhi
Road, New Delhi.
10. Sh. J.S. Waraich,
Dy. Supdt. of Police in the office
of SP/CBI, ~~Block No. 3, CGO Complex,~~
11. Sh. S.P. Singh,
Supdt. of Police (III), SU, CBI,
Jam Nagar House, Akbar Road,
New Delhi.

12. Shri H.C.Singh,
Dy.Suptd. of Police, CBI,
CIU(I), New Delhi.
(By Shri N.S.Mehta, Advocate) ..Respondents.

ORDER

(Delivered by Hon'ble Shri P.T.Thiruvengadam)

While the applicant was working as Inspector of Police, Central Bureau of Investigation, he was sent to Maruti Commission of Inquiry, on deputation, as Inspector with effect from 1-10-1977. On 22-9-78 the said Commission issued a notification bringing out that the applicant was appointed ^{there} as temporary Deputy Suptd. of Police w.e.f. 19-9-1978. The applicant was relieved from Maruti Commission on 31-5-79 on his posting as Dy.Suptd. of Police with the Sikkim Govt. on deputation. This deputation order was issued by the C.B.I. Thus the applicant moved over from Maruti Commission to Sikkim without physically reporting in his parent organisation. While the applicant was working at Sikkim, the C.B.I. organisation issued proforma promotion to the applicant under next below rules. The benefit of NBR was given w.e.f. 27-11-79 on ad hoc basis and w.e.f. 1-5-1980 on regular basis as per relevant notification. The applicant had been representing that he should be given the benefit of promotion as Dy.Suptd. of Police from 19-9-78 the date on which he was promoted in Maruti Commission. Ultimately vide letter dated 21-12-1988, the C.B.I. rejected his claim. This O.A. has been filed for a declaration that the applicant should be deemed to have been regularly promoted w.e.f. 19-9-78 and for quashing certain subsequent seniority list.

2. The main ground advanced by the learned counsel of the applicant is that he was continuously officiating as Dy.Suptd. of Police. He had been regularised much

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before he returned to his parent department from deputation. As such the ad hoc service as Dy. Supdt. of Police should be taken into account for reckoning the seniority as Dy. Supdt. of Police. He also argued that the applicant should have been empanelled in the D.P.C proceedings held in April, May 1978 ^{for Dy SPS} and not based on the subsequent DPC proceedings. [^] On this issue, we called for the records and note that in the DPC proceedings held in April, May 1978, the applicant did not find a place for empanelment even though there were some juniors who had been empanelled based on the records ^{of performance}. Accordingly, we do not find that the applicant [^] has any claim for empanelment in the DPC held in April, May, 1978.

3. The only other point to be considered is ^{whether} ~~that~~ the ad hoc service as Dy. Supdt. of Police put in by the applicant in the organisations where he had been posted on deputation, should be taken into account for seniority after the applicant got regular promotion as Dy. Supdt. of Police.

4. The learned counsel for the respondent referred to para 8 of the counter wherein the Commission of Inquiry of Maruti approached C.B.I. for concurrence for appointing the applicant as Dy. Supdt. of Police in a temporary capacity in the Maruti Commission. The C.B.I in their reply dated 18-9-78 mentioned that they had no objection to the appointment of the applicant as Dy. Supdt. of Police in Maruti Commission on the condition that the applicant will not claim any such post or any seniority in the rank of Dy. Supdt. of Police on repatriation. In view of this, his appointment to the higher post in ex-cadre cannot confer any right to claim promotion/seniority in the parent cadre. The subsequent posting in Sikkim was also on deputation and there again the posting as Dy. Supdt. of Police was on ad hoc basis till such time

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he was given the benefit of NBR.

5. The ld. counsel for the applicant places reliance on the orders passed in Doval Vs. Chief Secretary, Govt. of U.P. reported in the AIR 1984 SC 1527, wherein it has been held that while officiating appointment is followed by confirmation, unless a contrary rule is shown, the service rendered as officiating appointment cannot be ignored for reckoning length of continuous officiation for determining the place in seniority list. The facts and circumstances of this case are not, on all ^{four} ~~five~~, with this O.A. The officiation had taken place in the same department which is not the situation here. Also, ⁱⁿ the Constitutional Bench ^{case} of Supreme Court (in the direct recruit class I engineering officers' association Vs. State of Maharashtra (JT 1990 Vol.II SC 264)) the principles regarding seniority have been laid down. It has been held that while the initial appointment is only ad hoc and not according to rules and made as a stop gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

6. Thus even an officiating arrangement made within the department on ad hoc basis but not following the rules, such officiating service is not taken into account for seniority. There can be no case for giving any weightage for such officiation which has taken place in the ex-cadre. Obviously, the promotion has not been made as per the procedure/rules to be followed in the parent department.

7. In the circumstances of the case, ^{the} relief claimed that the seniority should count from the date on which the applicant was first promoted as Dy. Supdt. of Police in Maruti Commission, cannot be allowed. The second relief which is a consequential relief cannot also be

sustained.

8. In view of the above, the O.A. is dismissed with no costs.

P. J. R.

(P.T. THIRUVENGADAM)
Member (A).

11/2/94
(C.J. ROY)
Member (J)

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