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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

G.A.NO.2521/89

New Delhi, the 17th day of April, 1995

Hon'ble Shri J.P. Sharma, Member (J)
Hon'ble Shri B.K. Singh, Member (A)

Shri B.L. Vimal,
s/o Shri Sundar Lal,
Civilian Assistant Security Officer,
COS Chheoki, Allahabad. ... Applicant

By Advocate: Applicant in person

Vs.

1. Director General of Ordnance Services (OS-8D)
Master General of Ordnance Branch,
DHQ, New Delhi.
2. The Secretary,
Union of India,
Ministry of Defence,
New Delhi. ... Respondents

By Advocate: Shri B.K. Aggarwal

Q R D E R (QRAL)

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

The applicant was appointed as Civilian Assistant Security Officer (CASO) in July, 1977 and he was initially posted at Kanpur in the Ordnance Directorate Army Headquarters and joined there on 26.8.77. In the offer of appointment dated 30.7.77 certain terms and conditions of appointment were laid down and the important one is that the applicant shall be on probation for a period of 2 years, the probation period can be extended by the competent authority. In the event of non completion satisfactorily of the period of probation aforesaid, the incumbent

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shall be liable to discharge from the service without any notice and that the appointment can be terminated at any time with one month's notice without assigning any reasons. However, the applicant completed this 2 years period on 25.8.79 but no order of confirmation was issued in his favour nor the period of probation was extended by a communication to the applicant. The Department, however, on the administrative side issued an order on 11.9.80 that the performance of the applicant during the period of probation was not satisfactory and therefore he could not be confirmed in his appointment and discharged from service in terms of conditions of offer of appointment of 30.7.77. On the representation made by the applicant, the Ministry of Defence by the order dated 19.5.81 modified this order of discharge from service directing that the applicant shall be deemed to be in service and the period when he was out of service shall be treated the period as spent on duty with all wages, salary etc. but he shall continue to be on probation till he is finally confirmed in his appointment. It appears that the applicant was not informed about his confirmation. However, during the course of the

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arguments it transpires that the D.P.C. in its meeting on 29.6.89 recommended the confirmation of the applicant from a retrospective date i.e. on 28.5.82. The applicant has certain other grievances and he has himself drafted this application bringing in certain irrelevant points both of fact and law which are not relevant for the decision of the case. Ultimately the applicant prayed for the grant of the reliefs that he should be given confirmation after completion of 2 years period from August, 1979; that he should be granted selection grade w.e.f. the date his junior Shri B.L. Sharma was granted and thirdly that his pay be re-fixed on account of selection grade.

On notice the respondents contested this application taking objection of the multiplicity of the relief prayed for in this application as well as point of limitation that the applicant has not come within the limitation provided u/s 21 of the A.T. Act, 1985. It is also stated that the application is bad for non joinder of parties i.e. Shri B.L. Sharma who has been cited as an exemplar for the grant of selection grade to him from the date the said Shri B.L. Sharma was

granted. It is said that the applicant is not entitled to any relief. The applicant has also filed the rejoinder. The aforesaid application was got transferred to the Principal Bench obviously because the applicant was transferred from COD Allahabad to VSD, Meerut.

We heard the applicant in person and Shri B.K. Aggarwal for the respondents. Though the applicant has detailed the issue of his non confirmation ^{we} exhaustly by citing certain law but the fact remains that the applicant was discharged from service in 1980 by the competent authority having not put in service to the satisfaction of superior staff/officer. The Ministry of Defence by the order November, 1981 directed the re-instatement of the applicant but attached a rider that the applicant shall continue to be on probation till he is found suitable for confirmation in his appointment as CASO. The applicant has not challenged that order of November, 1981. His contention that he should be deemed to be confirmed in service after completing 2 years of probation cannot be accepted obviously because unless the order of November, 1981 issued by the Ministry of Defence is judicially analysed and decision arrived at

about the veracity and legality of that order.

In the absence of challenge by the applicant, the applicant shall be deemed to be on probation and was actually on probation after his reinstatement in November, 1981. The applicant also during the course of the arguments appears to be satisfied by an order of confirmation issued subsequently giving him confirmation in his appointment w.e.f. 28.5.82. The applicant, therefore, stands confirmed in his appointment w.e.f. 28.5.82 and shall therefore be entitled to all benefits available to a confirmed employee in the same cadre as Shri B.L. Sharma.

The contention of the respondents
that Shri B.L. Sharma is ^{not made} the party is not sustained.

The applicant is not claiming any benefits against Shri B.L. Sharma. The applicant is only citing B.L. Sharma as an example that a person junior to him, admitted junior on account of the revised seniority list, cannot be given better scale of pay like selection grade without considering and rejecting the claim of the applicant.

It is not the case of the respondents that the applicant was found unfit for the grant of selection grade and the learned counsel for the respondents

on instructions from the Departmental Representative desired to state that the selection grade is granted on certain norms. If that is so, the applicant should have also been tested of that norms. Thus the contention of the respondent's counsel regarding non joinder of Shri B.L. Sharma has no case.

Regarding the point of limitation the respondents themselves have decided the issue of his confirmation much after the applicant has filed the O.A. before the Allahabad Bench of C.A.T. The D.P.C. considered the matter on 29.6.89 and given him retrospective confirmation to the applicant w.e.f. 28.5.82. The question of limitation has, therefore, no basis.

The applicant has further stressed that Shri B.L. Sharma was granted selection grade w.e.f. 1.11.80 and that is the date much after the confirmation of the applicant in May, 1982. If Shri B.L. Sharma, junior to the applicant was considered and granted the selection grade, the applicant has also to be considered on the same norms and given the benefit of grant of selection grade. The applicant also stressed that all those who were granted selection grade got an automatic status of Class I

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CSO. This fact is also not denied. The applicant therefore was a sufferer both in pay and status by virtue of non consideration of the applicant for the grant of selection grade.

The applicant also harbours certain notions of not having been given the posting of Assistant Director in the higher scale but that relief has not been claimed by the applicant. We have gone through the relief clause in para 9 at page 7 of the O.A. but no such relief has been claimed. If the relief is not claimed, that cannot be granted by the Tribunal. The applicant has filed this application in 1987 and we are hearing in 1995. There was sufficient opportunity for the applicant to amend the application and to bring any further relief which he desires as circumstances must have changed during all these seven years. The applicant has not sought the amendment and he has to suffer and content. The Tribunal cannot in that way consider the relief which has not at all been asked for. The counsel for the respondents also vehemently opposed the grant of such a relief and also pointed out that the application shall be hit by the defect of joinder and multiplicity of reliefs in one application.

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The applicant has also prayed for fixation of pay and that shall be refixed after the applicant is considered and granted the selection grade.

No other point has been pressed. In view of the above facts and circumstances, the application is partly allowed with the following directions:

a) The applicant shall be deemed to be confirmed in his appointment w.e.f. 28.5.82.

b) The applicant shall be considered for the grant of selection grade w.e.f. 1.11.91 when Shri B.L. Sharma his next was granted the selection grade which was Rs. 775-1200 at that relevant time. After the applicant is granted this selection grade, his pay shall be re-fixed and he shall be entitled to all benefits of arrears of pay and allowances in the similar manner as has been granted to his junior Shri B.L. Sharma. The applicant shall be given the benefit of refixation of pay on the post of Civilian Assistant Security Officer, as by virtue of the grant of selection grade he will be automatically placed as C.S.O.

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In view of the above, the parties are to bear their own costs.

(B.K. SINGH)
MEMBER(A)

J.P. SHARMA
MEMBER(J)