

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 945/89

New Delhi this the 29th day of July, 1994.

THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

M. S. Badgujar S/O Sheo Ram,
Section Officer (Retd.),
Intelligence Bureau,
Ministry of Home Affairs,
North Block, New Delhi,
R/O Sector-I/22, R.K.Puram,
New Delhi.

... Applicant

By Advocate Shri Amrish

Versus

1. Union of India through
Secretary to the Govt. of
India, Ministry of Home
Affairs, North Block,
New Delhi.

2. The Director of Intelligence
Bureau, Ministry of Home Affairs,
North Block, New Delhi.

... Respondents

By Advocate Shri Vijay Mehta

O R D E R

In this Application the applicant has prayed for quashing the orders dated 2.5.1988 (Annexure A-6) rejecting his prayer for stepping up of his pay; dated 15.6.1986 (Annex. A-7) rejecting his representation; dated 27.12.1988 (Annex. A-9) rejecting his further representation; and dated 9.3.1989 (Annex. A-11) rejecting yet another representation made by the applicant.

2. The applicant who is a member of the SC community was promoted as Assistant in Intelligence Bureau (IB) on 10.6.1969. Direct recruit Assistants claimed seniority over promotees appointed as Assistants earlier and filed a writ petition in the Delhi High

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Court which was dismissed. However, the LPA against the judgment of the learned single Judge was allowed by a Division Bench of the High Court on 19.12.1980 and the seniority list issued on 28.1.1976 on the basis of the learned single Judge's directions was quashed by the Division Bench. Another SC employee, namely, Shri Ramesh Chander, directly appointed as Assistant on 15.4.1971 was shown as senior to the applicant on the basis of the Division Bench's judgment. Thereupon, the promotee Assistants filed an SLP in the Hon'ble Supreme Court who by their order dated 30.9.1986 upheld that the seniority fixed on the basis of the departmental promotions in 1954 could not be disturbed after such a lapse of time. The IB was directed to review all promotions made in the light of the seniority list prepared on the basis of the Division Bench's judgment and that review was ordered to be made on the basis of the seniority list dated 28.1.1976. Accordingly, the seniority of Assistants as well as that of Section Officers was revised, and according to the applicant he was assigned seniority No.274 while Ramesh Chander was assigned No. 329. Meanwhile, on the basis of the seniority fixed in accordance with the Division Bench's judgment, Ramesh Chander was promoted as Section Officer on 23.7.1983 while the applicant was promoted on 1.9.1986. Both promotions were ordered to be made subject to the decisions of the Hon'ble Supreme Court in the SLP which was pending at that time for decision. In terms of the Hon'ble Supreme Court's judgment, the promotion of the applicant as Section Officer was regularised w.e.f.

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3-10-1986 while Ramesh Chander's promotion as Section Officer was regularised w.e.f. 31.7.1987. Both these promotions were against the reserved points made for SC. The applicant contents that because of the erroneous fixation of seniority and because of erroneous promotion ordered on the basis of the erroneous seniority which was revised after the Hon'ble Supreme Court's judgment, he has come to draw less pay than the other SC employee, i.e., Ramesh Chander, and he was entitled to be promoted as Section Officer notionally w.e.f. 23.7.1983. He has prayed that he be granted notional promotion as Section Officer w.e.f. 23.7.1983 and his pay fixed accordingly or alternatively, his pay be stepped-up and fixed at Rs.2375/- per month w.e.f. 1.9.1986 and Rs.2450/- per month w.e.f. 1.9.1987. The applicant has retired from service on 30.11.1988.

3. The respondents in their reply have pointed out that the seniority list of Assistants in IB which was finalised on 28.1.1976 was challenged by some direct recruit Assistants in the Delhi High Court. A Division Bench of the High Court in its judgment dated 19.12.1980 in LPA No. 6/78 upheld the appeal of the direct recruits and issued some directions for re-determination of inter se seniority of promotee Assistants, as a result of which the applicant who was a promotee Assistant came down in seniority vis-a-vis a number of direct recruit Assistants. Thereupon, the IB and some of its promotee Assistants filed SLPs in the Hon'ble Supreme Court who granted special leave to appeal but did not

stay the High Court's judgment dated 19.12.1980. Pending consideration of the SLPs, the promotion to the higher grade of Section Officers continued to be made on the basis of seniority list drawn as per High Court's judgment. These promotions were subject to the final decision of the Hon'ble Supreme Court. Ramesh Chander who was senior to the applicant in the revised seniority list of Assistants was promoted to the post of Section Officer w.e.f. 23.7.1983 while the applicant was promoted as Section Officer w.e.f. 1.9.1986. The Hon'ble Supreme Court in its decision dated 30.9.1986 allowed the appeal of the department and the promotee Assistants, set aside the Division Bench's judgment dated 19.12.1980, and ordered review promotion in the grade of Section Officers on the basis of seniority list finalised on 28.1.1976. As a result of the review, the applicant who re-gained seniority over Ramesh Chander was promoted to the post of Section Officer on regular basis w.e.f. 3.10.1986. Ramesh Chander who had become junior was also promoted as Section Officer on regular basis w.e.f. 31.7.1987 treating his past officiation as Section Officer from 23.7.1983 to 30.7.1987 as ad-hoc. However, as Ramesh Chander actually performed the duties of Section Officer continuously from 23.7.1983 he was allowed to draw pay as originally fixed on promotion w.e.f. 23.7.1983 under FR-22-C. The applicant was allowed his due pay on promotion as Section Officer w.e.f. 1.9.1986 under FR-22-C on the basis of pay drawn by him as Assistant immediately before promotion. On account of longer officiation

as Section Officer, Ramesh Chander continued to draw more pay. The applicant's prayer for stepping-up of his pay could not be acceded to, nor could his prayer for grant of notional promotion as Section Officer w.e.f. 23.7.1983 with reference to the erroneous promotion of Ramesh Chander be acceded to.

4. There is considerable merit in the stand taken by the respondents that the applicant's pay cannot be stepped-up with reference to his junior, Shri Ramesh Chander, who was drawing more pay on account of longer length of service as Section Officer w.e.f. 23.7.1983, and whose period of service as Section Officer from 23.7.1983 to 30.7.1987 was treated as ad-hoc, having been purely fortuitous benefit which accrued to him as a result of an erroneous judgment of the High Court. For that reason too, the prayer for notional promotion w.e.f. 23.7.1983, with reference to the erroneous promotion of Ramesh Chander cannot be acceded to. Incidentally, it appears that the applicant had retired from service even before this O.A. was filed on 2.5.89.

5. In the result, the impugned orders warrant no interference, and this application is dismissed. No costs.

S. R. Adige
(S. R. Adige)
Member (A)

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