

**Central Administrative Tribunal
Principal Bench, New Delhi**

(Through Video Conferencing)

O.A. No.2273/2017

Thursday, the 7th day of January, 2021

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Shri Jasveer Singh, DSP, age 47 years
s/o Shri Baldev Singh (Group A)
r/o H. No.884-29, Kamal Colony
Model Town Rohtak, Haryana

.. Applicant
(Mr. Yashpal Rangi, Advocate)

Versus

Union of India & others through

1. The Home Secretary
Ministry of Home affairs
Govt. of India, North Block,
New Delhi
2. The Secretary
Ministry of Personnel
Public Grievances & Pensions
Department of Personnel & Training
Govt of India, North Block
New Delhi
3. The Director General
National Investigation Agency
Ministry of Home Affairs
7th Floor, NDCC-II Building
Jai Singh Road, New Delhi – 110 001

... Respondents

(Mr. Satish Kumar, Advocate)

ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:-



The applicant was recruited as Sub Inspector in Border Security Force (BSF) in 1991. He was promoted to the post of Inspector on 14.08.2000. On 01.12.2000, he came on deputation to National Investigation Agency (NIA) as Inspector. He earned promotion to the post of Assistant Commandant in the parent organization on 25.05.2011. On a representation made by him, his pay was protected in the NIA in the post of Assistant Commandant, i.e., Deputy Superintendent of Police (DSP), through order dated 25.05.2011. He was inducted as DSP in the NIA through order dated 03.01.2014. The applicant was ultimately absorbed as DSP in NIA, through order dated 05.05.2015.

2. The promotion from the post of DSP to the post of Additional Superintendent of Police is on completion of 5 years of service in the feeder category. The case of the applicant was dealt with by the respondents and ultimately, through order dated 20.04.2017, the applicant was informed that his service as DSP in the NIA, can be counted only from the date on which he is



promoted, i.e., 05.05.2015 and accordingly, he would acquire the eligibility for promotion only w.e.f. 04.05.2020. Reliance was placed upon the opinion tendered by the Department of Personnel & Training (DoPT) vide their communication dated 08.02.2017. This O.A. is filed challenging the order dated 13.02.2017 of the DoPT and the consequential order dated 20.04.2017 issued by the Ministry of Home Affairs. The applicant further sought a direction to the respondents to count his service rendered in BSF as Assistant Commandant equivalent to regular service of DSP in NIA and extend him the benefit of promotion by convening a Departmental Promotion Committee.

3. The applicant contends that once he was promoted to the post of Assistant Commandant equivalent to DSP in his parent organization on 25.05.2011 and the NIA has also extended the monitory benefits vide order dated 07.09.2011, the service rendered by him in that capacity needs to be treated as holding good for promotion. He submits that the view taken by the respondents is contrary to the law laid down by the Hon'ble Supreme Court.



4. On behalf of the respondents, a detailed counter affidavit is filed. It is stated that the Recruitment Rules provided for 5 years of regular service in the post of DSP and it can be only with effect from the date on which the applicant was permanently absorbed in NIA and not the one earlier to that. Various contentions urged by the applicant are denied.

5. We heard Mr. Yashpal Rangi, learned counsel for applicant and Mr. Satish Kumar, learned counsel for respondents, in detail.

6. The facts are not in dispute. The applicant came on deputation to NIA in the post of Inspector. At the relevant point of time, he was holding the same post in the parent organization, i.e., BSF. Shortly after his deputation, he acquired promotion to the post of Assistant Commandant in his parent organization on 25.05.2011. The NIA, in turn, extended the benefit of higher emoluments, through order dated 07.09.2011. However, the designation of the applicant continued to be that of Inspector only. The order dated 07.09.2011 reads as under:-

“Please refer to FHQ BSF (Pers Dte) letter No.17/104/2010-Pers /BSF/44622-921 dated 121 Aug 2011, on the subject cited above.

2. The following officials of BSF presently on deputation in NIA have submitted option to fix their pay to the higher rank i.e. Asstt. Comdt., consequent upon their promotion to the rank of Asstt. Commandant in BSF (parent cadre) wef 25 May 2011, on proforma promotion under ‘NBR’. Pay fixation option of the officials are sent herewith for taking further action at your end.



- (a) Shri Jasveer Singh, (No.910019125)
- (b) Shri Sanjay Singhania, (No.910019143)
- (c) Shri Mohd Tanzeel, (No.910019620)
- (d) Shri Rajbir Singh Warraich, (No.910020440)
- (e) Shri Yashpal Singh Thakur, (No.910020185)

3. In this connection, it is submitted that NIA will accommodate the above officials on proforma promotion under Next Below Rule’ in the higher Pay Band/Grade Pay till completion of their normal deputation period. This supersedes our earlier letter No.PF/SS/Inspr/NIA/2010/19499-500 dated 30 Aug 2011.”

7. It was only on 03.01.2014, that the applicant was inducted as BSF in NAI. The permanent absorption took place on 05.05.2015 as DSP. The whole controversy as to on which date the service of the applicant as DSP must be reckoned in the context of promotion to the post of Additional Superintendent of Police. On their part, the respondents contend that it is only from 05.05.2015 onwards, that it can be reckoned.



8. The law laid down by the Hon'ble Supreme Court and the Hon'ble High Court in this behalf maintains a settled distinction. The service rendered by an official on deputation deserves to be counted for the purpose of promotion once he is absorbed in that post. In other words, if a person is taken on deputation in a post in Group 'B' and remained in that capacity for 3 years, but was absorbed in that very post 3 years thereafter, he is entitled to count his service in Group 'B' rendered as on deputation also. Such a facility is available only on being absorbed. In contrast, if the same individual earned promotion to Group 'A' in the parent organization but continued to hold the post in Group 'B' on deputation, he cannot count for that service even after absorption. A third category of cases where he earns promotion in the borrowing department, works for some time in that post on deputation and was later on permanently absorbed in the promoted post, in such case, the service rendered on deputation in the promotion post before absorption also, needs to be reckoned. The case of the applicant falls into this category.

9. It may be true that the expression used in the order dated 03.01.2014 is of "induction". The fact remains that the applicant

was entrusted with the duties of DSP and by the time, he was already drawing the pay scale attached to that post. The twin condition contained in the Recruitment Rules holding the post and drawing a particular scale of pay stands complied with. Since the working of the applicant as DSP from 03.01.2014 was in the NIA itself, the same cannot be ignored.



10. We, therefore, allow the O.A. in part and hold that the service rendered by the applicant as DSP in NIA from 03.01.2014 shall be taken into account in the context of determining his eligibility for promotion to the post of Additional Superintendent of Police. The necessary steps shall be taken by the respondents with reference to the date on which he acquires the eligibility. The monetary benefits shall, however, be only from the actual date of promotion and not earlier thereto.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

January 7, 2021
/pj/sunil/vb/ankit