

Central Administrative Tribunal

Principal Bench, Delhi.

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REGN.No. OA 435 of 1986 ... Date of decision 14.9.87

Shri Muni Lal Ghai

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Applicant.

Vs.

Engineer-in-Chief,

Army Headquarters,

...

Respondents.

New Delhi.

PRESENT

Applicant in person.

Mrs. Raj Kumari Chopra, advocate, for the respondents.

CORAM

Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application under Section 19 of the Administrative Tribunals Act, 1985, against non-fixation of the salary of the applicant in the Grade of Office Superintendent Grade II with effect from 11.12.1975, the date from which he was given notional seniority in that Grade. The brief facts of the case are that the applicant was promoted from U.D.C. to Office Superintendent Grade II with effect from 21.8.80; based on the D.P.C. held by the Engineer-in-Chief Branch, Army Headquarters, New Delhi on 24.7. 1980 . As vacancies of Office Superintendent Grade II existed during 1975, he was given the notional seniority as Office Superintendent Grade II with effect from 11.12.1975 vide Engineer-in-Chief's letter dated 18.6.1983. He was also declared permanent as Office Superintendent Grade II with effect from 1.1.1978 vide orders dated 5.9.1985, but financial benefit has not been given to the applicant with effect from 11.12.1975. It is the

contention of the applicant that promotion without corresponding financial benefit is of no use to him. The applicant has enclosed copies of judgment of the Delhi ^{High} Court in CCP No. 83/84 and CCP No. 98/85 (Appendix D and D-I to the application) where financial benefits have been allowed to the applicant in that case from the date promotion had been given effect to. He has also filed a copy of the orders of the Supreme Court in Writ No. 157 - 162 of 1976, the famous case of P.S. Mahel & Ors. Vs. Union of India which deals with the seniority and promotion of officers of the C.P.W.D.

2. It has been brought out that due to some error in the Central Command, Allahabad, ^{High} the court had granted stay on seniority and the court directed for holding a fresh D.P.C. without change in the grading of various persons. The D.P.C. was held in 1980, but due to some mistakes another DPC was held in 1982. The point raised before the Tribunal is not related to the seniority of the applicant vis-a-vis other UDCs who were promoted as Office Superintendents Grade II, but the only point raised is that since a notional seniority of 1975 has been allowed to the applicant, he must get financial benefit accordingly and that his pay should be fixed which will entitle him to all pay and allowances from 1975. As such it is not necessary for me to go into the question of various meetings of the DPC. The only fact which is relevant is that while the applicant was actually appointed as Office Superintendent Grade II on 21.8.1980, he was given a notional seniority from 1975. The respondents have raised the question of limitation in this case as the Tribunal cannot consider any relief relating to 1975 as under the Administrative Tribunals Act, 1985, the Tribunal is prevented from entertaining grievances relating to ^{period} three years before the Tribunal came into effect.

3. In their written statement, the respondents have explained the facts relating to the fixation of notional seniority of the

applicant with effect from 11.12.1975 and the changes which had to be made in subsequent years, including the judgment of the Allahabad High Court on the ground of disparity in the seniority list. As mentioned earlier, the point raised before the Tribunal is not of fixation of seniority, inter se, of the Office Superintendents Grade II, but only regarding admissibility of financial benefit from 1975 and not from the date of actual appointment to that Grade. The date of confirmation of the applicant is also really not very relevant for fixation of pay in that Grade because if the pay of the applicant has to be fixed retrospectively, it will not be from the date he was confirmed in that Grade but from the date he actually started working or when he was given ^{the} seniority. The question, therefore, is whether pay can be fixed on the basis of notional seniority or from the actual date of taking over charge in that particular Grade. The Delhi High Court judgment quoted above states that pay has to be fixed from the date the petitioner in that case was given promotion to the post of Superintendent E/M Grade-II, the judgment does not say that it was only a notional promotion. In the case of notional promotion, it is difficult to accept that a person should get a higher salary when actually he did not work in the higher post. FR 17 lays down that an officer shall begin to draw pay and allowances attached to his tenure of a post with effect from the date he assumes duties of that post. There is no provision in the Fundamental Rules to pay a person a salary in a Grade when he has actually not worked in that Grade. The Supreme Court in P.S. Mahal's case has only fixed inter se seniority of various persons and ordered creation of supernumerary posts, wherever necessary, but that case was in respect of seniority of officers and not regarding payment of arrears based on notional seniority. In the present application, there is no specific prayer that the applicant should be declared senior to someone else and based on such a seniority, his pay should be refixed. Basically, the case is regarding fixation of salary based on notional seniority and not on the ground that any junior was getting a higher salary. If the case is that someone junior to the applicant has received a higher salary than the applicant, it would be discriminatory and

the salary of the

senior person must be protected, but in the present application the applicant has not raised the point that any of his juniors is getting a higher salary than himself. FR 26 also prescribes conditions on which service counts for increments in a time scale. It says that all duty in a post on a time-scale counts for increments in that time-scale, but it does not provide for counting non-duty period in that scale. Prima facie, there appears to be nothing wrong ⁱⁿ for allowing notional seniority from an earlier date, if there have been vacancies and if the purpose was to allow the applicant a certain years of seniority to make him eligible for promotion to the next higher grade. This appears to be the case here. It has been pointed out that when the DPC gave the notional seniority of 1975, the Department was short of eligible officers for promotion as Administrative Officers from Office Superintendents Grade II who needed 8 years of service for promotion to the next grade. There were vacancies in the grade of Administrative Officers, but there were no eligible persons for promotion. Direct recruitment was not done, but those promotees who were given notional seniority were promoted against vacancies taking advantage of the notional seniority allowed to such persons. The present case is granting of notional seniority and not notional promotion.

4. It was also the case of the respondents that the permanency of the applicant was changed from 1978 to 1984 and the applicant's case is that this was done illegally as the earlier permanency was given by a duly constituted D.P.C. As mentioned earlier, whether the earlier confirmation was by mistake which had to be rectified or not is not before the Tribunal and is also immaterial for the purpose of fixation of pay of the applicant. I, therefore, see no reason to differ from the judgment of the Madras Bench of this Tribunal in O.A. 287 of 1987 where it has been held that notional promotion is for the purpose of seniority only and for no other purpose.

It, therefore, follows that it does not bestow any financial rights on the applicant because of his being given a notional seniority for 1975. The only thing to protect would have been that his juniors should not be paid a higher salary than the applicant, but this is not the case of the applicant before me. In the circumstances, he can get the salary of Office Superintendent Grade II only from the date he was actually appointed to that post. The application is, therefore, rejected. There will be no order as to costs.



(B.C. Mathur)

Vice-Chairman