

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
~~MAX NOX~~

134

1987

DATE OF DECISION January 31st, 1990

Capt. K.S. Malhotra

Applicant (s)

Shri R.P. Oberoi,

Advocate for the Applicant (s)

Versus

Union of India & Ors

Respondent (s)

Shri Mukul Talwar & Mrs. Avnish Ahlawat
Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. P.C. JAIN, MEMBER (A)

The Hon'ble Mr. J.P. SHARMA, MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT OF THE BENCH DELIVERED BY
HON'BLE SHRI J.P. SHARMA, MEMBER (J).

Capt. K.S. Malhotra, Junior Staff Officer (CTI) filed an application under Section 19 of the Administrative Tribunals Act, 1985 challenging non-issue of orders regarding regular appointment of the applicant as Junior Staff Officer (CTI) and non-promotion of the applicant to the post of Commandant, Central Training Institute, Home Guards, Delhi.

2. The applicant claimed the following reliefs :-

- (i) To treat the applicant as having been regularly appointed to the post of Junior Staff Officer (CTI), Home Guards, Delhi w.e.f. 15.7.71 and to give him seniority in the said grade from that date;
- (ii) To treat the applicant as having been promoted to the post of Commandant, Central Training Institute, Home Guards, Delhi w.e.f. 1.2.83 or alternatively, w.e.f. 1.8.84;
- (iii) To fix the pay of the applicant in the pay scale of

Rs. 1100-1600 attached to the post of Commandant, CTI, w.e.f. the date allotted under (ii) above and to pay him arrears of pay and allowance on the above basis;

- (iv) To pay interest @ 18% of arrears of pay and allowances from the date the amount became due on the basis of (ii) above to the date of actual payment;
- (v) To award to the applicant costs of this application;
- (vi) To quash office order No. 412 dated 26.5.80 (Annexure XI) and No. 535 dated 2.7.85 (Annexure XII).
- (vii) Any other relief or consequential benefits which this Hon'ble Tribunal may deem appropriate and proper on the facts and circumstances of the case.

3. The facts in brief are that the applicant was appointed as Junior Staff Officer (CTI) on 15.7.71 (Annexure 1). In this appointment letter it is stated that the appointment is purely on adhoc basis and subject to finalisation of the Recruitment Rules and selection of regular candidates by the U.P.S.C.. In case the candidate does not fulfil the requirements of the Recruitment Rules his services may be terminated at any time without assigning any reasons therefor.

In pursuance of this letter the applicant joined and is still in service.

Alongwith the applicant another officer namely Capt. S.S. Dagar was appointed as J.S.O. (Civil Defence). Shri S.S. Dagar had filed a Writ Petition in Delhi High Court on 16.10.1980 (C.W. No. 861/80) and on this Writ Petition the Delhi High Court on 16.10.1980 passed an order Annexure III that there will be stay of reversion of the petitioner from his present post. At the time when applicant joined there were no Recruitment Rules for recruitment and Recruitment Rules were issued vide Annexure II, Memo No. F2(70)/74-S.II dated 5.3.77.

The rules show that it was a selection post and exact method of recruitment to be decided in consultation with the U.P.S.C on each

occassion. Ex-Emergency Commissioned Officer of the rank of Captain or equivalent are eligible. Thus the applicant according to the Recruitment Rules had the prescribed qualifications. On 15.3.74, Recruitment Rules for the post of Commandant (CTI) were published which is Annexure IV. It was Class I selection post and the post was to be filled by Junior Staff Officer with 8 years service in the grade.

4. The post of Commandant (CTI) fell vacant after the retirement of Shri Narula on 1.8.84 and since there was no recruitment, vide Annexure V office Order No. 506 dated 17.7.84, duties of Commandant (CTI) in addition to his own duties as JOG (CTI) were given to the applicant. In para 2 of the order it is mentioned " This is purely temporary arrangement and the concerned officer shall not be entitled to any extra remuneration/ honorarium for these duties". In fact Shri C.N. Narula/ was looking after the work of Commandant (CTI) was Senior Staff Officer, Civil Defence. In that said order, however, it was directed that Commandant General Home Guards or Director Civil Defence be consulted in all the policy matters. This arrangement continued as the vacancy remained unfilled which is still existing. Director, Civil Defence found that the Junior Staff Officer (CTI), has signed as Commandant (CTI) and that practice is wrong and should be stopped immediately. This is Annexure XI to the application and applicant has prayed for quashing the order No. 412 dated 26.5.86. Subsequent to this an order No. 535 dated 2.7.86 by the Director, Home Guards and Civil Defence was issued which is Annexure XII that Commandant Home Guards and Senior Staff Officer Home Guards would look after the work of Commandant (CTI), the post, which is lying vacant. The applicant has also prayed for quashing this order.

5. The applicant submitted a representation on 25.10.1985

Annexure VII saying that since he is the only eligible candidate and performing the duties since 1.8.84, promotion order as Commandant (CTI) should be issued. Again a representation was submitted Annexure VIII on 21.5.86 followed by two reminders, and also desired an interview which was rejected vide Annexure IX. Director, Civil Defence and Commandant Home Guards, issued a revised roster of duties of the staff vide Annexure X order No. 582 dated 1.8.85 and duties of J.S.O(CTI) were defined. In this revised roster in the organisation chart the post of Commandant (CTI) had not been shown while vide Annexure XI dated 26.5.86 post of Commandant (CTI) has been shown. The contention of the applicant is that the applicant after the appointment as J.S.O (CTI) has also been performing the duties of Commandant(CTI) vide order No. 506 dated 17.7.84 and so the applicant promotional post of Commandant (CTI), and also is entitled to the is entitled to the remuneration which is fixed for the incumbent of this post vide Recruitment Rules Annexure IV dated 13.5.74. The contention of the applicant is that he made various representation and, in spite of the fact that U.P.S.C. has written for his regularisation in 1979, but he has not been regularised as yet in post of J.S.O.(CTI), and nor he has been given promotion to the post of Commandant (CTI). In fact all the duties of Commandant (CTI) are listed now under the post of J.S.O.(CTI) and this has been done to counter the claim of the applicant made in his representation to respondent No.2. Thus the main grievance of the applicant is that he has not been regularised in spite of the recommendation of the U.P.S.C. and further he had not been promoted on a vacant post which is still unfilled, of the Commandant (CTI) and that he should be allowed remuneration w.e.f. 1.8.84. He has been illegally and arbitrarily denied the

promotion and benefits of the post of Commandant (CTI) as he has in fact been normally looking after the duties assigned to Commandant (CTI).

6. The respondents contested the averments made in this application and in their reply contended that the applicant was given purely temporary ad hoc appointment as JSO (CTI) w.e.f. 15.7.71 and the appointment has not yet been regularised as selection is under challenge before the Tribunal in T-630/85, S.S. Dagar Vs. Lt. Governor which is still pending. It is further said that at the time of filling up of the post of JSO (CTI) the Recruitment Rules were not in existence and the selection of the applicant has also been challenged in the aforesaid T-630/85 filed by Shri S.S. Dagar.

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The Hon'ble High Court of Delhi had granted / the stay against the reversion. It is further contended that the applicant was asked via office Order No. 506 dated 17.7.74 to lookafter only the routine duties of Commandant (CTI) in addition to his own duties. He was also directed to consult Commandant Home Guards or Commandant General Home Guards and Director Civil Defence in respect of all important and policy matters and in the order it was specifically mentioned that he will not be entitled for any extra remuneration and honorarium for looking after the duties of Commandant (CTI).

Regarding promotion it is stated that since the applicant is ad hoc that cannot yet be considered. In the revised roster of duties issued vide order dated 1.8.85 the Juties of vacant post such as SSO (Civil Defence) and Commandant (CTI) were not shown as these posts were lying vacant. It is further said that all the duties of Commandant (CTI) were not given to JSO (CTI) which was shown in the order No. 412 dated 26.5.86. The Order No. 505 dated 17.7.84 which was in respect of the applicant to look after the routine duties of

Commandant (CTI) was superceded by Office. Order No. 582 dated 11.8.85 as J.S.O.(CTI) was misusing his office by signing the documents as Commandant (CTI). Again, Director General, Home Guards vide order No. 535 dated 2.7.86 made it clear that the duties of Commandant (CTI) will be looked after by the Commandant Home Guards. As such, the applicant according to the respondents, is not entitled to any relief and the application is liable to be dismissed. The rejoinder has been filed by the applicant but it is only repetition of the facts given out in the application under Section 19 of the Administrative Tribunals Act.

7. We have heard the learned counsel for both the parties. Relief No. 1 claimed by the applicant has already been granted vide office order dated 30.10.1987 and his service has been regularised as JSO (CTI) from 15.7.71. Photo stat copy of the same has been filed during the course of arguments and taken on record.

8. Now the main question arises whether the applicant can be treated as promoted to the post of Commandant (CTI) w.e.f. 1.2.83 or alternatively on 1.8.84 and in any case is entitled to any remuneration of the post of Commandant (CTI). Learned counsel cited AIR-1983-SC-852; Y.V. Rangaiah and others Vs. J. Sreenivasa Rao and others. In the said authority there is a direction that a panel of candidates should have been prepared in 1976 and vacancy which occurred prior to amended rules would be governed by old rules and not by the new rules. No such point is in issue in the present case. A reference has also been made regarding the revision of instructions on ad hoc appointment by Department of Personnel and Training and it has been specifically mentioned that ad hoc appointment should be limited to post which cannot be kept vacant for long. In the present

case the applicant has already been regularised on the post of J.S.O (CTI). It has to be ascertained as a fact whether the applicant has actually worked as Commandant (CTI) as alleged by him or he was merely looking only after all the routine matters under the directions of the Head of the Department. In this connection Office Order No. 506 dated 17.7.84 is relevant. This order is quoted below:-

"Consequent upon the retirement of Shri C.N. Narula Senior Staff Officer (Civil Defence) w.e.f. the afternoon of 31st July, 1984, the following order in respect of distribution of duties shall remain operative till further orders:-

(i) Shri S.S. Dagar, J.S.O.(CD) will look after the routine duties of Senior Staff Officer (Civil Defence) in addition to his own duties.

(ii) Shri K.S. Malhotra, J.S.O.(CTI) will look after the routine duties of Commandant, CTI in addition to his own duties.

2. This is a purely temporary arrangement and the concerned officers shall not be entitled to any extra remuneration/honorarium for these duties.

3. They shall consult the Commandant, Home Guards or the undersigned in respect of all important and policy matters."

A perusal of the above order shows that the applicant was clearly asked not to take any policy decision and has to work in respect of all matters other than the routine matters with consultation of the Commandant Home Guards or Commandant General Home Guards. This clearly shows that the applicant was never given an ad hoc officiating chance to perform the duties of the office of Commandant (CTI).

Reference has been made to AIR-1986-SC-132, H.D.Singh Vs. Reserve Bank of India & Others where the Hon'ble Supreme Court has held that the wages cannot be denied to a person unfairly or arbitrarily but this is not the case here as is explicit from order No. 506 dated 17.7.84. Learned counsel also referred to ATR-1989-(2)-120 Hira Nand Sharma Vs. State of

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H.P. & Another, where the Hon'ble Tribunal of Himachal Pradesh observed that a person cannot be deprived of the wages admissible to him in law on the mere ground that he had agreed to work on lower wages or that no post was available against which higher wages would be drawn and paid. Here the Inkman was asked to operate single machine and was made to work as Machineman since then, while in the present case the applicant was only asked to look after the routine matters by virtue of office order quoted above dated 17.7.84 and subsequently he was asked to work only as J.S.O.(CTI) vide order dated 1.8.85 by (Annexure X) and office Order No. 412 dated 26.5.86(Annexure XI) he was asked not to designate himself as Commandant Home Guards order No. 535(Annexure XII) dated 2.7.86 the work of Commandant (CTI) was given to Commandant Home Guards or Senior Staff Officer, Home Guards. This clearly makes out that in the year 1985 work of J.S.O (CTI) was defined as part of his duties and in May 1986 by Annexure XI a warning was issued to the applicant and in July 1986 the specific arrangement was made for discharge of the functioning of the Commandant CTI. The present petition has been filed on 30.1.87. If the applicant had actually felt any grievance he could have come well in time. Learned counsel also placed a reliance on the authority of Dwarka Prasad Chandral Vs. The District Education Officer, Jabalpur & Others, where L.D.C. was asked to perform the duties of Head Master and that he was not paid for the work of the office of Headmaster and as such his claim for the pay of the Headmaster was allowed. However, in the present case, the matter is totally different. The applicant was not given any independent charge of Commandant (CTI). In view of the above discussion the applicant cannot be said to be entitled as of right to claim any pay in the grade of Commandant (CTI) nor he

was factually working in a legal authorised manner in that post.

9. Regarding the matter of promotion the applicant cannot claim it as of right. The matter is different when the post is desired to be filled then the applicant had to be given due consideration by the Selection Committee if he is eligible and qualified for that post. If the post is kept unfilled and nobody against the interest of the applicant is allowed to work then the applicant will have no grievance. There are also many policy matters of the Government which cannot be judged on financial grounds by Courts. They (respondents) themselves desire that the post should not be kept vacant for long but at the same time no direction can be issued to fill up vacant post and the applicant could ~~not~~ show neither any such provisions in rules nor any precedent cited. To get promotion is one of the fortune of a person aspiring for it but future and fortune cannot be destined by a person unless and until an occasion arises. That occasion can come only when the post of Commandant (CTI) is desired to be filled. In the matter of filling up a post formalities have to be undergone as given in the Recruitment Rules for Commandant (CTI) which the applicant has himself filed as Annexure IV. In view of this, the applicant cannot be said to have been subjected to any arbitrary or unenuitable treatment or discrimination. The application has, therefore, no force. The application is dismissed. Parties to bear their own costs.

J. P. SHARMA
(J.P. SHARMA)
MEMBER (J) 31/1/90

Dec 30/1/90
(P.C. JAIN)
MEMBER (A)