

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1063/87

Date of decision: 6-1-93.

Phool Singh

...Applicant

Versus

Union of India & Another

...Respondents

CORAM :

THE HON'BLE MR. JUSTICE V.S.MALIMATH, CHAIRMAN.
THE HON'BLE MR. S.R.ADIGE, MEMBER(A).

For the applicant

...Shri S.K.Bisaria, Counsel

For the respondents

...Shri P.H.Ramchandani,
Senior Counsel

JUDGMENT (ORAL)

(Hon'ble Mr. Justice V.S.Malimath, Chairman) :

The petitioner started his career as Constable in the year 1955. In due course, he was promoted as a Head Constable on 7-12-1967. The post held by him has been described as Assistant Wireless Officer. He was confirmed on 7th July, 1970. The petitioner's case is that he was further promoted on 28-2-1977 as Assistant Sub-Inspector (Wireless Operator). His further case is that the post held by him was upgraded and he was treated as Sub-Inspector w.e.f. 28-2-1980. The petitioner came to be reverted by order dated 21-11-86 as a Head Constable. It is in this background that the petitioner has approached this Tribunal and has prayed for quashing of the order dated 21-11-86 by which he has been reverted from the post of Assistant Sub

Inspector to the post of Head Constable.

2. The order of reversion is dated 21-11-1986 and the name of the petitioner is found at serial no.69. On the very same date, i.e., 21-11-86, another order was passed by the Dy. Commissioner of Police bringing the names of nearly 200 persons on the promotion list for the post of Assistant Sub Inspector (Wireless Operator) w.e.f.11-11-1986. The petitioner's name does not find a place in the list of persons brought on the promotion list. At the end of said order, however, it is noted that the decision in respect of the three officers named therein which includes the name of the petitioner has been deferred due to the pendency of the departmental proceedings against them. It is stated that their cases will be decided on merit by the D.P.C. after such proceedings are over.

3. In the reply filed by the respondents, it is stated that the petitioner was not in fact promoted to the cadre of Sub Inspector. It is their case that the promotion of the petitioner to the cadre of Assistant Sub Inspector made in the year 1977 was only on ad hoc basis. It is stated that he was not qualified for regular promotion as he had not yet passed the prescribed test. It was held that when he was holding the post of Assistant Sub Inspector on ad hoc basis, the post stood upgraded as Sub Inspector in the year 1980.

The scale of the Assistant Sub Inspector is Rs.380-560

✓ whereas the scale of pay attached to the post of Sub

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Inspector is Rs.425-700. The petitioner, however, continued in the scale of Rs.380-560 even after the notional upgradation of the post to that of Sub Inspector. In substance, there was no promotion of the petitioner to the cadre of Sub Inspector. It is the case of the respondents that the petitioner did not qualify even for the post of Assistant Sub Inspector. Hence, it was not reasonable to expect his promotion to the cadre of Sub Inspectors. It is, however, stated that the case of the petitioner for promotion to the cadre of Sub Inspector was actually deferred primarily on the ground that he was involved in a criminal case of assassination of Smt. Indira Gandhi, late Prime Minister of India. It is because of the pendency of the criminal case at that time that the D.P.C. did not take a decision in regard to suitability of the petitioner for promotion to the cadre of Sub Inspectors. As petitioner was holding the post of Assistant Sub Inspector/notionally as Sub Inspector on ad hoc basis, he came to be reverted as Head Constable. His name could not be included in the approved list of promotees having regard to the pendency of the criminal case against him. As the petitioner was holding the post on ad hoc basis and there were adequate number of persons regularly selected by the D.P.C., the petitioner was reverted to his substantive post of Head Constable. We do not see any ground in the circumstances to say that the reversion when it was effected was not legal or proper. Hence, the

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petitioner is not entitled to secure any relief in this behalf. In the course of the arguments, it was pointed out on information that the petitioner appears to have been exonerated of the criminal charges during the pendency of these proceedings. If that is so, the petitioner would be entitled to have his case for consideration particularly having regard to the fact that the order dated 21-11-86 produced by him makes it clear that his case was deferred having regard to the aforesaid background of the case pending against him. If that is so, the exoneration of the petitioner should have resulted in the consideration of his case for promotion in the light of order dated 21-11-86. If that has not been done so far, it is open to the petitioner to work out his rights in the appropriate proceedings. As the petitioner was pursuing his remedy before this Tribunal, it is obvious that this factor ought to be taken into consideration in examining the question of limitation if and when the petitioner finds it necessary to file an Original Application for seeking relief for promotion, if the same has not already been granted in accordance with law.

4. Subject to these observations, this O.A. is dismissed. No costs.

S.R. Adige
(S.R. ADIGE)
MEMBER (A)

V.S. Malimath
(V.S. MALIMATH)
CHAIRMAN