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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA-1486/90

New Delhi this the 3rd day of December, 1994.

Shri N.V. Krishnan, Vice Chairman(A).

Smt. Lakshmi Swaminathan, Member(J).

R.S. Rawat,  
S/o Late Shri Kishan Singh Rawat,  
R/o Qr. No. 233, Sector 7,  
R.K. Puram,  
New Delhi-22. ..Petitioner.

By Advocate Shri S.C. Luthra.

Versus

1. Union of India through  
The Secretary,  
Ministry of Home Affairs,  
Government of India,  
North Block,  
New Delhi.
2. The Director,  
Intelligence Bureau,  
Ministry of Home Affairs,  
Government of India,  
North Block,  
New Delhi-1. ..Respondents.

By Advocate Shri M.K. Gupta.

ORDER

Shri N.V. Krishnan.

The applicant is a Junior Intelligence Officer Grade-II in the Intelligence Bureau under Respondent No.2, the Director Intelligence Bureau in the Ministry of Home Affairs. He is aggrieved by the order dated 26.7.1989 (Annexure A-I) by which the representation dated 22.5.1989 for absorption in the rank of Junior Intelligence Officer Grade -I from 1.1.1982 has been rejected. That order reads as under:

"Reference, representation dt. 22.05.1989 of Sri Ram Singh Rawat, JIO -II (G) for absorption in the rank of JIO -I(G) in the Intelligence Bureau with effect from 01.01.1982.

Sri Ram Singh Rawat was on deputation from I.T.B.F. and was absorbed in Intelligence Bureau as JIO-II (G) with effect from

01.01.1982. At that time, he was officiating as JIO-I (G) in Intelligence Bureau on deputation basis, though he was holding the post of Head Constable in his parent department. As per rules then, in force, he was eligible for absorption in Intelligence Bureau (on transfer of service basis) against a similar or analogous post held by him in his parent department. Accordingly, he was absorbed in I.B. (on transfer of Service Basis) in the rank of JIO-II(G) with effect from 01.01.1982, after obtaining his written willingness for the same, pointing out the consequences on absorption, such as reduction in rank etc.

The recent judgements of C.A.T. in the cases filed by the absorbee officers will not apply in his case. However, the possibilities of protecting the rank and seniority of similarly placed absorbees are engaging our attention. Decision as and when taken will be intimated to all concerned, including Sri Ram Singh Rawat."

2. The facts of the case are as follows:

2.1. The parent department of the applicant is the IndoTibetan Border Police (ITBP). At the relevant time he was holding the rank of Havildar in the ITBP w.e.f. 7.8.1973. This rank is stated to be equivalent to the rank of Junior Intelligence Officer-II (JIO-II) in the Intelligence Bureau (I.B.).

2.2. The applicant was taken on deputation to the I.B. on 27.6.1975 as JIO-II. While on deputation, he was also promoted as JIO-I from 23.2.1979.

2.3. He was permanently absorbed in the I.B. w.e.f. 1.1.1982 i.e. at the time when he was holding the post of JIO-I on deputation. However, instead of continuing him as JIO-I, he was reverted to the rank of JIO-II. It is alleged that, in similar cases, where persons have been absorbed in the

I.B. on a lower rank; they were, nevertheless, allowed to continue to hold the post on the higher rank, which they were holding on deputation at the time of absorption.

2.4 The grievance of the applicant in this regard was compounded further by the decision of the respondents about the applicant's seniority in the rank of JIO-II, on which he was absorbed. It is stated that, in the matter of seniority as JIO-II, the respondents decided to count his service only w.e.f. 1.1.1982 i.e. the date of absorption in the I.B. as JIO-II. The service rendered by him as Havildar in the I.T.B.P. in his parent department from 7.8.1973 till he came in the I.T.B.P. on 27.6.1975 as also service in the I.B on deputation as JIO-II from 27.6.1975 and as JIO-I from 23.2.1979 were not counted.

2.5. The applicant made continuous representations ~~in~~ this behalf but this was not acceded to.

2.6. On 9.10.1987, the Supreme Court rendered a decision in K. Madhavan & Anr. Vs. Union of India & Ors., (AIR 1987 SC 2291). Relying upon that judgement, the applicant made representations to the second respondent on 18.11.1987, (Annexure A-5). He was informed on 21.1.1988 (Annexure A-6) that the said decision would not apply to his case. The applicant, therefore, sent a further representation to the second respondent dated 22.8.1988 (Annexure A-7). In that representation, he also cited the decision of this Tribunal dated 13.1.1988. in Baldev Singh & Ors. Vs. Union of India (case T.870/85-CJ-330/83) wherein the decision of the Supreme Court in Madhvan's case was followed and it was held that the individual had to be absorbed in the rank he was holding at the time of absorption and that his absorption in

the lower rank was held void. He, therefore, requested that instead of being absorbed ~~him~~ as JIO-II from 1.1.1982 he should be absorbed as JIO-I from that date and that his seniority as JIO-I be fixed accordingly.

2.7. In the meanwhile, it is stated that some decisions had been rendered by this Tribunal in regard to similar matters. Attention is drawn to the decision dated 2.2.1989 in O.A. No. 1219/88 Shiv Narain and Anr. Vs. Union of India and Anr, copy of which is at Annexure A-8. Based on this judgement, the applicant made a further representation on 22.5.1989 which is not on record. It is this representation which has been turned down by the impugned Annexure A-I order reproduced above.

2.8. Subsequently, the applicant represented on 26.4.1990 (Annexure A-10) in which attention was drawn to the impugned order dated 26.7.1989 which also informed the applicant that 'the possibilities of protecting the rank and seniority of similarly placed absorbees were engaging the attention of the respondents, and he requested that the decision be taken in this regard early because direct recruits who were junior to the applicant as JIO-II have been promoted as JIO-I long back. Not receiving satisfaction, this O.A. has been filed for a direction to count the seniority of the applicant in the rank of JIO-II w.e.f. 7.8.1973 and to consider him for promotion on the basis of the revised seniority from dates from which his juniors have been promoted.

2.9. In short, the only claim now made is that accepting the position that he has been correctly absorbed as JIO-II in the I.B. w.e.f. 1.1.1982, the respondents should atleast

grant him seniority in that rank, not with effect from the date of his absorption i.e. 1.1.1982, but from the date on which he was holding such rank (i.e. 1.8.1973) in his parent department (i.e. I.T.B.P.).

3. The respondents have filed a reply contesting these claims. It is stated during the relevant period, formal recruitment rules were not in force but such matters were governed by executive instructions. The applicant was on deputation from 27.6.1975 onwards. Government refused to extend the deputation of the applicant and others any further and, therefore, the applicant, along with nine others, were to be repatriated on completion of their tenure on 31.12.1981. However, the applicant was given an option in this regard, in terms of the Annexure R-I memo. That memo reads as follows:

"The case of the following personnel on deputation to the I.B. was taken up with the Govt. for extension in their period of deputation for one more year. The Govt. have not agreed to our request and have asked us to repatriate them to their parent deptt. w.e.f. 31.12.1981. In view of the above, we have to relieve these personnel on 31.12.1981 (AN). However, in case they are willing for transfer of their services to the I.B. they will be taken against a similar or analogous post being held by them in their parent deptt. Those officiating in higher rank on deputation in I.B. will be reverted to their substantive rank which they are holding in their parent deptt. The service rendered by them in their parent deptt. will not count towards seniority in the rank they are taken in I.B. and they will rank junior to all personnel who have been selected/appointed by \_\_\_\_\_ on or prior to the date of their transfer/deputation.

2. In case the above conditions are acceptable to them their written consent in triplicate may be obtained and sent to us immediately within a week i.e. on or before 27.11.1981 so that their case may be taken up for consideration". (Emphasis given).

4. This was addressed to the applicant and nine others.

The applicant gave his willingness for transfer of his services to the I.T.B.P. on permanent basis and he agreed to the

conditions of service of transfer as mentioned in the above memo. Copy of the option dated 14.12.1981 and the memo forwarding it are at Annexure R-2. Accordingly, he was absorbed by Annexure R-3 order dated 26.2.1982 as a Temporary JIO-II. In regard to his previous service this memo stated as follows:

"His previous service in ITBP will count for increments as admissible under the rules. The service rendered by him in ITBP, will, however not count towards seniority in the I.B. He will rank Junior to all JIOs-II (Gen1) who have been selected/appointed in Intelligence Bureau on transfer of his service from ITBP."

5. The respondents, therefore, contend that the applicant himself had given his written consent to the conditions stipulated. The respondents have also stated that before 1992 the recruitment rules were not statutory and it did not permit absorption in the rank which he was holding at the time of absorption. The policy was to absorb such persons only in the rank they were holding in the parent department.

6. We are not making any further reference to the documents filed by the applicant regarding his claim for absorption on the higher post of JIO-I which he had made in the representation to the department, as there is no such grievance at present in this O.A.

7. We have heard the learned counsel for the parties. The only issue that subsists is whether in the rank of JIO-II on which the applicant was absorbed on 1.1.1982 the applicant can claim seniority from 7.8.1973 i.e. the date with effect from which he was holding the post of equivalent rank i.e.

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Havildar in his parent department, i.e. I.T.B.P. as claimed by him or he is entitled to count seniority only from the date of absorption as held by the respondents.

8. We have carefully considered the matter. Reliance of the learned counsel for the applicant on the judgement of the Supreme Court in Madhavan's case (Supra) is misplaced. The Supreme Court was interpreting in that case the Special Police Establishment (Executive Staff) Recruitment Rules, 1963. The issue was whether for appointment to the post of Supdt. of Police in the CBI he should have eight years of service as DSP. The question was whether this meant eight years of service as DSP in the CBI or whether service rendered as DSP in the parent department can also count. The Court held as follows:

"In other words, the contention of the petitioners is that respondent 5 should have been for eight years in the CBI as DSP before he would be eligible for appointment to the post of SP in the CBI.. As respondent 5 joined the post of DSP in the CBI on deputation on 1-7-1967, he could not be appointed to the post of SP even on 28.10.1972, far less on 21.7.1971 (FN), for on either date, he did not complete eight years of service in the CBI. We are, however, unable to accept the contention "eight years' service in the grade" would mean "eight years' service in the grade of DSP". The 1963 Rules do not provide that the period of eight years should be computed from the date of deputation to the CBI as DSP. In the absence of any such express provision, it must be held that the period during which one held the post of DSP in the State Police Service should also be taken into account for computing the period of eight years. The 1963 Rules provide that two years must be spent on probation as DSP in the CBI. The position, therefore, comes to this that of the total period of eight years, two years must be on probation basis in the CBI. An officer may have been in the State Police as DSP for a period of six years and, thereafter, if he joins the CBI on deputation and spends two years on probation, he would be eligible for consideration for appointment to the post of SP."(emphasis added)

9. It is significant to note that this interpretation was given because the rules did not provide specifically that the period of eight years should be counted from the date of deputation to the CBI.

10. In the present case, the respondents have clearly stated that the existing instructions laid down that seniority, on absorption, will count only from the date of absorption in the Intelligence Bureau and any service rendered prior to that date in an equivalent grade in the parent department on a regular basis or even on higher grade while on deputation would not count for seniority. That is clear from the Annexure R-I memo issued to the applicant which has been extracted above.

11. The applicant has filed the Annexure-11 order dated 30.7.71 appointing persons as ACIO, JIO and HC to, show that persons have been absorbed in the officiating rank held by them on deputation. Thus, the person at Serial No. 1 who was officiating as ACIO was absorbed on the same rank. Persons at serial No. 17 to 29 who were officiating as JIO on deputation have been absorbed on the same rank. The respondents clarify that this was due to the fact that they were holding that rank in the parent cadre and that there is no discrimination. The same order shows that others who were officiating on deputation as ACIO-II or as JIO have been absorbed only as JIO and Head Constable respectively.

12. The learned counsel for the applicant subsequently filed MP 241/91 enclosing therewith an order of the Supreme Court in Civil Appeal No. 4480/91 Ram Murari Vs. Union of India (Ann.16 colly). He strongly relied on that order to contend that the applicant should also be given the benefit of

that order. We have seen the documents marked as Annexure A-16. The appellant in that case, Ram Murari, had also approached the Patna Bench of the Tribunal in O.A. 423/90. The relief claimed by him was to recall an order passed on 25.6.1983. This was considered by the Tribunal by order dated 30.11.1990(Ann.16). It was held that the O.A. was barred by limitation. When the matter was taken up in appeal to the Supreme Court an order was passed as per Annexure A-16. The Supreme Court held as follows:

"In the rejoinder the appellant has clearly made out a case of discrimination. Similarly placed officers have been differently treated and while relief has been extended to persons indicated therein, appellant has been denied the benefit by relying upon the Rule which has been extracted in the counter affidavit. It is a question of enforcing the Rule and requiring an examination to be a condition precedent to consideration of entitlement to the benefit. If that has not been done in the case of similar situated other employees, we see no justification as to why the same should be enforced in the case of the appellant". (emphasis added)

13. It is clear that the circumstances in which the decision was given are entirely different. Apparently, some rule required an examination to be held as a condition precedent to consideration for entitlement to the benefit. That has not been done in the case of similarly situated employees but that rule was being enforced against the applicant therein. That decision is really of no use.

14. We have also seen the judgement of the Tribunal in O.A. No. 1219/88 (Annexure A-8) filed by two persons S/Shri Shiv Narain and Jagdish Shukla. The decision therein relates a totally different problem. The question in respect of these persons was what is the date from which their seniority can be counted in the IB. The first applicant was on deputation on 30.11.1963 as JIO-II. He was promoted while on deputation, as ACIO-II on 4.1.1972. Before that date, he was absorbed as

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JI0-I w.e.f. 1.8.1971. However, on absorption he was allowed to continue as ACIO-II. On this post of ACIO-II, he was regularised only on 14.5.1979. The respondents considered his seniority as ACIO-II from 14.5.1979 only. The order of the Tribunal is that as this applicant had already been absorbed on 1.8.1971 as JI0-I and has been appointed as ACIO-II from 7.1.1972, that date should be taken for the purpose of seniority because his service from 7.1.72 is as an official of the IB. In the case of the second applicant Jagdish Shukla, he was promoted as ACIO-II while on deputation. He was absorbed only on 1.4.1975. Therefore, in his case the date of seniority as ACIO-II would count only from 1.4.1975. In fact, this judgement goes against the applicant inasmuch as any service rendered prior to absorption on the same post has not been taken into account as is clear from the case of Jagdish Shukla.

15. The judgement in OA 31/86 Laxman Narayan Vs. Deputy Director(E) I.B. by the New Bombay Bench is also to the same effect. The decision in OA 353/88 G.M. Nimbalkar Vs. Union of India & Ors. by the Principal Bench is similar to the decision in respect of Shivnarain referred to above in para 13. In Baldev Singh & Others Vs. Union of India & Others (T-870/85) of the Principal Bench also, the Tribunal only held that officiation from the date of absorption in the IB on a higher post will count for seniority in respect of that post.

16. The question raised here is different. The applicant has been absorbed as JI0-II in the IB only on 1.1.1982. He was no doubt regularly holding that post in the ITBP, his present department, from 7.8.1973. He also held the post in IB on deputation from 22.6.75 and the higher post of JI0-I from 23.2.79. These periods have not been counted for

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seniority. In our opinion, the judgement of the Supreme Court in Madhavan's case (Supra) is the only relevant judgement for correct decision. As stated above that does not apply to the facts of this case. Hence, the OA has no merit and it is dismissed.

17. In the circumstance, we find no merit in this O.A. Accordingly it is dismissed.

Lakshmi Swaminathan  
(Smt. Lakshmi Swaminathan)  
Member(J)

'SRD'

N.V. Krishnan  
(N.V. Krishnan)  
Vice Chairman(A)

3/12/84