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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

Regn. No. DA-2561/90

Date of Decision: 08.01.1993

Shri B. S. Jarial Applicant

Versus

Delhi Administration and Others Respondents

For the Applicant Shri B. S. Charya, Advocate

For the Respondents Shri M. C. Garg, Advocate

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman (J)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

1. To be referred to the Reporters or not, *Yes*

JUDGEMENT
(of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

The applicant, while working as Deputy Superintendent, Grade I in the Central Jail, Tihar, New Delhi, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

(i) To set aside the impugned action of the respondents in not paying to him the difference in pay and allowances for the

period from 21.6.1984 to 25.10.1984 and for the period from 26.10.1984 to 31.3.1986, when he officiated in higher post. He further claims the pay of Dy. Supdt., Grade I for the period from 1.7.1987 to 19.3.1990; and

(ii) to hold that the respondents should form a separate cadre for administration of Jails in the Union Territory of Delhi to include the posts from Assistant Superintendent to that of Superintendent and provide avenues of promotion from Deputy Supdt., Grade II to Dy. Supdt., Grade I and above on the basis of seniority-cum-suitability, or in the alternative, to include the post of Dy. Supdt., Grade II in the regular cadre so as to make available to the applicant the avenue of promotion for advancement in his career.

2. We have gone through the records of the case and have heard the learned counsel for both the parties. During the hearing of the case, we have been informed by the learned counsel for the applicant that there are 234 sanctioned posts in the Central Jail at Tihar comprising one post of I.G. (Prisons), 3 posts of Supdts., 6 posts of Dy. Supdt., Grade I, 7 posts of Dy. Supdt., Grade II, 44 posts of Assistant Supdt., 19 posts of Head Warders, 138 posts of Warders, among others. According to the recruitment rules for the post of Dy. Supdt., Grade I, the post is to be filled by transfer,

failing which, by deputation. As regards filling up of the posts on transfer, only officers from DANI Civil Service are eligible. Officers holding analogous similar posts in other States, are eligible for deputation. In other words, there is no channel of promotion for Dy. Supdt., Grade I under the recruitment rules.

3. In the instant case, the applicant was directly recruited as Assistant Supdt. (Jail) w.e.f. 1.5.1981. He was promoted to the post of Dy. Supdt., Grade II in October, 1986 on an ad hoc basis in the absence of the final seniority list. The applicant has stated that by Office Order dated 21.6.1984, he was asked to function as Dy. Supdt. (Factory) which carried the pay-scale of Rs.550-900 as against the pay-scale of Assistant Supdt. (Jail) which was in the pay-scale of Rs.425-700. He continued to work as such till 25.10.1984. He claims that he ought to have been paid salary in the scale of Rs.550-900 during the said period, but was denied the said benefit. He was also not paid any allowance.

4. The applicant was posted as Officiating Dy. Supdt., Gr.II and moved from Jail Factory to Central Jail No.1 by order dated 26.10.1984. He continued to remain there till 31.3.1986. According to him, the work performed by him during this period in the Central Jail No.1, was in the nature of Chief Executive Officer which carries higher responsibilities and against which either a Chief

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Executive Officer or Dy. Supdt., Grade I is posted. The pay-scale of the post was Rs. 650-1200 plus a Special Pay of Rs. 100/- per month. After 31.3.1986, he was again asked to work as Chief Executive Officer in the Central Jail No.1 from 18.4.1986 and he continued to perform the said function till 1.8.1986. However, he was not paid the pay-scale of Rs. 650-1200 plus Rs. 100/- per month as Special Pay.

5. In the meantime, the D.P.C./^{met Q} in September/October, 1986 which prepared the Select List/Panel of promotees to the posts of Dy. Supdt., Grade II and the applicant was placed on the top of the list/panel. He was, thereafter, transferred from Jail No.1 to Jail No.2 on 14.5.1987 and while functioning there as Dy. Supdt., Gr. II, he was posted as Chief Executive Officer/ Dy. Supdt., Grade I against a vacant post w.e.f. 1.7.1987 under the orders of Supdt. (Jail) and he continued to function as such till 19.3.1990. In between this period, he also held the additional charge of Jail Factory in Jail No.2 between 15.1.1988 and 3.1.1989. The post of Dy. Supdt. (Factory) carried the pay-scale of Rs. 2000-3500. He was, however, not paid the said salary. After 19.3.1990 till 30.8.1990, he remained posted as Dy. Supdt., Grade II in Jail No.2. From 31.8.1990 till the date of the filing of the application, he was posted and functioned as Dy. Supdt. (Factory) which carried the pay-scale of Rs. 2000-3500. However, he is being paid only the salary of Dy. Supdt., Grade II, which is Rs. 1640-2900. The applicant made representations

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for giving him the higher pay-scales for shouldering higher responsibilities, but this was not acceded to by the respondents. He has alleged that there are no promotional avenues for Dy. Supdt., Grade II and that the ~~post~~ should be encashed. He has compared his position with that of his counterparts in Punjab, Haryana, U.P., Maharashtra, Gujarat, Andhra Pradesh and Tamil Nadu, where there is a separate Jail Cadre for administration of the Jails. He has also relied upon the report of Mulla Committee and another Committee appointed by the Ministry of Home Affairs in 1986, according to which, promotional avenues should be provided to the Jail staff. According to him, the respondents have not taken any action in this regard.

6. The respondents have stated in their counter-affidavit that the applicant was not formally appointed to the post of Dy. Supdt. (Factory) by the competent authority, that he was only asked to hold the current charge of the routine duties, that he was looking after the duties of the Dy. Supdt. as a stop-gap arrangement made by the Jail functionaries and that he was promoted on an ad hoc basis to the post of Dy. Supdt., Grade II only in October, 1986. They have denied that the post of Dy. Supdt. (Factory) carries the pay-scale of Rs. 2000-3500. According to them, he was not appointed to the post of Dy. Supdt., Grade I and as such, he could not claim the pay-scale of Rs. 2000-3500.

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7. According to the recruitment rules, the post of Asstt. Supdt. is a feeder post for the post of Dy. Supdt., Grade II. The applicant was promoted to the post of Dy. Supdt., Grade II after completion of five years. The post of Dy. Supdt., Grade I is a responsible post requiring lot of experience and maturity and presently, it is being filled from the officers of DANICS.

8. The respondents have stated in reply to Ground (F) of the application that "In any case, this is not the forum to raise the grievance that there are no avenues of promotion. It is for the Administrator to decide about the creation of additional posts, creation of promotional avenues in which the Administrator will decide in his wisdom as and when need arises."

9. In our considered opinion, adequate opportunity for advancement is a requirement of progress of any organisation. This has been authoritatively stated by the Supreme Court in Raghunath Prasad Singh Vs. State of Bihar, AIR 1988 SC 1033 and CSIR Vs. K.G.S. Bhatt, AIR 1989 SC, 1972. Para. 24 (19) of Justice A.N. Mulla Committee's Report on Jail Reforms, deals with the question of promotional prospects of the Jail staff. It has been stated therein that "Promotional prospects in the present service should be such that newly recruited persons be in a position to look forward to at least three grade promotions in the total span of their service of about 30 years."

10. It is true that ordinarily, it is for the Government to consider the stagnation in a particular service or cadre and

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take appropriate steps to remove such stagnation. In the instant case, even though the Mulla Committee had recommended adequate promotional avenues to be provided to the Jail staff, no steps have been taken by the respondents in this regard. The position as it exists at present, is that seven Dy. Supdts., Grade II will have to stagnate in that post from the date of their appointment to the date of their superannuation as there is no channel for promotion of Dy. Supdt., Grade II to that of Dy. Supdt., Grade I. To our mind, suitable provision should be made in the recruitment rules, keeping in view the recommendations of the Mulla Committee. The respondents should consider the question of providing a channel for promotion to Dy. Supdt., Grade II to the post of Dy. Supdt., Grade I at least to the extent of $33\frac{1}{3}$ per cent of the total number of posts.

11. The applicant has claimed difference in the pay and allowances of the post to which he had been appointed and that of the post which he had been directed to look after from 1984 to 1986, by relying upon the provisions of FR-49(i), according to which, the Central Government may appoint a Government servant already holding a post in a substantive or officiating capacity to officiate, as a temporary measure, in one or more of the other independent posts at one time under the Government. In such cases, where he is formally appointed to hold full charge of the duties of higher posts in the same office as his own and in the same Cadre/line of promotion, in addition to his duties, he shall

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be allowed the pay admissible to him, if he is appointed to officiate in the higher post. In the instant case, there is no formal appointment of the applicant to officiate in the higher post which he had, in fact, looked after. Therefore, strictly speaking, the applicant is not entitled to the benefit of the provisions of FR-49(i).

12. In the conspectus of the facts and circumstances of the case, the application is disposed of with the direction to the respondents to consider the question of ~~the~~ ^a adequate promotional avenues to the officers in the category of Dy. Supdt., Grade II by making a provision in the recruitment rules for promotion to the next higher grade, to the extent of at least $33\frac{1}{3}$ per cent of the total number of posts in that higher grade. They shall do the needful in the matter expeditiously and preferably within a period of four months from the date of communication of this order. For the period of service rendered by the applicant in the higher posts from 1984 to 1986, we are of the opinion that the respondents should consider giving him suitable honoraria, in accordance with the relevant rules. The application is disposed of accordingly. There will be no order as to costs.

S. N. Dhumal
(S. N. Dhumal) Q.P. 93
Administrative Member

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(P. K. Kartha)
Vice-Chairman (Judl.)