

(38)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 1510/91

199

T.A. No.

DATE OF DECISION 7-1-2000

Sh. V. K. Kaul

..... Applicant

present in person

..... Advocate for the  
Applicant(s)

VERSUS

UOI & Ors

..... Respondent(s)

Sh. K. C. D. Gangwani

..... Advocate for the  
Respondents.

CORAM

The Hon'ble Shri S. R. Adige, Vice Chairman (A)

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

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

Central Administrative Tribunal  
Principal Bench

O.A. 1510/91

New Delhi this the 7th day of **January, 2000**

(39)

Hon'ble Shri S.R. Adige, Vice Chairman (A).  
Hon'ble Smt. Lakshmi Swaminathan, Member (J).

V.K. Kaul,  
S/o late Shri Autar Kishen Kaul,  
R/o A-9, Pamposh Enclave,  
Greater Kailash-I,  
New Delhi-48.

Applicant.

Applicant in person.

Versus

1. Union of India through  
the Cabinet Secretary,  
Rashtrapati Bhawan,  
New Delhi-110001.
2. The Secretary,  
Ministry of Home Affairs,  
North Block,  
Central Secretariat,  
New Delhi-110001.
3. State of Rajasthan through  
the Chief Secretary,  
Government of Rajasthan,  
The Secretariat,  
Jaipur. ... Respondents.

By Advocate Shri K.C.D. Gangwani, Sr. Counsel.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member (J).

This O.A. had been earlier disposed of by Tribunal's order dated the 7th day of October, 1997. In the O.A., the applicant had claimed the following reliefs:

(i) a direction to Respondents 1 & 2 to promote him and fix his pay at Rs.8000/- p.m. w.e.f. 1.8.1987 viz., the date from which his junior in the service in the Centre was given this pay;

(ii) to fix his pay as D.G., B.P.R.D. at Rs.8000/- p.m. fixed as that is the pay to which the erstwhile pay of Rs.3250/- has been upgraded following IVth Pay Commission's recommendations;

8

AO

(iii) to quash MHA's letter dated 28.11.1989 and dated 26.10.1989 and connected Govt. of Rajasthan's letter dated 26.7.1989;

(iv) to direct Respondents to give him benefit of proforma promotion/NBRA w.e.f. 1.12.1987 when his junior was promoted as D.G. Police in Rajasthan;

(v) to grant applicant the scale of Rs.7600-8000 and to fix his pay at Rs.8000/-.

(vi) to refix his retirement benefits on the above mentioned basis w.e.f. 1.11.1990".

2. The Tribunal by order dated 7.10.1997 had partly allowed the O.A. to the extent that the applicant shall be entitled to fixation of pay in the scale of Rs.7600-8000/- with effect from the date he assumed the charge of DG, BPRD. Being aggrieved by this order, the applicant had filed C.W. No. 5101/97 in the High Court of Delhi. The Delhi High Court after hearing the parties has remitted the case to the Tribunal by order dated 11.10.1999 with the following observations:

"In view of the law laid down by the Apex Court, the impugned order cannot be sustained to the extent that granting pay fixation of the petitioner should have been decided on merits. The impugned order is accordingly set aside. Parties are directed to appear before the Tribunal for directions on 15th November, 1999".

3. Accordingly, we have further heard the applicant and Shri K.C.D. Gangwani, learned counsel for the respondents.

4. The applicant's main contention is that he has a fundamental right for being considered for selection to the higher post of DG carrying the fixed pay scale of Rs.8000/- when his junior Shri H.P. Bhatnagar was considered and promoted w.e.f. 1.8.1987. He has also contended that his all ACRs have been outstanding whereas that of his junior Shri H.P. Bhatnagar in the Rajasthan State Cadre was not so. However, this is a matter for the Selection Committee to consider. He has also raised a number of other grounds, but during the hearing he has

(A1)

submitted that he would be satisfied if a direction is given to the respondents to have his case considered by the Selection Committee with effect from the due date, that is 1.8.1987 and granted the consequential benefits of the higher pay scale and revision in retiral benefits after his retirement.

5. The controversy in this case relates to whether the applicant was entitled to be considered for promotion by the Selection Committee for the post which was equivalent to DG, BPRD and DG, CRPF, which carry the same pay scale of Rs.8000/- fixed, and whether the applicant could be considered for promotion to an ex-cadre post in the Central Government. While the applicant has contended that the DG, BPRD and DG, CRPF are cadre posts, this has been disputed by the learned counsel for the respondents. However, we need not take a view on this issue further at this stage as according to the respondents' own averments in the reply to the O.A. which was dealt with by the Tribunal in the order dated 7.10.1997, they have submitted that they have indeed considered the applicant for the promotion/selection, but <sup>had</sup> ~~had~~ not found him fit. That being so, we do not express any opinion on merits on the question whether these posts belong to the cadre or not.

6. The main grievance of the applicant is that the respondents have never considered him for promotion as Director General (DG) when his junior Shri H.P. Bhatnagar was promoted and granted the fixed pay of Rs.8000/- w.e.f. 1.8.1987. The respondents in their replies dated 30.10.1991 and 12.4.1996 have, inter alia, submitted that they have considered the applicant along with other IPS officers at the Centre for the higher post, but he could/make it because of his past experience not matching those jobs. He was, therefore, not given the post

(A2)

of DG in the scale of Rs.8000/- fixed at that time. In MA 774/96, the applicant had prayed that the relevant records may be called for. The Tribunal had directed the respondents to produce the relevant records by order dated 17.9.1996. To this, an additional affidavit was filed on 11.3.1997 by the respondents to the effect that the files were not available and hence they were not in a position to produce the same to substantiate the averments made in the reply. Shri K.C.D. Gangwani, learned Sr. Counsel, has submitted that he may be given another opportunity to enable the respondents to make a further search for the records and produce them in the Tribunal, if possible.

7. The applicant has filed the O.A. on 1.7.1991 and the respondents were also represented before the High Court when the order dated 11.10.1999 was passed and were, therefore, fully aware that the matter would be taken up by the Tribunal for hearing on merits on the issues that have been remitted. In the circumstances, they could have very well conducted the search for the relevant records and produced them if they had so wanted, to counter their earlier averments made in the additional affidavit of March, 1997. As the respondents have failed to produce the records to show that the applicant's case has indeed been duly considered at the relevant time in 1987 for promotion to the higher post when his junior Shri H.P. Bhatnagar was considered, we have no reason to reject the applicant's contention that his case has not at all been considered for promotion in 1987 by the Selection Committee. The respondents cannot take advantage of their own acts of commission and omission as it was their bounden duty to keep the official records in proper custody, especially when the matter has been sub judice since 1991. In the circumstances, as the request for further time to conduct a search for the records is also unreasonable, it is rejected.

Yours

(A3)

8. In the result, for the reasons given above, the O.A. is allowed and disposed of with the following directions:

(i) The competent authority/Selection Committee shall consider the case of the applicant for promotion/selection to the post of Director General in any of the posts carrying the fixed pay of Rs.8000/- with effect from the date his junior, Shri H.P. Bhatnagar was so considered and promoted w.e.f. 1.8.1987 in accordance with rules and instructions. Necessary action shall be taken within a period of two months from the date of receipt of a copy of this order.

(ii) If the applicant is so found fit, he shall be entitled to all consequential benefits, including difference in arrears of pay and allowances w.e.f. 1.8.1987 and revision of retiral benefits from the date of his superannuation. The due amounts shall be paid to the applicant without delay, and in any case it is not done by two months after (i) above, he shall be entitled to 10% interest per annum till the date of actual payment.

(iii) In the facts and circumstances of the case, we consider it appropriate to impose cost of Rs.1000/- (Rupees one thousand only) against the respondents and in favour of the applicant.

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

*Adige*  
(S.R. Adige)  
Vice Chairman (A)

'SRD'