

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA No. 1726/91 ... Date of decision; 16.02.93.
Sh. Prem Singh ... Applicant
Versus
Commissioner of Police, Delhi .. Respondents
Sh. Umesh Mishra .. Counsel for the applicant
Sh. D.N. Goburdhan .. Counsel for the respondents

CORAM

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

Hon'ble Sh. B.N. Dhoundiyal, Member (A)

1. Whether Reporters of local papers may be allowed to see the judgement? *Yes*
2. To be referred to the Reporters or not ? *Yes*

J U D G E M E N T

(Of the Bench delivered by Hon'ble Sh. B.N. Dhoundiyal,
Member (A))

This O.A. has been filed by Shri Prem Singh an Inspector of Delhi Police against the impugned order dated 6.5.1991 whereby his request for arrears of pay and allowances during the periods of promotion delayed by the respondents, has been rejected by the Dy. Commissioner of Police (HQ).

2. The applicant was granted promotion in pursuance of the judgement dated 14.11.1990 in OA 434/87 from 1981 when he was deemed to have been qualified in the written test. This Tribunal held that since he had secured $53\frac{1}{2}$ marks in the written test, the fractional number should have been rounded off to a whole number to give him 54 marks. This would be 60% of the maximum marks of 90 for the paper *bn*

and would make him eligible for being called for the viva-voce. The Tribunal directed the Commissioner of Police to take into consideration the result in the written test held in 1981 and hold an interview in accordance with the rules and thereafter if he qualified pass the appropriate orders. In pursuance of this judgement, the Dy. Commissioner of Police passed the following orders on 5.2.91:

"No. 4115/CB-V: Promotion: ASI (Min.) Prem Singh No. 200/D (now SI, D-2890) whose name stands on Promotion List "E" (Min.) is promoted to officiate as SI (Min.) w.e.f. 27.4.82.

He is also granted proforma promotion for the period from 27.4.82 to 16.2.86 during which he will not draw any pay and allowance of the post of SI (Min.) but this period will otherwise count towards fixation of seniority etc. "

Another order issued on 25.3.91 promoting him to the post of Inspector (Min.) reas as under :

" No. 10586/CB-I PROMOTION:- S.I.(Min.) Prem Singh, No. D-2890 whose name stands on Promotion List F (Min.) w.e.f. 5.10.88 is promoted to officiate as Inspector (Min.) w.e.f. 5.6.89. However, the period from 5.6.89 to 21.3.91 will be treated as proforma promotion during which he will not be entitled for any pay and allowances of the post of Inspector (Min.) but this period will otherwise count towards fixation of pay etc. His name will figure above the name of Inspector (Min.) Rajinder Kumar, No. D-1345 in this Hdqurs. notification No. 21769/CB-I dated 5.6.89."

3. The applicant represented to the Police Commissioner that his promotion was delayed due to none of his faults and he should be allowed pay of the S.I. from 27.4.82 to 16.2.86 and pay of Inspector from 5.6.89 to 21.3.91, the two periods representing proforma promotion without financial benefits. By the impugned order dated 6.5.91, he was informed that his representation had been rejected by the Commissioner of Police. *bn*

4. While affirming the above facts, the respondents have stated that in compliance of the directions of the Tribunal, the applicant was given proforma promotion to restore his seniority as S.I. from 27.4.82 and Inspector from 5.6.89 but no arrears of pay could be allowed to him in view of the provisions of FR 17 (1). The applicant did not pray for this relief in the earlier O.A. filed by him nor was this relief granted by the Tribunal. The principle of resjudicata should operate as the same matter is being reagitated before the same court for the same cause of action. The application should have either filed a review or a S.L.P. for this purpose.

5. We have gone through the records of the case and heard the learned counsel for the parties. The learned counsel for the applicant has argued that fresh cause of action arose when the direction given by the Tribunal for passing appropriate orders was violated by not granting arrears of pay and allowances. We agree with this view and held that the principle of res-judicata will not apply in this case. The main reason given by the respondents for denying the payment of arrears are the instructions contained in F.R.17 (1) which reads a under :

" F.R. 17(i) Subject to any exceptions specifically made in these rules and to the provision of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties. "

6. In his rejoinder, the applicant has averred that he assumed the charge of the posts of S.I. and Inspector from the back dates as there was no change in the duties assigned to the applicant and he continued to work as Head Asstt., Complaint Section. Moreover, as held by this Tribunal in case of Roshan Lal Vs. U.O.I. (ATR 1987 (1) CAT 21) , if an employee is wrongly not promoted and later on found

entitled to that promotion, then there is no rule for contending that the pay of the higher post will not be admissible on the ground that he had not worked against the higher post. There is considerable force in these arguments as delay in promotion was not due to any fault of the applicant and as taking over of a new post on proforma promotion was ^{not} involved and promotions were given on different dates while holding the same post.

7. In the facts and circumstances of the case, the applicant is entitled to succeed. The respondents are directed to modify the promotion order to allow arrears of pay and allowances to the applicant. As rounding up of the marks was in the nature of a concession and there was no malafide delay on the part of respondents, it will meet the ends of justice if interest on any payments due @12% p.a. is allowed from 14.11.90 i.e. the date of judgement in O.A. 434/87.

8. These orders shall be complied with expeditiously and preferably within three months from the date of communication of a copy of this judgement.

There will be no order as to costs.

B.N. Dhoundiyal
(B.N. Dhoundiyal) 16/2/93

Member(A)

16/2/93
(P.K. Kartha)

Vice Chairman (J)