

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.
* * *

(1)

Date of Decision: 22.05.1992

OA 3135/91

K. MADHAVAN

... APPLICANT.

Vs.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

THE HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicant

... In person.

For the Respondents.

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

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

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J).)

The applicant, Joint Director cum Special Inspector General of Police, CBI, filed this application assailing the non-payment of arrears of pay and allowances w.e.f. 13.10.83 and also assailed the Office Orders dated 6.4.90 (Annexure A-1, Para-2) and dated 1.6.90 (Annexure A-3).

The applicant claimed the relief that a direction be issued to the respondents No.1 to 3 to order payment of arrears of full pay and allowances in the rank of DIG

of Police in the CBI to the applicant from 1.4.81 to 31.12.85 with interest @ 12% per annum.

2. The facts of the case are that the applicant was promoted to the rank of DIG by the order dated 6.4.90 w.e.f. 13.10.83 but by this Office Order in Para-2, the applicant was disallowed the pay and allowances in the grade of DIG and the promotion was given only on notional basis w.e.f. 13.10.83 giving actual financial benefits from 25.4.85 i.e. the date on which the applicant was appointed as DIG on ad-hoc basis.

3. The CBI issued a seniority list of Supdts. of Police and the applicant and S.Sen were shown senior to Shri O.P. Sharma. The date of appointment of the applicant as Supdt. of Police was shown as 21.10.71 (AN) of S.Sen as 25.1.72 and of O.P. Sharma as 28.10.72. On 25.9.81, the Govt. ordered that Shri O.P. Sharma should be given notional date of appointment as SP on 21.10.71 (FN) and, therefore, would be senior to both the applicant and S.Sen in the rank of SP. On 17.10.81, the CBI issued a revised seniority list of SSP in CBI showing Shri O.P. Sharma senior to the applicant and S.Sen. On 20.8.83, on the basis of impugned seniority list dated 17.10.81, both Shri O.P. Sharma and the applicant were graded as "Very Good". So, only Shri O.P. Sharma was recommended for appointment for the existing one post of DIG. On 20.9.83,

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the applicant and S.Sen filed Writ Petition Nos 9847-48/83 in the Hon'ble Supreme Court praying for quashing the notional date of appointment as SP on 21.10.71 (FN) which was granted to Shri O.P. Sharma and also quashing the revised seniority list dated 17.10.81. On 6.10.83, the Hon'ble Supreme Court passed an interim order in the Writ Petition that only ad-hoc appointment as DIG/made in the CBI will be subject to the result of the Writ Petition. On 13.10.83, Shri O.P. Sharma was appointed as ad-hoc DIG subject to the result of the Writ Petition. On 25.4.85, the applicant and Shri S.Sen were also appointed as ad-hoc DIG subject to the result of the Writ Petition. On 9.10.87, the Hon'ble Supreme Court delivered the judgement in the Writ Petition as under:-

- (a) The order dated 25.9.81 appointing O.P. Sharma as SP with retrospective effect from the notional date 21.10.71 (FN) and the seniority list dated 17.10.81 showing O.P. Sharma as senior to the applicant and S.Sen was quashed. A writ in the nature of certiorari was issued in this regard.
- (b) A writ in the nature of mandamus was issued directing UOI and CBI to publish a fresh seniority list showing the applicant and S.Sen as senior to O.P. Sharma.
- (c) The writ petitions were allowed and rules were made absolute to the extent indicated above.

On 3.2.88, the CBI circulated a seniority list of SSPs in CBI dated 1.12.87 in which the applicant and S.Sen were shown senior to Shri O.P. Sharma. On 6.9.89, Review DPC was held by UPSC in supersession of the earlier DPC

held on 20.8.83. The Review DPC recommended the name of the applicant for promotion as DIG against the vacancy which had arisen on 1.4.81. This was in lieu and supersession of the recommendation of the DPC held on 20.8.83 which had recommended O.P. Sharma for the said vacancy. In further DPC held on 6.9.89 itself, S.Sen and O.P. Sharma were also recommended, in that order, for appointment as DIGs against further vacancies that had become available in 1985 and 1986. On 6.4.90, CBI issued Office Order appointing the applicant as DIG in CBI on regular basis w.e.f. 13.10.83 in the scale of Rs.5100-6150.

4. The respondents contested the application and took the preliminary objections that in the Writ Petition, the applicant prayed before the Hon'ble Supreme Court for a Writ of mandamus directing the respondents 1 to 3 to order and treat the petitioners as having been promoted as DIg in the SPE/CBI w.e.f. 22.10.79/26.1.80 retrospectively with all consequential benefits such as pay etc. The Hon'ble Supreme Court, however, in its judgement only ordered for quashing of the appointment of Shri O.P. Sharma by the impugned order dated 25.9.81 w.e.f. 21.10.71(FN) and also quashed the seniority list dated 17.10.81. The mandamus was also issued directing the respondents Nos.1 & 2 to publish fresh seniority list showing the petitioners of the Writ Petition as senior to said O.P. Sharma. No

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other point was urged before the Hon'ble Supreme Court, so the present application is hit by principles of res-judicata. In this connection, the learned counsel for the respondents has referred to a number of decisions.*

- *1. OA 297/85 decided on 7.11.86
Sh. A.K. Vijayabalu Vs. UOI
CAT - Madras Bench
AISLJ 1986 (4) P-548 onwards
- 2. OA 535/86 decided on 18.2.87
Sh. Dharam Paul & Ors. Vs. UOI
AISLH 1987 (4) P-935
- 3. OA 1186/88 decided on 13.10.88
Sh. I.R. Prakash Vs. The Director General & Ors.
CAT - Bangalore
AISLH 1988 (4) P-112
- 4. OA 270/89 decided on 17.3.89
Sh. MD. Mathur Vs. UOI
CAT - New Bombay Bench
AISLJ 1989 (4) P-168
- 5. OA No.A.N. 1892 of 1988 decided on 12.9.89
Sh.V.Rajamani Vs. General Manager, Southern Railways
CAT - Bangalore Bench
AISLJ 1990 P-461
- 6. C.As No.194-202 of 1986
S.L.Ps No.16614-15 of 1983
W.Ps. No.1327 of 1982, 3947-48, 4817
8594 & 12570-72 of 1983, 1540-43 of 1984
& 1169 of 1986 decided on 2.5.90.
The Direct Recruit Class-II Engineers Officers' Association & Others Vs.
State of Maharashtra And Others
Supreme Court of India
AISLJ 1990 P-41
- 7. OA 62/90 decided on 1.8.90
Sh. Jai Prakash Sharma Vs. UOI
CAT - Allahabad
SISLJ 1991 P-109
- 8. OA 469/90 decided on 31.5.91
Sh. T. Seethalakshmi Vs. UOI & Ors.
CAT - Ernakulam
AISLJ 1991 (3) P-208
- 9. OA No.213 HP of 1989 decided on 29.11.91
Sh. G.C. Gupta & Ors. Vs. UOI
AISLJ 1992 P-274

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However all the authorities relied upon have not applicable to the present case. The applicant was given a protection by an ad-interim direction by the Hon'ble Supreme Court in the pending aforesaid W.Ps. that the promotion to respondent Nos. shall be only ad-hoc subject to the result of the Writ Petition. When the Writ Petition is decided upholding the claim of seniority of the applicant, the promotion to the applicant has to be given, if otherwise found fit by DPC, from the same date from which respondent No.5 was given. Denying him the benefits of salary it would be unjust and inequitable. It was the act of administration which made respondent No.5 senior to the applicant who was earlier shown junior to him by giving notional date of promotion as SP earlier to the applicant 21.10.71 (FN). Had this not been done, the applicant would have earned his claim of promotion even in 1981 when the vacancy of DIG occurred. None of these cited authorities therefore are not at all applicable to the facts of the present case and not necessary to discuss them separately.

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5. Thus, the main objection to grant of arrears of pay since 13.10.83 to the applicant is that as the matter has been adjudicated by the Hon'ble Supreme Court in the Writ Petition No.9847/83, so the Tribunal has no jurisdiction to decide the same again.

6. The respondents have also referred in their counter, judgement delivered by the Principal Bench of the CAT in OA 701/90 decided on 31.10.90 O.P. Sharma Vs. UOI. The respondents have also stated in the counter the principle of 'No work no pay' and in this context it is urged that the applicant was not entitled to the arrears of the salary for the period from 13.10.83 to 24.4.85 when he had not actually worked as DIG in CBI. Thus, according to the respondents the application has no merit.

7. I have heard the applicant in person and the learned counsel for the respondents at length. It is evident from the record that in the seniority list published in October, 1978 Shri O.P. Sharma was shown below the applicant as well as Shri S.Sen. In the other seniority list published on dated 17.10.81 Shri O.P. Sharma was shown senior to the applicant and Shri S.Sen and he was given a notional date of appointment as 21.10.71(FN). The notional date of

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appointment has been given to Shri O.P. Sharma because the DPC was unjustly postponed and a deemed date i.e. 21.10.71 of appointment has been given. On the basis of that DPC was to be held in October, 1970 and in order to mitigate injustice to O.P. Sharma, a date earlier to that of applicant and S.Sen was given i.e. 21.10.71(FN).

8. From the judgement of the Hon'ble Supreme Court it is also evident that on October 6, 1983 it was ordered that the respondents can make ad-hoc appointments to the post of DIG in the CBI/SPE which would be subject to the result of the Writ Petitions. As a result of that Shri O.P. Sharma was promoted to the post of DIG on October 13, 1983 on ad-hoc basis, subject to the result of the Writ Petitions. The Hon'ble Supreme Court has also observed that the retrospective appointment or promotion to a post should be given most sparingly and on sound reasoning and foundation. In the Writ Petition, the Hon'ble Supreme Court held that there was no justification for the appointment of O.P. Sharma to the post of SP in the CBI with retrospective effect from 21.10.71 so as to make him senior to the petitioners. Thus, from the above it is evident that the contention of the applicant regarding his seniority over Shri O.P. Sharma with all benefits of promotion has been accepted and in fact the same has already been awarded to him by the order dated 6.4.90.

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It is evident from the judgement of the Writ Petition filed by the applicant in Hon'ble Supreme Court that the promotion of Shri O.P. Sharma as DIG w.e.f. 13.10.83 was subject to result of the Writ Petition. It makes it clear that O.P. Sharma could not have been considered for promotion w.e.f. 6.10.83 and in the only vacancy existing the applicant would have got the chance of promotion which he got on ad-hoc basis on 25.4.85 w.e.f. 13.10.83.

9. The respondents have taken the objection of re-judicata but that is not applicable in the present case because the fixation of pay and retrospective promotion of the applicant from 13.10.83 is a consequence of the change in the seniority list. The cause of action did not arise to the applicant at that relevant time though in the Writ Petition the petitioner i.e. the applicant have already prayed that they should be treated as DIG in SPE/CBI w.e.f. 22.10.79/21.6.80 respectively with all consequential benefits such as pay, increments, arrears of pay, confirmation, seniority and qualifying service for further promotion etc. In fact, the Hon'ble Supreme Court did not at all touch this aspect of the matter and only directed that the applicant be shown senior to Shri O.P. Sharma in the seniority list. The applicants were only given ad-hoc promotion as DIG in April, 1985 and with effect from 13th October, 1983. It was only

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subsequently that the DPC considered the matter and given them regular promotion respectively to the post of DIG. Thus, the contention of the learned counsel is that the non grant of consequential benefits by Hon'ble Supreme Court in the Writ Petition Nos.9847-48/83 to the applicants would not operate as re-judicata. The learned counsel for the applicant has also referred to a number of authorities with regard to the fact that when the earlier judgement is sub silentio on an aspect, the earlier judgement would neither can be a precedent nor operate as re-judicata.

- i) Municipal Corporation of Delhi Vs. Gurnam Kaur (1981) I SCC 101.
- ii) Gulab Chand Chhotalal Parikh Vs. State of Gujarat AIR 1965 SC 1153 (Para 33 at Page 1161 and para 60 at page 1167)
- iii) State of UP and Anr. Vs. M/s Syndicate Chemicals & Anr. JT 1991(3) SC 268 (Paras 39 to 42 at pages 285 & 286).

10. The applicant, who argued in person, also referred to Annexure A-4 to the application that the learned Solicitor on behalf of contesting respondents General had conceded in the document filed in OA 701/90 before the Principal Bench of CAT in the case of Om Prakash that Sharma Vs. UOI with his regular appointment as DIG on 13.10.83, everything that goes with such regular appointment and full consequential reliefs thereof, including service, qualifying period, continuous service, actual service, experience, working experience, full arrears of salary etc.

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would also accrue to Shri K. Madhavan from this date." This document which is a part of the OA 701/90 was filed at the instance of the present respondents in that OA and in fact the respondents have expressed in writing even much earlier before the applicant made representation for the grant of arrears of pay and now they cannot resile from their stand taken in earlier judicial proceedings. This has not been explained in any manner whatsoever.

11. The applicant has also claimed the arrears of pay and allowances from 1.5.81 i.e. from the date when the vacancy actually occurred on the post of DIG but that is too much as a person gets pay only when he is selected and empanelled and promoted. The existence of vacancy will not give deemed date of promotion to him on the recommendation by DPC held much after. In fact after DPC's one held after the vacancy has also occurred. The appointment to the post will be actual or notional. Since this vacancy of 1981 was filled up by the promotion of OP Sharma in October, 1983 and by virtue of the judgement of the Hon'ble Supreme Court declaring the applicant senior only the applicant could have been appointed to the post, so he has been rightly awarded retrospective promotion to the post of DIG w.e.f. 13.10.83. He cannot, therefore, be granted any promotion to the post of DIG w.e.f. 1.5.81.

12. The Rule, of course is that 'No work no pay'. However, when there is a willing worker and is deprived of work on the post to which he is eligible and is ignored by virtue of an action of the administration and instead

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of him such other person is given promotion who was not eligible person is denied the benefit which had accrued to a person who was not eligible and got monetary and other benefits result of unwarranted promotion. The applicant also referred to a number of authorities* regarding payment of back wages.

13. I have given a careful consideration to all these aspects of the case and the law cited. The application is, therefore, partly allowed and disposed of in the manner

***(i) Supreme Court**

- a) 1974(3) SCR 87
State of Mysore Vs. C.R. Seshadri.
- b) AIR 1984 SC 1291
P.S. Mahal Vs. UOI
- c) JT 1990 (3) SC 468
Syndicate Bank SC/ST Employees Association Vs. UOI.

(ii) High Courts

- a) 1982(1) SLR 455 (Karnataka)
Sheikh Mehbood Vs. Railway Board.
- b) 1980(3) SLR 702 (P&H)
Charan Dass Chadha Vs. State of Punjab.
- c) 1983(1) SLR 400 (P&H)
Asha Rani Lamba Vs. State of Haryana.

(iii) CAT Benches

- a) ATR 1987(I) CAT 121 (Chandigarh Bench)
Roshan Lal Vs. UOI
- b) 1989 (I) SLR 686 (Jabalpur Bench)
M.P. Gupta Vs. UOI.

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that applicant shall be entitled to all arrears of pay and allowances in the rank of DIG of Police in CBI w.e.f. 13.10.83 to 31.12.85 and Para-2 of the impugned order dated 6.4.90 be set aside and the respondents shall refix the pay of the applicant giving him actual promotion w.e.f. 13.10.83 and the order dated 1.6.90 (Annexure A-3) shall stand modified to that extent. The rest of the reliefs claimed by the applicant are disallowed. The respondents are directed to comply with the above directions within a period of three months from the date of receipt of a copy of this order.

In the circumstances, parties to bear their own costs.

Temporary
(J.P. SHARMA) 40
MEMBER (J)