

Central Administrative Tribunal
Principal Bench: New Delhi

(7)

RA 137/93 in
OA 470/91

Date of Order: 30.04.1993.

Antony Mathew

...Petitioner

Versus

Delhi Administration & Others

...Respondents

Coram:-

The Hon'ble Mr. Justice V.S. Malimath, Chairman

The Hon'ble Mr. I.K. Rasgotra, Member (A)

O R D E R

This R.A. has been filed praying for review of our judgement in OA-470/91 - Antony Mathew v. Delhi Administration & Others rendered on 2.3.1993. As per our judgement we had allowed the application and directed the respondents to assign the petitioner seniority, taking his service as continuous w.e.f. 1.10.1984 - the date on which he was appointed as Sub Inspector in the Border Security Force (BSF). The principal ground adduced in the R.A. justifying review of our judgement is that the pay scale of the Sub Inspector in the BSF is Rs.380- 560(Rs.1400-2300) whereas the corresponding scale in the Delhi Police of the Sub Inspector (Executive) is Rs.425- 600(Rs.1640-2900). The petitioner when he came on deputation to Delhi Police had not opted for the scale of pay of the Delhi Police. On the other hand, he had opted to draw the pay of his parent department plus deputation allowance. As the pay scale of Sub Inspector in the BSF is lower than the pay scale of the Sub Inspector in Delhi Police it is contended that the principle of law laid down by the Supreme Court in the case of K. Madhavan vs. Union of India AIR 1987 SC 2291 is not applicable. In view of the above, it has been prayed that

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the judgement dated 2.3.1993 be set aside and the matter heard afresh.

2. We have considered the review application carefully. In K. Madhavan's (supra) case the principle laid down by the Supreme Court is that the service rendered substantively in a rank in the parent department shall be taken into consideration in the borrowing department on being absorbed therein in equivalent rank. In paragraph-6 of the judgement their Lordships observed "....We are however unable to accept the contention '8 years service in the grade' would mean '8 years service in the grade of DSP'....In our view therefore, there is no substance in the contention of the petitioners that in order to be eligible for appointment to the post of SP in the CBI one should be in the rank of DSP in the CBI for a period of 8 years including a period of two years on probation. Respondent No.5 having held the post of DSP for 5 years in the Rajasthan State Police and more than three years in the CBI, that is to say, over 8 years, he was quite eligible for appointment to the post of SP."

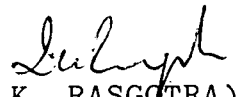
3. It will be apparent that what the Supreme Court has considered the equivalence in rank and not equivalence in scales of pay for the purpose of reckoning eligibility in terms of years' service. It cannot also be the case that DSP in Rajasthan would be fixed the same scale of pay as a DSP in any other State or for that matter in the CBI. The scale of pay of a DSP in a State is decided by the Government of the State on the basis of the recommendations of the respective pay Commissions appointed by the States, whereas the scale of pay of DSP in the CBI would be as decided by the Government of India on the basis of the recommendations of the Pay Commission appointed by the Central Government. The scale of pay of a DSP in a State and in CBI necessarily may not be identical. We, therefore, do not see any merit in the above contention. Besides lacking merit as discussed

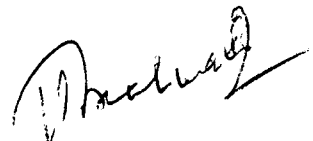
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above this argument should have been brought up when the case was heard. It is well settled that all possible arguments are to be put-forth in the course of hearing. Such arguments cannot be reserved for justifying review of the judgement at a later stage.

4. In any case the scope of the review petition is circumscribed by the statutory exceptions provided in Order XLVII of Code of Civil Procedure. After careful consideration of the matter we are of the opinion that the arguments adduced by the petitioner seeking review does not fall within the ambit of the statutory exceptions of Order XLVII of Code of Civil Procedure. The R.A. is accordingly rejected in circulation.


(I.K. RASGOTRA)
MEMBER(A)


(V.S. MALIMATH)
CHAIRMAN

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