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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./T.A. No. 866/91 /19

Decided on: January 16-1-, 1996

R.N.N.Choudhary

(By Shri B.B.Rawal.

..... APPLICANT(S)
Advocate)

VERSUS

UOI & OTHERS.

(By Shri MADHAV PANIKAR.

..... RESPONDENTS
Advocate)

OD RAM

THE HON'BLE SHRI S.R.ADIGE, MEMBER(A).

THE HON'BLE SHRI/SMT./DR. A.VEDAVALLI.

1. To be referred to the Reporter or not?
2. Whether to be circulated to other Benches of the Tribunal ?

✓
(DR.A.VEDAVALLI)
MEMBER(J)

Adhish
(S.R.ADIGE)
MEMBER(A).

(25)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 866 of 1991

New Delhi, dated the 16 January 1996

HON'BLE MR. S.R. ADIGE, MEMBER (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri R.N.N. Choudhury,
S/o late Shri R.A.N. Choudhury,
R/o H-1521, Chittaranjan Park,
New Delhi-110019. APPLICANT
(By Advocate: Shri B.B. Raval)

VERSUS

1. Union of India through
the Cabinet Secretary,
Government of India,
Rashtrapati Bhawan,
New Delhi.
2. The Secretary,
Ministry of Home Affairs,
Government of India,
North Block,
New Delhi.
3. The Secretary,
Research and Analysis Wing,
Cabinet Secretariat,
Govt. of India,
Room No. 8-B, South Block,
New Delhi.
4. The Director,
Intelligence Bureau,
Ministry of Home Affairs,
Govt. of India,
North Block,
New Delhi.
5. The Secretary (Home Deptt.),
Govt. of West Bengal,
Writer's Building,
Calcutta.
6. The Director General of Police,
Govt. of West Bengal,
Writer's Building,
Calcutta. RESPONDENTS

(By Advocate: Shri Madhav Panikar)

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JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

In this application Shri R.N.N. Choudhury retired Under Secretary, RAW, Cabinet Secretariat, New Delhi has prayed for the following reliefs:

- i) restoration of his original seniority in the cadre of Police Inspector in West Bengal State followed by his due seniority on due date in the cadre of Dy. S.I.P. in West Bengal Police followed by his promotion and seniority on due date as Superintendent of Police in West Bengal Police.
- ii) Direct to the Intelligence Bureau and the Research and Analysis Wing to give him seniority
 - a) As ACIO-I from 13.11.1959;
 - b) As DCIO/SFO from 17.1.69;
 - c) As Asstt. Director/Under Secretary from May, 1979;
 - d) As Dy. Director/Director from the due date of NBR basis w.e.f. the date his immediate junior was promoted.
- iii) Consequential benefits in terms of pay fixation and payment of difference in salary along with attendant allowances with interest @ 24% p.a. till date of realisation.
- iv) Revised P.P.O. with 24% p.a. interest thereon till date of realisation.
- v) Exemplary costs.

2. The applicant's case is that he joined the West Bengal Police as S.I. on 1.2.51 and was confirmed as such w.e.f. 30.12.53. Thereafter he went on deputation to Intelligence Bureau, Home Ministry, Govt. of India, Calcutta on 1.4.57 as Asstt. Central Intelligence Officer Grade II, equivalent to S.I. of / Police. He was promoted to the next higher rank

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(Inspector) of ACIO-I at New Delhi on 13.11.59. Meanwhile on April, 1959 while posted in Calcutta the applicant requested the West Bengal Police authorities for nomination to the Central Detective Training School (CDTS) course which was a precondition for promotion as Inspector ^{in his State cadre} but his request was refused. In April, 1960 while posted in Delhi he again requested the I.B. authorities for nomination to the said course from their quota, more particularly because he was selected for a two years special assignment and if he was not sent, he would lose his chances for the training which would hamper his promotion prospects, and followed it up by another representation on 15th July, 1960 (Annexure A-4) ⁱⁿ which he pointed out that in the course of his selection for the special assignment he was given to understand that his interests for promotion as Inspector in West Bengal Police cadre would be properly safeguarded and that he would be given a seat in the July ¹⁹⁶⁰ session of the course. The applicant states that in the representation dated 15.7.60 he reiterated his request to be sponsored and nominated for the July ¹⁹⁶⁰ training course or be repatriated back to his parent organisation, but neither was he sent on that course, nor ^{was} he repatriated back. Instead he was sent on the special assignment in October, 1960 on the assurance that he would be called for the

training as early as possible and the I.B. would see to it that his interest did not suffer. The applicant states that he represented again on 21.8.60 in which he referred to his interview with the Dy. Director, I.B. on 20.7.60 who had assured him that he would be sent on the course commencing on 1.11.60 but that was not done either. The applicant states that he was on the special assignment from Oct. 60 to Dec. 65 and returned in January, 1966 and immediately thereafter was sent on the course, which he successfully completed in April, 1966. He represented to the IGP, West Bengal through proper channel on 14.4.67 for promotion to Inspector from the date his junior had been promoted as he had not been able to participate in the course for no fault of his (Annexure A-7), and also represented to the Director, I.B. in the same vein on 11.12.67 (Annexure A-7). Eventually he was promoted as Inspector in his parent cadre in August, 1968, but if he had been sponsored for the training course in 1960, he would have been promoted in 1961 itself.

3. The applicant further contends that meanwhile I.B. was bifurcated and a new Deptt. named RAW was created viz. 21.9.68. He was promoted as DCIO ^(Dy.S.P.) in Dec. 1968, and was transferred to RAW where he took over as DCIO on 17.1.69. He states that as he was ^{on} deputation from West Bengal Police to I.B., neither his consent nor convenience of

I.B. was taken, before transferring him to RAW. He states that on 7.10.69 he represented to the authorities (Annexure A-9) seeking pay protection consequent to the revision of pay scales under the rationalisation scheme against loss of Rs.14,000/- suffered by him on being sent on the special assignment. He further states that on 28.10.69 he sent a representation to the I.G.P., West Bengal (Annexure A-12) pointing out that when he had applied in April, 1959 for being sent on the ¹OTS training course, his request had not been acceded to, as a result of which he had lost his chance for promotion, and when he did complete the training in April, 1966 he was not called for the interview at the ¹(D.F) meeting Range Board held in March/April, 1967 for promotion to Inspector and his case was not put up for consideration for promotion, as a result of which he lost his chance for promotion as Inspector even at that stage. In 1968 he was finally promoted, but had his case been considered for promotion in 1967 he was certain he would have been promoted in that year itself. He states that on 23.12.69 he represented to the Joint Director, RAW that as ACIO-I he was getting basic pay of Rs.575/- in the West Bengal Police Inspector Scale of Rs.375-600, but after his promotion as Dy.CIO (Dy.S.P.) his pay was fixed at Rs.330/- in the scale of Rs.300-900 of Dy. S.P. West Bengal on the basis of his substantive pay as S.I. putting him to

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financial loss of Rs.300/- p.m. on account of promotion and seeking pay protection or pay fixation at the appropriate stage in the West Bengal, Dy. S.P. scale of Rs.300-900. The applicant further states that he followed this up with subsequent representations and also a telephonic conversation with the I.G.P., West Bengal but to no avail.

4. Meanwhile he was sent on a special assignment in 1978 and on returning in October, 82 he found that many of his junior ACIOs-I (direct recruits/promotees) had been promoted to (Supdt. of Police) DCIOs and even to Assistant Director but his case was not considered, being a deputationist. However, in the DPC held on May, 1979 he was approved for promotion as Assistant Director, but because he was on special assignment, that promotion was effective only from 18.1.83 when he returned from his special assignment. He states that even after his promotion as Assistant Director, his pay was fixed on the basis of his basic pay as Inspector of Police, West Bengal. He states that he represented to the authorities once again, and this time the Cabinet Secretariat wrote to the I.G.P., West Bengal on 17.11.85 strongly recommending relaxation of the condition of mandatory training and grant of notional promotion to the applicant as Dy. S.P. w.e.f. 18.1.83 (Annexure A-17). He states that thereafter he

received a memo dated 27.12.89 from the respondents to the effect that his case for notional promotion as Dy. S.P. w.e.f. 18.1.83 was under examination in the West Bengal Police Directorate, Calcutta and seeking from him copies of (i) the West Bengal Govt. order approving his deputation (ii) copies of the order containing the terms of deputation. He states that he furnished a photo copy of a hand-written order placing his services at the disposal of the Director, I.B. and soon after he retired on 31.1.87, but so far his prayers have gone unattended, to.

5. Respondents No.1 to 4 (no reply appears to have been filed by Respondents No.5 and 6) in their reply have contested the O.A. They point out that the first cause of action sought to be redressed in the O.A. arose in 1960 when the applicant was not sent for the COTS training. They state that this is not only barred by Limitation, but also lack of jurisdiction being much anterior to 1.11.82 as laid down in R. Sangeetha Rao Vs. UOI ATR 1990 (1) CAT 326. Furthermore they point out that the whole case of the petitioner is based on the fact that the West Bengal Govt. did not relax the mandatory condition regarding passing of the training and to allow him notional promotion as Dy. S.P. Hence they argue that the grievance of the applicant is against the West Bengal Govt. and not against any Dept. of the Central Govt. and hence

the Tribunal is not empowered to entertain the application. They further state that the applicant was promoted as Inspector, in his own turn in West Bengal Police cadre in August, 1968. While giving consideration to his appointment as ACIO-I (Inspector) w.e.f. 13.11.59, he was appointed as DCIO (Dy.S.P.) in I.B. in Dec. 1968. Hence he not only enjoyed all the facilities available in I.B. such as increased pay, allowances, rent free accommodation, etc. but also earned promotions at a far more rapid rate than what he could have hoped to have earned in his parent Deptt. They state that it was their administrative right to decide once the applicant had come on deputation to I.B. whether to send him for training or not, in terms of the utility of that training to their organisation, and since the applicant remained with them till his superannuation, they deny that non-sponsoring his name for the training did any damage to his career, particularly as he earned two elevations in the I.B. As regards the applicant's contention that assurances were given to him that his promotion prospects in the state would be protected the respondents state that there is no positive evidence in their records as to whether any such assurances were given, and in any case by that time he had already been promoted as ACIO-I (Insp. rendering his request for such training superfluous. They further state that when the applicant's

reversion had been sought by the West Bengal Govt. to the State Police, he not only expressed his willingness to continue in the Cabinet Secretariat, but sought his absorption there, which amply establishes his willingness to move from I.B. to Cabinet Secretariat. The other ^{material} ~~mentioned~~ contentions made ^{by} the applicant have also been denied.

6. In his rejoinder the applicant has broadly reiterated the contents of his O.A.

7. We have HEARD Shri Raval for the applicant and Shri Madhav Panikar for the respondents. We have also perused the materials on record and considered the matter carefully.

8. The applicant's entire case rests upon his not being deputed for the CDTs Training in 1960 and the West Bengal State Govt. not relaxing the mandatory condition regarding passing of the training and to allow him notional promotion as Dy. S.P.

9. In so far as relief (i) is concerned, on the point of the West Bengal Govt. not relaxing the mandatory condition of clearing the CDTs training programme, Resp. 1-4 (Depts. of Central Govt.) have correctly averred in their reply that the applicant's grievance if any, is against the West Bengal State Govt. which does not come within the CAT's jurisdiction, and not against the depts. of Central Govt. Hence the present forum is not the appropriate one for redressal of that particular grievance. ¹

10. Furthermore, as regards the applicant not being sent for the CDTs training in 1960 it is not the applicant's case that he came on deputation to I.B. in April, 1957 as ACIO (II) against his will.

Once the applicant willingly came on deputation, he was bound by the terms and conditions of the deputation and has not pointed out any specific terms ^{or} ~~and~~ conditions which mandated the Central Govt. authorities to send him for the training course, while on deputation. Hence the applicant had no legally enforceable right to be sent on training courses conducted by the State Govt. while ~~he~~ was on deputation, on the ground that participation in such course was necessary for him for consideration for further promotions, in his parent cadre. In the absence of ^{any} ~~such~~ ⁱⁿ terms or conditions, the Respondents 1-4 have correctly pointed that they reserved the administrative right whether to send him for training or not having regard to the exigencies of service, and the usefulness of such training programmes to them.

11. It is true that in his representation dated 15.7.60 to the I.B. authorities to nominate him for the July, 60 training session, the applicant mentioned that in case the same was not acceded to, his repatriation to his parent cadre (West Bengal) be considered, but not much can be read into that, because in his subsequent representation dated 2.8.60, the prayer for repatriation to his parent organisation was not pressed, and instead, in the background of the interview granted to him by the Dy. Director, I.B.

he prayed for being sent on the Nov. 1960 training course. If indeed the failure of the Resp. 1-4 to nominate him for the CDTs training in July, 1960 or Nov. 60, as also their inaction in repatriating him to his parent organisation upon his request dated 15.7.60 had generated a genuine grievance in his mind, it was open to him to have approached the competent legal forum for redressal of those grievances but ^{he} ~~he~~ did no such thing. He did not even repeat his request for repatriation, but continued with the I.B and eventually participated in the Jan. - April, 66 training course successfully, whereupon he represented to the I.G. Police, West Bengal on 14.4.67 to promote him as Inspector from the due date, as he had not been able to participate in the 1960 training programmes for no fault of his own. When the West Bengal State Govt. did not accede to his request, and he was not recommended for promotion as Inspector in the West Bengal Range Board (DPC) meeting of March, 1967, in his representation dated 11.12.67, he sought absorption in the I.B. It is only in 1968 that he was considered fit for promotion as Inspector by the West Bengal Range Board (DPC) and he was given proforma promotion as Inspector w.e.f. 2.8.68 on the basis of the "Next Below Rule" from the date his junior in the list commenced to officiate as Inspector of Police in West Bengal State.

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12. The applicant cannot have a legally enforceable claim that had he been deputed in the July, or Nov. 60 CDTs training programme he would have been promoted as Inspector then itself, because while participation in that training programme was a mandatory or necessary condition, it was not a sufficient condition. All that can be said is that had the applicant been allowed to participate in the 1960 CDTs training programme, and had he successfully completed it, and had he come within the zone of consideration, he could have been considered for promotion as Inspector, because promotion to the post of Inspector was by selection, and there is no guarantee that he would have been selected. It is clear from the West Bengal Govt.'s letter dated 11.12.70 (Anne. A-11) that although the applicant, upon eventual successful completion of the CDTs training programme of Jan. - April, 66, was considered for promotion in the March, 1967 West Bengal Range Board (DPC) Meeting, he was not found fit for promotion, and eventually was found fit only in 1968 (and was finally confirmed as Inspector only in 1984). No doubt the applicant did address another representation dated 28.11.69 to the I.G. Police, West Bengal alleging that he was illegally not called for interview in the March, 67 Range Board Meeting, and that his papers were also not put up in the meeting because of which his case could

not be properly considered for promotion as Inspector in 1967 itself, but here again the redressal of such grievance if any, ^{has to be by} the West Bengal State Govt. over which the CAT has no jurisdiction.

13. The applicant has alluded to various assurances given to him by officers in the I.B. whom he met in connection with his being sent on the Training programme, that he would be sent in good time and that his interests would not be allowed to suffer, etc. Even if any individual I.B. officer did hold out such assurances, in the facts and circumstances mentioned above, it still does not give the applicant a legally enforceable claim on Resp. 1-4 to treat him as a person who was promoted as Inspector ⁱⁿ ~~to~~ W. Bengal Police in 1960, itself and received consequential promotions as Dy. S.P. etc. in the W. Bengal Police on that basis, to enable him to claim corresponding seniority in the I.B./RAW.

14. For the ^{above} ~~above~~ reasons stated above, this Tribunal ^{finds} ~~itself~~ unable to grant relief (i) to the applicant.

15. In so far as relief (ii) is concerned, admittedly the applicant who joined the I.B. on deputation on 1.4.57 as ACIO (II) ^{1 (S.I. of Police)} was promoted while continuing on deputation as ACIO-I (Inspector) on 13.11.59. This level he reached in the State Govt. only in Aug. 1968 i.e. nine years

later. Moreover, while serving as ACIO-I on deputation, he was further promoted as DCIO (Dy. S.P.) against a deputation quota vacancy in the I.B. in Dec. 68. The respondents are therefore not wrong when they say that not only did the applicant avail of the facilities available to a deputationist in the I.B. but also earned two promotion during his 11 years of service in I.B. Having opted to remain on deputation, he could avail of only those benefits which flowed from such deputation, and could not legitimately assert that had he continued in his parent organisation, he would have fared much better, for such an assertion was at best only hypothetical. Furthermore the applicant's representation dated 28.11.64 to the West Bengal Govt. to count his services in I.B. towards promotion, confirmation, seniority, etc. in his parent organisation was relief claimed against West Bengal Govt. and not against the Central Govt.

16. Consequent to the carving out of RAW from I.B. in Sept. 68, the applicant's services were placed with RAW where the applicant took over in the post of Dy. C.I.O/Sr. Field Officer (Dy. S.P.) on 17.1.69. The applicant has asserted that he was a deputationist and neither was his consent, nor the W. Bengal Govt.'s prior concurrence taken at the time but it appears that he made no protest at that time, and ultimately he was absorbed and retired on superannuation from RAW in 1987.

Hence such an objection is highly belated at this stage, more so as the applicant has not stated what prejudice was caused to him by the placement of his services with RAW in Jan. 69.

17. While posted as SFO in RAW the applicant was sent on a special assignment from 16.5.78 to 4.10.82. Meanwhile the DPC in its meeting in May, 1979 recommended certain promotions from SFO to Asstt. Director (S.P.). As the applicant was on special assignment at that time his case was not considered in that meeting but ~~before~~ ^{upon his} return on 4.10.82, his case was considered in a supplementary DPC held on 12.11.82 and on being found fit, he was promoted vide order dated 18.1.83 (Annexure A-19) and was placed between two deputationist officers namely Shri B.D. Shama from M.P. Police who had joined on 4.7.80 and Shri V.N.B. Rao from DANII Police who had joined on 26.6.79. In this connection as ^{per} DP&T decision bearing diary No. 5835-71 Estt. (D) dated 15.10.71 placed at page 16 of File No. E.3/25 (406)/68 Vol. IV which was produced for our perusal, persons appointed to a grade on deputation basis were appointed for a specific period after which they were required to revert back to their parent deptt. As these deputations did not have any locus standi in the borrowing deptt. they were not

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entitled to promotion/confirmation in the borrowing deptt., and hence the question of fixation of their inter se seniority vis-a-vis other categories of officers of a particular grade did not arise. Though deputationists were not entitled to promotion to a higher grade, yet they could be considered for appointment on deputation to the higher grade, provided the Recruitment Rules of the higher grade provided for appointment on deputation and the parent deptt. was agreeable. In the absence of recruitment rules it was for the appointing authority to decide whether a person already serving as a deputationist in the lower grade should be considered for appointment on deputation to the higher grade with the consent of the parent organisation.

18. As per this decision (which incidentally has not been impugned) the applicant who was strictly speaking still a deputationist, had no enforceable legal rights ^{to} be promoted in RAW. We must also note that no recruitment rules providing for appointment ~~as~~ ^{promotion} Asstt. Dir. by deputation which were operative at that point of time, were brought to our notice by applicant's counsel Shri Raval. It might here be argued that having been with the Central Govt. (first with I.B. and then with RAW) ever since 1957, the applicant had lost the characteristics of a deputationist, and had a right to be treated

on a better ^{posting} than a mere deputationist, and
thereby ^{be} considered for promotion. It is perhaps
for this reason that upon the applicant's return
from the special assignment on 4.10.82, the
respondents 1-4 did consider him for promotion as
Asst. Director (S.P.) in the supplementary DPC
meeting held on 12.11.82, and upon his being found
fit, was promoted as Asst. Director on 18.1.83 and
was placed above his immediate junior Shri V.N.B. Rao
who had been promoted as Asstt. Director on 28.6.79.
Indeed the fact that the respondents 1-4 considered
the applicant's status different ^{from} that of a mere
deputationist, and were not unmindful of his interests,
finds support from the notings in the file No.
E.3/25(406)/68 Vol. IV, ^{from} which it appears that the
consent of the West Bengal Govt. was intentionally
not sought prior to considering him for promotion
as Asst. Director, for fear that they may raise
some objections, he being only of the rank of
Inspector in West Bengal cadre at that point of
time, while the post of Asstt. Director was equi-
valent to that of S.P.

19. The applicant's promotion as Asstt. Director
could however, take effect only, from the date
he actually took over that post i.e. 18.1.83, and
he could not be given the benefit of 'Next Below
Rule' because that benefit could be extended to
him under Rules only if he as well as Shri
V.N.B. Rao had belonged to the same cadre, whi

While the applicant had come on deputation from West Bengal State, Shri V.N.B. Rao had similarly come on deputation from DANI police and thus they originally belonged to two separate and distinct cadres. At that point of time RAW did not have any cadre of its own. It is only consequent to the initial constitution of the Junior Ex-Cadre in RAW w.e.f. 1.3.83, i.e. 1½ months after the applicant's promotion as Asst. Director that RAW got a cadre of its own, into which the applicant was absorbed, and ^{from} ~~upon~~ which he eventually retired as Asstt. Director on 31.1.87.

20. We may summarise. In so far as relief (i) is concerned, we are asked ~~near~~ 9 years after the applicant retired on superannuation, and well over four years after the O.A. was filed, to direct the State Govt. of West Bengal over whom we have no jurisdiction, to treat the applicant as promoted to the rank of Inspector of Police in the State Cadre in 1960 ^{itself} (35 years back in time) and grant him notional promotion as D.Y. S.P. in the State Cadre, on the assumption that had he been deputed to the CDTs training programme in 1960 he would necessarily have cleared the same, and would automatically have, after coming within the zone of consideration for selection been selected for promotion as Inspector. Manifestly, we find

ourselves unable to grant such a relief because apart from the prayer for relief being grossly hit by limitation and lack of jurisdiction under Section 20 and 21 AT Act, the relief prayed for is essentially against the West Bengal State Govt. over whom this Tribunal has no jurisdiction. Similarly in respect of relief (ii) we are asked to grant the applicant the benefit of 'Next Below Rule' on his promotion as Asst. Director, with reference to his immediate junior Shri V.N.B. Rao although clearly the two did not belong to the same cadre, which is mandatory requirement under rules, and for that reason we are unable to grant that relief either. Reliefs (iii), (iv) & (v) are consequential to relief (i) and (ii) and as we are unable to grant reliefs (i) and (ii), it follows that we are unable to grant reliefs (iii), (iv) & (v) either.

21. In the result this O.A. is dismissed.

No costs.

A. Vedavalli

(DR. A. VEDAVALLI)
Member (J)

S.R. Adige
(S.R. ADIGE)
Member (A)

/GK/