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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No.2276/92

Date of decision:- 21.5.93.

Sh.Surender Singh Gandhi ... Applicant

vs.

Delhi Administration
through
Chief Secretary & ors. ... Respondents

CORAM:THE HON'BLE SH.J.P.SHARMA, MEMBER(J)
THE HON'BLE SH.S.R.ADIGE, MEMBER(A)

For the Applicant ... Sh.K.L.Bhatia,
counsel.

For the Respondents ... Mrs.Meera Chhibber,
counsel.

JUDGEMENT

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

Assistant

The applicant has worked as /Sub Inspector in the Delhi Police and his grievance is that he has not been promoted with effect from 22.5.90, the date when his juniors were promoted but he has been promoted with effect from November,1991. The applicant has prayed for grant of the following reliefs:-

- (a) a direction be issued to the respondents to promote him to the post of ASI(Ministerial) with effect from 22.5.90.
- (b) the seniority of the applicant vis-a-vis his juniors will continue to be reckoned from the date of his appointment as Head Constable (Ministerial) and from 22.5.90 as A.S.I (Ministerial) after his appointment on ad hoc basis on the basis of relief(a).
- (c) the respondents should give him all benefits of seniority, promotion, arrears of pay etc. which/accrue^{may} to him due to his promotion to the post of A.S.I.(Min) from 22.5.90.

2. The facts in short are that the applicant had filed an earlier OA No.1188/90 before the Tribunal for directions to the respondents to withdraw the impugned order of penalty of censure dated 31.7.89 and confirming him with effect from 9.5.89 and not from 9.11.89 and lastly to consider him for promotion to the post of A.S.I.(Min) from the date his juniors were promoted. This OA was disposed of by the order dated 12.4.91 and besides other directions, it was directed that the case of the applicant for promotion to the post A.S.I.(Min) shall be considered by the respondents by constituting a Review D.P.C for the purpose within a period of three months from the date of receipt of the judgement. The Review D.P.C. shall consider the suitability of the applicant for promotion from the date of his juniors were promoted, ignoring the penalty of censure imposed on hm on 31.7.89. The applicant also filed CCP No.226/91 . The said CCP was dismissed by the order dated 19.2.92 wherein it was observed that there was substantial compliance with the judgement of the Tribunal dated 12.4.91 referred to above. The applicant being still not satisfied filed the present OA. It is stated that in pursuance of the order of the Tribunal dated 12.4.91, the respondents issued an order confirming hin in the post of Head Constable(Min) with effect from 9.5.89 and by virtue of this confirmation, the applicant was eligible for promotion to the post of A.S.I. from the date his juniors were promoted

i.e.22.5.90. The respondents, however, issued order dated 12.11.91(Annexure VII) by which the applicant along with other Head Constables was promoted to officiate as A.S.I(Min.) with effect from 11.11.91. Thus, the grievance that of the applicant is/by virtue of the seniority he has earned in the grade of Head Constable he should have been given ad hoc promotion as A.S.I.(Min) from the date his next junior i.e.22.5.90 was given. In view of this he has prayed for the reliefs aforesaid.

3. The respondents in their reply have opposed the grant of the reliefs and took a preliminary objection that the OA is barred by the principle of res judicata as the issue raised by him has already been agitated and dealt with in the earlier proceedings in OA No.1188/90 and CCP No.226/91 and he cannot agitate the same point again. The OA 1188/90 was filed by the applicant in June 1990 i.e.after the promotion of juniors on ad hoc basis with effect from 22.5.90. The applicant, therefore, cannot come again for the same relief. It is further stated that the applicant has lost his original seniority in the grade of Head Constable which was only restored pursuant to the order of the Tribunal dated 12.4.91 by order dated 14.8.91. The applicant was promoted to officiate as ASI(Min) with effect from 11.11.91 along with his immediate juniors and seniors following induction of his name to Promotion List 'D'(Ministerial) with effect from 8.11.91 as approved by the D.P.C. in terms of Rule 15(iii) of Delhi Police

(Promotion & Confirmation) Rules, 1980. 2

4. We have heard the learned counsel for the parties at length and have perused the material on record. The present OA is not maintainable in view of the fact that the earlier OA 1188/90 was filed by the applicant in June 1990 and he did not claim any such relief of being promoted with effect from 22.5.90. Only he prayed that he should be considered for promotion to the post of A.S.I.(Min.). The direction was issued by the Tribunal by the order dated 12.4.91 for considering the applicant for promotion to the post of A.S.I.(Min) by a Review D.P.C. In fact, the grievance of the applicant ^{not} is that he should/ have been considered with others and the DPC should have been convened to consider the case of the applicant only as A.S.I.(Min) on the basis of the restored seniority as Head Constable with effect from 14.8.91. However, this all was considered in CCP 226/91 in which the applicant has also assailed his non-promotion as A.S.I. from the date his next junior was so promoted i.e with effect from 22.5.90. In the CCP, it has been observed as under:-

" Assuming that any mistake is committed in the matter of ascertaining the actual date on which his juniors were promoted, that would not give rise for a cause to take action under the Contempt of Courts Act and the question can only be set right in appropriate original proceedings. But the petitioner has taken the stand in his rejoinder that a junior of his was promoted on 22.5.90. He does not state as to whether it is a regular promotion or an ad hoc promotion

or a promotion purely as a stop-gap arrangement nor has he given the duration of the said promotion of the junior. Apart from stating that his juniors were promoted, no particulars of the persons who have been promoted have been furnished. The OA having been filed in June, 1990 there is no reference to the promotion said to have been made w.e.f. 22.5.90. If the petitioner had a grievance to make about the promotion of any particular junior having taken place before the O.A. was filed, one would have expected him to have filed a copy of the order passed in this behalf and impleaded the person as respondent in the O.A. It is obvious that no decision could normally be rendered by the Tribunal behind the back of the persons who are likely to be affected adversely by that decision.

Having regard to all these aspects, we are satisfied that though late, there has been substantial compliance with the judgement of the Tribunal. We, therefore, do not consider it necessary to pursue these proceedings and the same are accordingly dropped."

5. In view of the above observations in the OA and the CCP, the applicant cannot reagitate the matter. The present OA is barred by the principle of res judicata and devoid of merit. No costs.

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

J.P.Sharma
(J.P.SHARMA) 21.5.93
MEMBER(J)