

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A. NO. 3144 /1992

DATE OF DECISION : 6 -5-1998.

HON'BLE SHRI JUSTICE K. M. AGARWAL, CHAIRMAN

HON'BLE SHRI R.K.AHOOJA, MEMBER (A)

C.S.Dwivedi, IPS

... Applicant(s)

-Versus-

U.O. I & Anr.


... Respondent(s)

Advocates :

~~Mr.~~/Ms. Meera Chhibber for Applicant(s)

Mr./~~Mrs.~~ V.K.Mehta & Mr.Vinay for Respondent(s)
Sabharwal

- ✓ 1. Whether to be referred to Reporter? *yes.*
2. Whether to be circulated to other Benches?


(K. M. Agarwal)
Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH.

O.A. No.3144/92.

NEW DELHI THIS THE 6th DAY OF MAY, 1998.

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HON'BLE MR. JUSTICE K.M.AGARWAL, CHAIRMAN.

HON'BLE MR. R.K.AHOOJA, MEMBER (A).

Shri C.S. Dwivedi,
IPS (1959 / M.P)
Addl. Director General, C.R.P.F.
R/o C-II/115, Moti Bagh,
New Delhi.

...Applicant.

(By Advocate Mrs.Meera Chhibber)

-versus-

1. Union of India,
through Secretary,
Ministry of Home Affairs,
New Delhi.
2. State of Madhya Pradesh,
through Chief Secretary,
Madhya Pradesh,
Bhopal (M.P)

....Respondents.

(Respondent 1 by Advocate Shri V.K.Mehta & respondent 2
by Advocate Shri Vinay Sabharwal)

O R D E R

MR. JUSTICE K.M. AGARWAL, CHAIRMAN:

The respondents in this application under Section 19 of the Administrative Tribunals Act, 1985 are two; the Union of India and the State of Madhya Pradesh. The main reliefs claimed are also two. They are:

(i) To declare that the applicant "is entitled to be given proforma promotion as D.G. w.e.f. the date when his juniors Shri R.K.Wadhera or Shri D.K.Arya were promoted i.e. Jan. 1992 or May, 92.

(ii) And "to direct the respondents to give consequential monetary benefits to the applicant by putting him in the scale of 7600-8000/- w.e.f. Jan. 1992 or May, 1992 and refix his pay & pension accordingly."

2. The applicant was an I.P.S. Officer of 1959 batch and of Madhya Pradesh cadre. In 1964, he was promoted as Superintendent of Police and in 1980, as Deputy Inspector General of Police. In the State cadre Seniority List, his

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name was at S.No.23 and in the combined Central List of I.P.S. Officers, his name was at S.No.173. On 14.4.1986, he was selected for the post of Inspector General of Police and posted in the Central Reserve Police Force. In August 1990, it is alleged, the applicant was promoted to the rank of Additional Director General of C.R.P.F. by the Central Government. The grievance of the applicant is that one Shri R.K.Wadhera of Uttar Pradesh cadre, though junior to him in the All India combined Seniority List, was promoted as Director General, ITBP in January 1992 in the scale of Rs.7600-8000 and that on 20.5.1992, his another junior Shri D.K.Arya of Madhya Pradesh cadre was also promoted in the State of Madhya Pradesh in the same pay scale of Rs.7600-8000. As he was excluded from such promotion both by the Centre and the State, he filed the present O.A. for the said reliefs after the date of his retirement. The application is resisted by both the respondents.

3. Two things may be noted. The juniors Shri R.K.Wadhera and Shri D.K.Arya have not been joined as parties to the application. Secondly, the applicant retired on 30.11.1992 while on deputation with the Central Government and accordingly he must be drawing his pension from the Central Government. Further, the reliefs claimed in the application are so worded that it was difficult to make out if the reliefs were claimed against the Central Government, or against the State Government. On being questioned, the learned counsel for the applicant submitted that they were claimed against both the respondents. On being further questioned, how the reliefs could be granted against both the respondents, the learned counsel submitted that the applicant was interested in his promotion and post retirement benefits and, therefore, it was immaterial whether he got his reliefs from the Central Government, or from the State Government. We then proceeded to hear the arguments.

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4. After hearing the learned counsel for the parties and perusing the record, we are of the view that the applicant can get no relief from the first respondent. It was not disputed by the learned counsel for the parties that the post of Director General is a selection post. Accordingly the applicant being within the zone of consideration was entitled to be considered for the post, but had no right to be promoted irrespective of the result of selection process. In reply to paragraph 4.8 of the application, the first respondent has stated:

"In reply to para 4.8 of the application, it is submitted that promotion to the posts, carrying pay of Selection Grade and posts carrying pay above the time scale of pay in the Indian Police Service, are made by Selection on merit with due regard to seniority as provided in Rule 3 (2A) of the IPS (Pay) Rules.

"Shri R.K.Wadhera and Shri J.N.Saxena were found to be suitable for promotion in the post of DG, ITBP and DG, BPR&D respectively in terms of Rule ibid and accordingly promoted against these posts. The name of the applicant was considered but was not found suitable for the post in the scale of Rs.7600-8000 at the Centre."

In his Rejoinder, the applicant has not controverted the said facts. Under these circumstances, we are of the view that no relief can be granted to the applicant against the 1st respondent, though his juniors were promoted to his exclusion on the basis of the recommendations of the DPC or the Selection Committee.

5. The learned counsel for the applicant relied on a decision of the Principal Bench of the Tribunal in Andrew Varity Liddle v. The Union of India & others, O.A. No.2296/96, decided on 12.3.1997 to submit that:

"...The hierarchy of posts in Supertime Scale given in Rule 3(1) of the Indian Police Service (Pay) Rules, 1954 would show only 3 posts of DIG, IG and

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DG in different pay scales. No post of Additional D.G. or its pay scale is shown in the said Rules. It, therefore, appears from the nomenclature and the pay scale given to the applicant that the post of Additional D.G. was treated as a post equivalent to the post of D.G."

In other words, the argument was that the applicant was holding the post of Additional D.G. and as that post was held to be a post equivalent to the post of D.G., he was entitled to the pay scale claimed in the application.

6. The argument deserves to be rejected. In A.V. Liddle's case (supra), the stand taken by the Government was that at the first stage of selection for the post of D.G., Shri Liddle was empanelled and also promoted to the post of Additional D.G. At the second stage of selection, he was excluded from consideration on the ground that his residual service was less than one year on the date of the meeting of Selection Committee. Further, by order dated 11.9.1996, he was directed to "perform the current duties of Director General, CRPF in his present grade". In the present case, the stand of the first respondent is that the applicant was considered with others in the zone of consideration, but was not found fit for the post. He is also not shown to have had "the current duties of Director General". Accordingly the argument was misplaced.

7. As against the second respondent, the applicant claimed that as per the decision of the Central Govt. vide O.M.No.31/15/81-ED (MM) dated 11.3.1983, (Annexure I of the 2nd respondent), read with O.M. No.16011/82/91-IPS.II dated 20.12.1991, (Annexure II), no option was given to him by the Central or the State Government "either to continue with the Centre or to revert to his parent cadre" and, therefore, he was entitled to similar treatment from the 2nd respondent as was given to Jogender Singh by the Karnataka Government, or to Shiv Mohan Singh by the Government of Madhya Pradesh.

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8. By O.M. dated 20.12.1991 (Annexure II), the instructions contained in earlier O.M. dated 11.3.1983 (Annexure I) were made applicable to the members of the Indian Police Service. Annexure I, pertaining to I.A.S. Officers, reads as follows:

" I am directed to say that according to the existing policy of the Government, the benefit of Next Below Rule in the supertime-scale of the Indian Administrative Service is not permissible. Consequently, officers on central deputation serving at the level of Deputy Secretary/Director, do not get the benefit of supertime-scale pay in the Centre on getting their turn for promotion to the supertime scale in their parent cadres. The protection of pay in respect of those officers serving at the Centre is, therefore, not possible because of the non-admissibility of the Next Below Rule.

"2. The matter has been considered by the Government of India and it has been decided that if the turn of an officer serving at the Centre on tenure deputation basis, reaches in his parent cadre for promotion in the supertime scale, an option may be given to him either to continue with the Centre or to revert to his parent cadre. If the officer opts for his reversion to the State cadre for getting the benefit of promotion to the supertime scale, such request will be forwarded by the Establishment Officer, Department of Personnel & A.R., Government of India, to the State cadre for arranging a posting for the officer concerned. The State Government will be required to arrange a posting for him within a period of two months from the date of intimation sent by the Establishment Officer in this regard, and thereafter the services of the officer will be placed at the disposal of the State Government concerned." (Emphasis supplied).

The applicant, therefore, appears to be right in contending that he was entitled to a notice to exercise his option "either to continue with the Centre or to revert to his parent cadre". But notice does not always mean notice in writing. If the applicant had the knowledge of vacancy and also time and opportunity to opt either to continue with the

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Centre or to revert to his parent cadre, merely on the ground that notice in writing was not given to him for exercising the option, he cannot succeed, or get any relief from the 2nd respondent. In the present case, his junior Shri D.K. Arya was promoted on 20.5.1992. The promotion was ad hoc in nature and as a measure of stop gap arrangement. (See the appointment letter dated 20.5.1992 filed as Annexure E by the applicant). It also did not appear to be after due selection process. The applicant had knowledge of this fact, otherwise he could not have addressed his letter dated 23.6.1992 (Annexure G) to the Chief Secretary of the Government of Madhya Pradesh, or the letter dated 6.8.1992, (Annexure I), to the Secretary to the Government of India, Ministry of Home Affairs, New Delhi. In none of these letters, he exercised his option to revert to his parent cadre. In his letter to the Chief Secretary, Government of Madhya Pradesh, his request was as follows:

"3. I am due for retirement w.e.f. 30.11.92. It will be kindness of the Government, if I am given proforma promotion from the date, Shri Arya of 1960 batch is promoted in the State as Director General to protect my pay and seniority. Since it will effect my pension and gratuity, I hope that the Government will certainly take the cognizance for giving me proforma promotion at an early date, to restore my claim, if there is any difficulty in my adjustment in the State of Madhya Pradesh in the scale of Director General of Police."

The same request was made to the Central Government, as would be evident from paragraph 2 of his letter dated 6.8.1992 addressed to the Secretary to the Government of India, Ministry of Home Affairs. It runs as follows:

"2. Since I am retiring from service on superannuation w.e.f. 30.11.92, may I request that my pay may kindly be fixed at Rs.7600/- w.e.f. 20th May, 1992, the date on which Shri D.K.Arya, IPS (1960) has been promoted in my cadre. This kind gesture of the Government will give me the same

pensionary benefit which I would have got if I had been repatriated to the State of Madhya Pradesh. I shall be grateful if an early decision is taken on my request."

The aforesaid conduct of the applicant would show that he was not interested in repatriation to his parent cadre. He was interested either in proforma promotion by the State Government or in pay fixation by the Central Government in the scale of Rs.7600-8000. He cannot, therefore, complain that he was given no notice to opt "either to continue with the Centre or to revert to his parent cadre."

9. As pointed out earlier, the promotion of Shri D.K.Arya was purely on ad hoc basis and as a stop gap arrangement without following any process of selection. In such a case, the applicant on deputation could not claim any promotion, or precedence over Shri D.K.Arya on the ground of his seniority. The cases of Jogender Singh and Shiv Mohan Singh were different from that of the applicant. In the case of Jogender Singh, the direction was for consideration of his name for promotion. In the case of Shiv Mohan Singh, the direction was for fixation of his pay in the scale of Rs.7600-8000, because his name was considered for promotion by the Selection Committee and he was also found fit for promotion. Further, Jogender Singh was of Karnataka cadre and not of Madhya Pradesh cadre. In any case, the applicant could claim consideration of his name for promotion and not promotion itself. In D.D. Suri v. Union of India, 1979 (3) SLR 689 (SC), it was held by the Supreme Court that:

"It is, therefore, abundantly clear that the petitioner cannot claim as a right the super-time scale merely on the basis of his seniority among the members of the Indian Administrative Service belonging to the Orissa Cadre. The process of appointment to the super-time scale is by

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selection. When the element of selection comes in, this promotion must be subject only to the claims of exceptional merit and suitability, and is not a matter of right: **Union of India v. M.L. Capoor** (2). Promotion to the super-time scale is, therefore, not a matter of course. The officer must stand the test of suitability and his integrity must be beyond doubt."


10. The representation dated 17.11.1992 of the applicant for repatriation was made on the eve of his retirement and, therefore, rightly rejected. Even if it were allowed, he could not get the ad hoc posting or promotion to the post of D.G. in the State of Madhya Pradesh for the reasons hereinbefore given.

11. For all the aforesaid reasons, we are of the view that this O.A. has no merit and deserves to be dismissed.

12. In the result, this O.A. fails and it is hereby dismissed, but without any order as to costs.



(K.M. AGARWAL)
CHAIRMAN


(R.K. AHOOJA)
MEMBER (A)