

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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O.A. No! 1096/93

New Delhi this the 11th Day of April 1997.
Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)

Hon'ble Dr. S.P. Biswas, Member (A)

R.K.Mandal,
R/o D-538, Netaji Nagar,
New Delhi.

(By Advocate: Shri B.B.Raval)

Vs

Union of India,
through the Secretary,
Ministry of Home Affairs,
North block,
New Delhi

The Director-General,
Bureau of Police Research and Development,
Ministry of Home Affairs,
CGO Complex,
New Delhi.

Shri Kalu Ram, Inspector,
Bureau of Police Research & Development,
Ministry of Home Affairs,
CGO Complex, Lodhi Road,
New Delhi.

Shri Bhale Ram,
Constable,
Bureau of Police Research & Development,
Ministry of Home Affairs,
CGO Complex, Lodhi Road,
New Delhi.

(By Advocate: Shri R.V.Sinha)

O R D E R

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)

1. The petitioner in this case was appointed as Constable in the Border Security Force (hereinafter referred to as BSF) on 6th Jan., 1975 and thereafter came to Bureau of Police Research & Development (hereinafter referred as BPR&D) on deputation and joined the post of Government Examiner of Questioned Documents at Calcutta. The respondents passed an order dated 6.4.1984 absorbing the petitioner as Constable in the organisation, copy of



which is available at page 38 of the paper book. The petitioner was further promoted to the rank of Head Constable w.e.f. 24.1.1991 and thereafter on the basis of a representation that his juniors have been promoted; the petitioner was given promotion to the rank of Head Constable w.e.f. the year 1986.

2. By an order dated 23.4.1993, respondents reverted the petitioner to the post of Constable on the ground that the promotion of the petitioner to the post of Head Constable was by mistake and the recruitment rules for the post of Head Constable requires ten years of minimum service in the grade and since the petitioner was absorbed only on 6.4.1984, his prior service could not be counted. His promotion to the post of Head Constable w.e.f. 1986 is, therefore, wrong and hence reverted. The petitioner in this petition is challenging the said order.

3. Learned counsel for the petitioner submitted that even assuming that the recruitment rules to the post of Head Constable requires "ten years of minimum service in the grade, the term ten years of service in the grade" denotes the service in the grade of Constable, and it is an admitted case that the petitioner was a confirmed Constable in B.S.F. w.e.f. 6.1.1976 though his initial appointment was from 6.1.1975, and therefore, his promotion to the rank of Head Constable w.e.f. 1986 is correct and unassailable. The petitioner also relied upon the decision of the Hon'ble Supreme Court in K.Madhvan & Ors. vs. UOI &

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Ors. reported in JT 1987 (4) SC page 43. A similar question arose in the said case as well whether the term "eight years in the grade" appearing in the recruitment rules would mean the eight years service in the grade of D.S.P., and the Hon'ble Supreme Court in that case held that his previous service in the Rajasthan Police service as D.S.P. has also to be reckoned for the purpose of calculating eight years in the grade, from the date on which he was holding the post of D.S.P. in the Rajasthan Police.

4. There is considerable force in the submission of the petitioner that the recruitment rules only shows that "ten years service in the grade" which only means eight years in the grade of Constable and since the petitioner was appointed as Constable on 6.1.1975 in BSF and he was confirmed a year thereafter, his appointment as Head Constable w.e.f. 1986 is also unassailable.

5. Petitioner also produced before us an order passed by the respondents on 18.5.1995, stating that the pay of the petitioner as Head Constable in BPR&D is fixed at Rs. 1020/- in the scale at par with his junior virender Kumar who is also drawing pay at the stage of Rs. 1020/- in the scale of pay 825-1200/-, w.e.f. 1.1.1986 and thereafter they proceeded to consider his promotion to the grade of Head Constable and fixed the pay accordingly. Para 2 of the said order is reproduced herebelow:-



"2. Consequent upon his promotion as Head Constable in the pay scale of Rs. 950-20-1150-FB-25-1400 with effect from 30.1.1986, the pay of Shri Mandal is fixed as under:-

- (a) Basic pay as on 30.1.1986 Rs. 1020.00 in the lower post.
- (b) Pay in the higher post on 30.1.86 under FR 22(2)(1) in the scale of Rs. 950-20-1150-FB-25-1400.
- (c) Pay in the lower post as on 1.6.86 i.e. the date of his increment in the lower post of Constable.
- (d) Pay after notional increment Rs. 1065.00 i.e. Rs. 20/- or Rs. 25/- whichever is more.
- (e) Pay fixed in the higher scale Rs. 950-20-1150-FB-25-1400/- as on 1.6.86
- (f) Date of increment 1.6.1987.

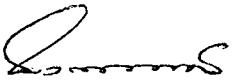
Pay as on:

1.6.1987	1090.00
1.6.1988	1110.00
1.6.1989	1130.00
1.6.1990	1150.00
1.6.1991	1175.00
1.6.1992	1200.00
1.6.1993	1225.00
1.6.1994	1250.00

- (g) Date of next increment 1.6.1995"

6. In view of the fact that the respondents even though passed an order on 23.4.1993 which is the impugned order in this case, do not seem to have implemented the said order rather proceeded to fix the pay of the petitioner in the year 1995 and in view of this, this court finds that the fixation therein was correct. We are of the considered view that the reversion order dated 23.4.1993 has no legs to stand and in these circumstances this OA is allowed and the

petitioner shall be entitled to all consequential benefits. With these directions this OA is allowed with no order as to costs.



(G.P.Biswas),
Member (A)



(Dr. Jose P. Verghese)
Vice-Chairman (J)

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