

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

ORIGINAL APPLICATION NO.508 OF 1998

Allahabad, this the 16th day of July, 1999.

CORAM : Hon'ble Mr.S.Dayal, Member (A)
Hon'ble Mr.S.K.Agrawal, Member (J)

Krishna Behari Srivastava,
Director (Traffic),
Department of Police,
Govt. of U.P.
Lucknow.

..... Applicant

(in person)

Versus

1. Union of India
through the Secretary,
Ministry of Home Affairs,
Government of India,
New Delhi.

2. State of U.P.
through the Secretary,
Department of Home, Govt. of U.P.,
U.P. Civil Secretariate,
Lucknow.

..... Respondents

(By Shri N.B.Singh and Shri K.P.Singh, Advocates)

O R D E R (Reserved)

(By Hon'ble Mr.S.K.Agrawal, Member (J))

In this original application applicant makes
the following prayer :-

- 1) to direct the respondents to consider and
promote the applicant on the post of Deputy
Inspector General of Police with effect from
15-3-1989 ;
- 2) to direct the respondents to fix the pay of
the applicant in the scale of Rs.5100-6150/-
as per Rule 22 (c) of Fundamental Rules at
the stage at which his juniors have been placed
in that scale.

...../2p

3) Any other direction appropriate to the facts and circumstances of this case.

2. The applicant had initially joined U.P. Police Service in July, 1963. On 3-10-1980 the applicant joined the cadre of Indian Police Service and on 24-4-1987 Government of India declared the seniority list of officers belonging to I.P.S. cadre and placed the applicant at Serial No.33, whereas Sri M.P.Dixit at Sl.No.34, Shri A.K.Pandey at Sl.No.36, Shri A.B.Shukla at Sl.No.39, Shri Uma Shankar Bajpai at Sl.No.40 and Shri Radhey Shyam at Sl.No.42 showing them junior to the applicant. O.A.No.417 of 1987 and O.A.No.626 of 1987 were filed challenging the seniority position. These original applications were allowed vide judgement dated 18-11-88 and in view of the decision a gradation list of officers belonging to U.P. I.P.S. cadre was published on 16-1-89 showing the seniority position as on 1-1-1989. It is stated by the applicant that all the I.P.S. Officers named above were given promotion on the post of Deputy Inspector General of Police vide order dated 15-3-89, but the applicant was not considered for promotion. Therefore, he filed original application No.402/89 before this Tribunal which was allowed and the directions were given to give notional promotion to the applicant with effect from the date when juniors to him were given such promotion vide order dated 26-2-92. In view of this order the applicant was given notional promotion w.e.f. 15-3-89 on the post of Deputy Inspector General of Police vide order dated 11-1-1993 and applicant joined the same on 14-1-1993. The first grievance of the applicant in this original application is that his pay should have been fixed in the scale of Rs.5100-6150/- at the stage at which his

juniors have been placed by applying Fundamental Rule 22 (C). In the Counter it is stated that the pay of the applicant on promotion was fixed according to rules. Shri A.K.Pandey, Shri U.S.Bajpai, Shri M.P. Dixit, Shri A.B.Shukla were promoted as Deputy Inspector General of Police before the date of promotion of applicant, therefore, they were getting higher pay than the applicant. Consequent on implementation of Ministry of Home Affairs notification dated 5-12-94 the applicant was assigned 1975 as year of allotment, whereas others were allotted 1972 as year of allotment, whereas Shri A.B.Shukla was allotted 1976 as the year of the allotment. Therefore, the applicant is not entitled to stepping up on the basis of the provisions given in Fundamental Rule 22 (C) as Fundamental Rule 22 (C) is not applicable in this case.

3. Rejoinder has also been filed by the applicant reiterating the facts stated in the original application which is on record.

4. Heard the applicant in person and learned lawyer on behalf of respondents.

5. Applicant who appeared in person has submitted that the applicant was ignored wrongly for the promotion of Deputy Inspector General of Police with effect from 15-3-89 thereby wrongly prevented from discharging the duties as Deputy Inspector General of Police w.e.f. 15-3-89 and he actually could not work on the post due to the fault of respondents, therefore, he

is entitled to monetary benefits for the said period. Learned lawyer for respondents while objecting these arguments has submitted that applicant did not work on the post, therefore, he was given notional promotion.

6. We have given thoughtful consideration to the rival contentions of both the parties and also perused the whole record.


7. Admittedly the applicant was given promotion on the post of Deputy Inspector General of Police retrospectively with effect from 15-3-89 vide order dated 11-1-1993. By this order respondents have admitted the fact that the applicant was entitled to promotion with effect from 15-3-1989. We are also of the considered view that the provisions of Rule 17 (1) of Fundamental Rules are not applicable where the person concerned is willing to work, but was kept away by the authorities for no fault of his own. This view has been taken by Hon'ble Supreme Court of India in Union of India & others Vs. K.B.Janakiraman and Others (1991) 4 SCC 109. In Bhagrani Chopra Vs. U.O.I. & others O.A.No.2442/96 decided by Principal Bench, New Delhi on 7-11-97 it was held where the authorities wrongly denied the promotion to the applicant and later on given notional promotion retrospectively the applicant is entitled to monetary benefits for the period on the ground that the applicant was kept away by the authorities from discharging the duties of the post to which he was entitled for no fault of his own.

8. On the basis of above all, we are of the considered opinion that applicant is entitled to arrears of pay with effect from 15-3-1989 the date

from which he was promoted retrospectively after deducting the amount already paid to the applicant. As regards stepping up of the pay of the applicant under Fundamental Rule 22 (c) is concerned seniority is not only the criteria for determining the entitlement of stepping up of pay of the applicant. Fundamental Rule 22 (c) imposes following three conditions to be fulfilled before a person is entitled to stepping up :-

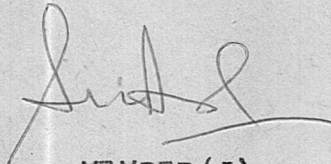
- (a) Both the junior and senior officer should belong to the same cadre and the posts on which they have been promoted should be identical in the same cadre.
- (b) The unrevised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical, and
- (c) the anomaly should be directly as a result of the application of the provisions of F.R. 22-C in the revised scale. For example, if even in the lower post, the junior officer was drawing more pay in the unrevised scale than the senior by virtue of fixation of pay under the normal rules or any advance increments granted to him, the provisions contained in this decision need not be invoked to step up the pay of the senior officer.

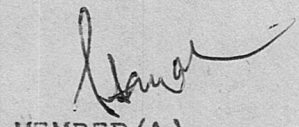
9. The case of the applicant is not covered under the conditions mentioned in F.R. 22 (C), therefore, the applicant is not entitled to this relief.

 10. We, therefore, allow this original application in part and direct the respondents to grant and pay to the applicant the arrears of salary in the pay scale

of Rs.5100-6150/- with effect from 15-3-89 to 13-1-93 after deducting the actual amount paid during that period within three months from the date of receiving copy of this order. The claim of the applicant regarding stepping up of pay as envisaged under F.R. 22(C) is disallowed.

11. No order as to costs.


MEMBER (J)


MEMBER (A)

/satya/