

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 1005/95

DATE OF DECISION: 19-4-2000
14/2000

Shri B.L.Nirala Applicant.

Shri G.S.Walia
----- Advocate for
Applicant.

Versus

Union of India & Anr.
----- Respondents.

Shri J.P.Deodhar
----- Advocate for
Respondents.

CORAM:

Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman.
Hon'ble Shri B.N.Bahadur, Member(A).

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

} No
B-s

(B.N.BAHADUR)
MEMBER(A) 19/4/2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No.1005/1995

Dated this 19th Day of April 2000

[Nineteenth April 2000]

CORAM: Hon'ble Shri Justice R. G. Vaidyanatha, Vice Chairman
and
Hon'ble Shri B.N.Bahadur, Member (A).

B.L.Nirala,
Dy. Chief Security Officer,
Directorate of Estate
Management
Vikram Sarabhai Bhavan
Anushakti Nagar
Bombay 400 094.

C/o G.S. Walia
Advocate, High Court
Mumbai 400 001.

.... Applicant

(By Shri G.S. Walia, Advocate)

Vs.

1. Union of India, through
Dept. of Atomic Energy
Bombay 400 039.

2. Director
Director of Estate
Management,
Vikram Sarabhai Bhavan
2nd floor, North Wing
Anushakti Nagar
Mumbai 400 094

.... Respondents

(By Shri J.P. Deodhar, Advocate)

O R D E R

[Per: B.N.Bahadur, Member (A)]

This is an application filed by Shri B.L.Nirala, Dy. Chief Security Officer (DCSO, for short) in the Directorate of Estate Management, under Respondents. The applicant seeks the relief for the stepping up of his pay equal that of his junior, Shir Nikose, with effect from the latter's date of promotion i.e. 1.3.1991, and for arrears accordingly. He also seeks the relief

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for being declared as entitled for the pay of Chief Security Officer from the date that he claims, he has been officiating on this post i.e. 1.1.1995.

2. The facts of the case, as put forth by the applicant, are that in the panel prepared for promotion to the post of Dy. Chief Security Officer (DCSO), through DPC held on 17.11.1990, he was at serial No.5, whereas Shri D.P.Nikose, was placed at Sr.No.8. Shri Nikose, was promoted on 1.3.1991 as DCSO, however, which is ten months before the applicant was promoted. The applicant avers that he made two representations against this, and that one of them was recommended by his Office vide Ex.C. Respondents. Replies does not satisfy the applicant, who claims that he should have been promoted earlier than Shri Nikose and contests the stand taken by the respondent denying stepping up of pay to the level of Shri Nikose's pay.

3. The applicant also avers that has been asked to officiate on adhoc basis as Chief Security Officer (Ex.H). Thus he is before us seeking the reliefs as described above.

4. Respondents have filed their reply, wherein they state that in the select panel drawn up after the DPC held on 7.2.1991 (and not 17.11.1990), the applicant was placed at Sr. No.6, whereas Shri Nikose, who is also an SC candidate, was placed at No.8. Shri Nikose was higher in seniority, otherwise. An important

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defence put forth by respondents is that on the date of DPC, the applicant did not satisfy the condition of number of years of service for promotion. However, since only a small gap in eligibility criterion existed, his case was taken up by DPC and he was admittedly placed higher on merit in the panel. However, he was given promotion to the post of DCSD only after he attained such eligibility in terms of Recruitment Rules, and therefore, the applicant has no right for stepping^p_λ up of pay visa-vis the candidate below him in the select panel. Respondents aver that the representation of applicant has been replied to.

5. In regard to the claim of applicant regarding officiation as Chief Security Officer, the respondents deny the claim and state that Respondent No.2 has no powers to ask or appoint anyone to work as Chief Security Officer, and that the applicant can derive no help from document (Ex. H) which he has illegally obtained. This is merely an internal correspondence.

6. We have heard learned counsels on both sides. The counsel for applicant took us over the facts of the case, explaining the entire system of promotion in the hierarchy, the recruitment rules and also brought out the relevant dates in the career graph of the applicant. Learned Counsel strenuously argued that once the system of preference to somebody placed higher in the panel is accepted, it follows that applicant should have got promotion earlier than Shri Nikose and should now be entitled for stepping up of pay. Learned counsel for applicant

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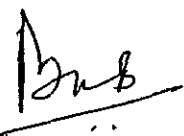
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also sought to rely on Govt. letter dated 5th Sept. 1975 regarding relaxation of experience in respect of Scheduled Castes/Tribe candidates. He sought to take support of the judgement in the case of Ram Swarup vs. State of Haryana (1979) SCC L&S 35. The claim to the Pay of Chief Security Offices (CSO) was also agitated.

7. Learned Counsel for Applicant cited the following judgements. in support of his case:-

- (1) 1998 SCC L&S 1273 (2) JT 1998 (4) SC 501
(3) (1995) (1) ATJ 498

8. Arguing the case on behalf of the respondents, their learned Counsel, Shri Deodhar, stated that Shri Nikose was senior to the applicant in the feeder grade. The applicant had not completed the required 7 years of service at the time of the DPC meeting, but since immediate appointment was not contemplated, he was considered and included in the panel as explained. There was however no vacancy on 11.3.1991, that is when the applicant completed 7 years and when the next vacancy arose in 1991 the applicant was promoted. The learned counsel justified the action taken by the respondents and argued that no right for stepping up of pay could be established. He cited the case of P.Jagdish [1997 (3) SCC 176] to make the point that the applicant was not entitled to the stepping up of his pay to the level of Shri Nikose's pay.



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9. We have seen all papers in the case and have considered the arguments made before us by learned counsels on both sides. We have also perused the cases cited, and have gone through the relevant notings in the original file of DAE produced before us.

10. It is seen that the Recruitment Rules for the post of DSCO do indeed provide for a requirement of a minimum of 7 years continuous service as Security Officer as essential for consideration for regular promotion to the post of Dy. Chief Security Officer. It is also admitted that these 7 years were not completed by the applicant either on the date of DPC or right upto the date when Shri Nikose was promoted. The point regarding automatic eligibility for consideration of promotion in the event of a junior being considered was indeed advanced by learned counsel for applicant but, in the absence of a specific provision in the Recruitment Rule in this regard, no automatic right can accrue to the applicant. Similarly the Circular dated 5th September, 1975 relied upon is not relevant, and, in any case, Shri Nikose is also stated to be an Officer belonging to the Scheduled Castes.

11. Well and truly, the applicant, Shri Nirala, has been placed higher in the panel. But that clearly does not give him the right to the promotion to DSCO overlooking the essential requirement of 7 years service in the feeder grade laid down in Recruitment Rules. Thus, it cannot be held that the action in promoting Shri Nikose was wrong or mala fide. Now, the concomitant question is whether any right accrues for the stepping up of the pay of applicant on par with that of Shri

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Nikose from the date asked for viz. 1.3.1991. In terms of the position of the Rules and the Case law discussed above, we are not convinced that there is any case for providing the relief of stepping up of pay asked for since the applicant was not eligible for promotion when Shri Nikose was promoted. It may be unfortunate that he had to wait for a number of months before the next vacancy arose after his eligibility, but that situation cannot provide the basis for claiming stepping up of pay.

12. The point regarding the relief sought at para B (c) viz. entitlement to the pay of Chief Security Officer has also been carefully looked at by us. The sole dependence is of Ex. H, where a recommendation is made through a confidential internal note. An internal arrangement communicated as having been made by the Director of Estate Management cannot be the basis of a relief, when the power of appointment does not lie with him, admittedly. We have seen the file of the subject, as mentioned above, and find that this note (Exhibit H) was indeed considered by Department of Atomic Energy, and the proposal was not approved. The fact that no reply was sent cannot create a right in favour of the applicant. We are, therefore, unable to find any basis for providing this relief either, to the applicant.

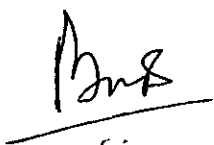
13. We have gone through the Case Law cited. In the case of Hari Om Sharma (1998) SCC L&S 1273 cited on behalf of applicant, we do not see how the ratio settled in this case can help the applicant. Obviously this is directed more to the claim for the pay of Chief Security Officer. There

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was no regular arrangement made in the present case and the oral directions of a temporary arrangement draws no parallel from the case of Hariom Sharma. Similarly it is not clear as to how the judgements cited in the case of Karnal Singh (JT 1998 SC 501) in the Land Acquisition Case can help the cause of the Applicant. We have also seen the case of Vijayapal Singh (1997) 10 SCC 260 where an IPS Officer asked to hold an Excadre Post. Here was a State Government officer asked to hold an Excadre post of IPS and held entitled to pay scale attached to such posts in view of Fundamental Rules 22; there is regular appointment herein by a Competent Authority since the officer was duly posted to the post. In the present case there is no such regular posting by a Competent Authority. On the other hand, the case of Ram Swarup (1979 SCC L&S 35), in fact, supports the claim of the respondents.

14. Learned counsel for respondents have cited the case of respondents have cited the case of P.Jagdish & ors. [1997 (3) SCC 176.]. This ^{Bomb}~~also~~, unfortunately, does not help to decide the case either way. Incidentally, it was mentioned at the time of argument that in the provisional list of Officers in the grade of DSCO, circulated recently, the applicant, Shri Nirala has been shown a higher seniority position compared to Shri D.P. Nikose. We would not like to comment on this aspect. This is not an issue before us and, we need not, and have not, gone into it.

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15. In consequence of the above discussion this OA is, therefore, dismissed with no orders as to costs.

B.N. Bahadur
(B.N. Bahadur) 19/4/2000.
Member (A)

R.G. Vaidyanathan
(R.G. Vaidyanathan) 19/4/2000
Vice Chairman

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