

(59)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A. No. 467/1995

Date of Decision: 21/8/97.

BETWEEN:

B.S. Nabar

.. Applicant

AND

1. Government of India Rep. by
its Secretary, Ministry of
Home Affairs, North Block,
New Delhi - 110 001.
 2. Secretary, Department of
Personnel and Training,
Ministry of Personnel, Public
Grievances and Pensions,
Government of India,
New Delhi.
 3. The Director, S.V.P. National
Police Academy, Shivrampally,
Hyderabad - 500 052.
 4. Government of India, Rep. by
its Secretary, Ministry of
Finance, New Delhi.
- .. Respondents

Counsel for the Applicant: Mr. S. Satyam Reddy

Counsel for the Respondents: Mr. N.R. Devaraj

CORAM:

THE HON'BLE SRI H. RAJENDRA PRASAD: MEMBER (ADMN.)

THE HON'BLE SRI B.S. JAI PARAMESHWAR: MEMBER (JUDL.)

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ORDER

(Per Hon'ble Sri B.S. Jai Parameshwar: Member (Judl.)

1. Heard Sri S. Satyam Reddy, the learned counsel for the applicant and Sri N.R. Devaraj, the learned Sr. Standing counsel for the Respondents.
2. This is an application under Section 19 of the Administrative Tribunals Act. The application was filed on 28th March, 1995.
3. Facts giving rise in this OA may in brief be stated as thus:-

The applicant herein was selected by the U.P.S.C. as Assistant Director (Scientific Aids) and joined as such at Sardar Vallabh Bhai Patel National Police Academy (in short "the academy"), Hyderabad on 7.12.70. Then he had joined the post in the scale of Rs.700-1250. On the recommendations of the Third Pay Commission his ^{scale of} pay was revised to Rs.1100-1600. Likewise on the recommendations of the ^{Scale of} Fourth Pay Commission his ^{Scale of} pay was revised to Scale of pay of Rs.3,000 - 4,500/- effective from 1.1.86. The post of Asstt. Director (Scientific Aids) is an isolated post.

4. The applicant submitted representations for considering his case either for promotion as Dy. Director or to give him the next higher grade since he had been working in the same post for many years.

5. His representations evoked no response. Hence he has filed this OA for the following reliefs:-

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" To declare the action of the respondents in keeping the applicant in the same post and scale for 25 years as arbitrary and illegal and consequently direct the respondents to promote the applicant as Deputy Director in the pay scale of Rs.5100-5900 or in the alternative direct the respondents to give the pay scale of Rs.3700-5700 as is applicable to Readers from the date when they were given the said scale and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper. "

6. The main contention of the applicant is that he has been working in the same post for the last 25 years, and that he has been stagnated in the post, that there has been no promotional avenues for him that had he joined any other department of Government of India, he would have reached the maximum promotional post by now and that his case has not been considered by the Respondents.

7. The Respondents have filed the counter. The factual aspects of the case of the applicant are not in dispute. It is stated that the post was created. The new post was to carry duties of taking classes in Forensic Science and other relevant factors to IPS probationers and other officers and that there was no post of Reader or Professor in the Academy when the applicant joined the service of the Academy that the Tribunal cannot direct the Respondents to give any particular scale of pay or a particular post, that the Government fixed the pay scale on the recommendations of the Pay Commission, that comparison of one post with the other only in terms of the pay scales may not be proper that the post which the applicant is holding is ^{an} isolated post with ^{and} no professional promotional avenues, that the representations of the applicant were considered but could not be accepted that even before the 5th Pay Commission considering the higher scale, the Academy had granted the stagnation increments to the applicant as per the admissible rules that since there was no higher post the question

of depriving him of his opportunity to the promotional post did not arise and when the applicant joined the Academy in 1970 it was made clear that there were no promotional avenues and the applicant joined the post, and that the applicant now cannot compare with other promotional posts where the incumbents have certain promotional avenues. Therefore, there are no merits in this OA and hence the same be dismissed with costs.

From the documents produced by the applicant it is clear that the academy was attempting to help the case of the applicant. On 27.8.96 the then Director of the Academy had addressed a letter to the Special Secretary, Ministry of Home Affairs, Government of India to consider creating a post of Deputy Director by keeping in abeyance one post of Professor in Business Management and one post of Language Instructor as earlier proposed or in the alternative ^{to} promote him (the applicant) as Deputy Director as against one of the 2 vacant posts of Dy. Directors on Ad hoc basis till his retirement in December, 1997.

The applicant is due to retire in December 1997 on attaining the age of super annuation.

9. The learned counsel for the applicant relied upon the decision of Principal Bench of this Tribunal in the case of Shri Deena Nath Dogra Vs Delhi Administration and others reported in 1992 (1) SLJ Page-48. In para 7 & 8 the Hon'ble members have observed as follows:

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In C.S.I.R. V. K.G.S. Bhatt, 1989 (2) SCALE 395 at 398, the Supreme Court again reiterated the same view. The following observations made by the Supreme Court are pertinent:-

".....It is often said and indeed, adroitly, an organisation, public or private does not 'hire a hand' but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important

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feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well (Sec % Principles of Personnel Management by Flipo Edwin B. 4th Ed. P.246) Every management must provide realistic opportunities for promising employees to move upward. "The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisor". (See Personnel Management by Dr. Udai Paresk, p.277). There cannot be any modern management much less any career planning, man-power development, management development, etc. which is not related to a system of promotions (See: Management of Personnel in Indian Enterprises by Prof. N.N. Chatterjee, Chap.12, P.128)."

" Reference may also be made to the decision of this Tribunal in Jia Uddin V. Delhi Administration & Another 1990(1) ATLT (CAT) 445 to which one of us (P.K. Kartha was a party in that case, an officer of the Delhi Admn. had worked in the same post for several years and the Tribunal directed the respondents to encadre the post held by him in the mainstream cadre same in accordance with the rules with consequential benefits. If the respondents felt that any officer in the service was thereby to be adversely affected, the Tribunal directed that a supernumerary post might be operated in the relevant cadre for the applicant which might be akkined to lapse with the retainment on superannuation.

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The Principal Bench in the said OA gave direction to the Respondents to operate a super-numerary post in the cadre of Laundry Technecian for the applicant.

11. The Principal Bench of this Tribunal, earlier in the case of B.K. Paul Chaudhari Vs. Union of India, reported in 1987 (3) ATC (Delhi), had formed an opinion that the court cannot compel creation or abolition of post. Recently the Hon'ble Supreme Court of India also held that the Tribunal or court cannot direct the executive to create a post. In that view of the matter it may not be proper for us to direct

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the Respondents either to creat a post of Deputy Director or to give the higher scale of pay to the applicant in this OA. Granting higher scale of pay amounts to promotion. The applicant is holding an isolated post. Hence the alternative prayer also cannot be granted.

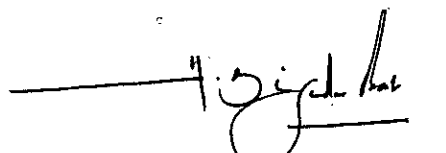
12. Earlier the Principal Bench of this Tribunal had in the case of Zia Uddin V. Delhi Administration and another reported in 1990 (13) Administrative Tribunal Cases P.812 considered similar circumstances and directed to create an encadre post of Public Relations Assistant with effect from 1982 of the main stream in the scale cadre and ^{to} considered the applicant for appointment against the same in accordance with the rules. We feel this decision also does not come to the help of the applicant in any manner in view of the latest decision of the Supreme Court.

The applicant relied on the decision of the Principal Bench of this Tribunal in OA No. 2009/92 (MM Mathew V. Union of India and another, decided on 22nd May, 1995. In the said case the Principal Bench considered the circumstances similar to one available in the present case and disposed of the OA with the direction to the respondents in the OA to consider the case of the applicant either by framing certain rules providing promotion to the higher post from the grade of SSO or to amend the rules suitably if there is any ambiguity regarding the interpretation of existing rules of inducting the SSO in the same grade taking them on transfer to the unfilled 2/3rd vacancies as is done in the case of I.P.S. Officers.

Though we have got every sympathy to the applicant we cannot issue any directions to the Respondents -the Academy as prayed for in the OA. Since the applicant is holding an isolated post and there is no promotional avenue to the post of Assistant Director (Scientific Aids), we direct the academy to consider the representations of the applicant sympathetically and come to an early decision as the applicant is due to retire from service in December, 1997.

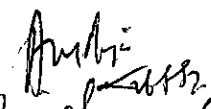
With the above direction the OA is disposed of. No order as to costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)


(H. RAJENDRA PRASAD)
MEMBER (ADMN.)
21 Aug 97

21.8.97

Date: 21.8.97


Deputy Registrar (D Co.)

KSM

O.A.467/95

To

1. The Secretary, Ministry of Home Affairs,
Govt.of India, North Block,
New Delhi-1.
2. The Secretary, Dept.of Personnel and Training,
Min.of Personnel, Public Grievances and
Pensions, Govt.of India, New Delhi.
3. The Director, S.V.P.National Police Academy,
Shivrampally, Hyderabad-52.
4. The Secretary, Ministry of Finance, Govt.of India,
New Delhi.
5. One copy to Mr.S.Satyan Reddy, Advocate, CAT.Hyd.
6. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
7. One copy to MBSJP.M.(J) CAT.Hyd.
8. One spare copy.
9. One copy to D.R.(A) CAT.Hyd..

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11/9/97

I Court.

TYPED BY:

CHECKED BY:

COMPARED BY:

APPROVED BY:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE.
VICE CHIEF MAN

And

THE HON'BLE MR. H. RAJENDRA PRASAD :M(A)

The Hon'ble Mr. B. S. Jaiprakash :M(D).

DATED:- 21/8/97

~~ORDER~~/JUDGMENT.

M.A.,/RA.,/C-A.No..

in

O.A.No.

467/957

T.A.No.

(W.P.

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Admitted and Interim directions issued.

Allowed

Disposed of with Directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected

No.order as to costs

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

ब्रेषण/DESPATCH

29 AUG 1997

हैदराबाद ब्याचपीठ
HYDERABAD BENCH