

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 01st September, 2008

ORIGINATION APPLICATION NO. 564/2005

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

Anil Kumar son of Shri S.P. Singh aged about 48 years, presently posted as Assistant Director, STC, I.G. Stadium, Alwar (Rajasthan). Resident of 4/35, Kala Kua, Housing Board, Alwar.

.....APPLICANT

(By Advocate: Mr. P.V. Calla)

VERSUS

1. The Sports Authority of India through its Director General, Jawahar Lal Nehru Stadium, Lodi Road Complex, New Delhi.
2. The Executive Director (Personnel & Admn.), J.N. Stadium, Lodi Road Complex, New Delhi.
3. The Regional Director, Sports Authority of India, NSWC, Sector 15, Gandhi Nagar (Gujrat).
4. Shri Pawan Kumar Mattu son of Shri Kartar Ram Mattu, resident of 2104/3, Sector-45C, Chandigarh. Presently serving as Office Superintendent, Sports Authority of India, NSGC, Sector-42, Hockey Stadium, Chandigarh.

.....RESPONDENTS

(By Advocate: Mr. T.P. Sharma)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

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- "(i) quashed and set aside the impugned office order No. 190/2001 dated 13.8.2001 in so far as it seeks to restrict the grant of benefits of pay scale of the post of Assistant Director in the pay scale of Rs.8000-13500 only w.e.f. the dates of the applicant's resuming the charge as Assistant

Director even though the said promotion has been granted notionally w.e.f. 20.2.1992.

- (ii) quash and set aside the impugned office order No. 217/2000 dated 24.8.2001 modifying the above order dated 190/2001 dated 13.8.2001 and depriving the applicant of his promotion w.e.f. 20.2.1992.
- (iii) quashed and set aside the impugned office order No. 100/2005 dated 23/27.6.2005 passed by the respondent no. 1 cancelling the promotion granted to the applicant to the post of Assistant Director vide office order No. 190/2001 dated 13.8.2001 and treating the applicant's aforesaid promotion to the post of Assistant Director as ad hoc promotion w.e.f. the date he has assumed the charge of Assistant Director till further orders; and
- (iv) the impugned order dated 3.11.2005 annexure A/1 reverting the applicant from the post of Assistant Director to the post of Office Superintendent may kindly be quashed and set aside.
- (v) Any other relief to which the applicant is found entitled, in the facts and circumstances of the present case, may also be granted in favour of the applicant.
- (vi) The Original Application may kindly be allowed with costs."

2. Briefly stated, the case of the applicant is that in OA NO. 495/95 Jodhpur Bench of the Tribunal vide its judgement dated 13.08.1999 has quashed the order dated 06.06.1995 whereby Shri S.K. Mehta, who was junior to the applicant, was promoted on the post of Assistant Director in SAI and the respondents were directed to finalize the seniority of Assistant showing Shri S.K. Mehta having been appointed on 01.04.1988. In order to implement this judgement, the respondents constituted 3 Members Committee to look into the grievances of the employees. For that purpose, learned counsel for the applicant has drawn our attention to Annexure A/15 which is the report of the Committee set up by the Director General SAI vide order dated 19.07.2000 for examining the grievances of the staff. As per the findings given by the Committee, the applicant was recommended for promotion as Assistant Director. The said recommendation of the committee was accepted by the respondents as can be seen from order dated 13.08.2001 (Annexure A/3) and the applicant as well as other persons were approved for promotion as per CAT Jodhpur Bench's judgement dated 13.8.1999 in OA No. 495/1995. They were

also given notional seniority in the grade of Assistant Director w.e.f. 20.02.1992. However, the said order was cancelled vide order dated 27.06.2005 (Annexure A/1) on the basis of the judgement rendered by the Chandigarh Bench of the Tribunal in OA No. 126/CH/2003 decided on 10.01.2005. It may be stated here that impugned order dated 27.06.2005 (Annexure A/1) was passed on the premises that the Review DPC held pursuant to judgement rendered by the Jodhpur Bench of the Tribunal has not been correctly held so far the case of Shri P.K. Mattu, respondent no. 4, was concerned. It is an admitted case between the parties that the judgement rendered by the Chandigarh Bench of the Tribunal has been challenged before the Hon'ble Punjab & Haryana High Court and the matter is still pending. It may also be stated here that validity of the judgement of the Jodhpur Bench of the Tribunal has also been upheld by the Hon'ble Rajasthan High Court in Writ Petition No. 3379/1999 decided on 19.07.2005. The grievance of the applicant in this case is that once the judgement of the CAT Jodhpur Bench has been upheld subsequently by the Hon'ble High Court of Rajasthan, it was not legally permissible for the respondents to act upon the judgement of the Chandigarh Bench of the Tribunal whereby the CAT Chandigarh Bench has given a direction contrary to the direction given by the Jodhpur Bench of the Tribunal. Now the respondents instead of reviewing the order in the light of the decision rendered by the Hon'ble Rajasthan High Court have proceeded on the basis of the judgement rendered by the CAT, Chandigarh Bench and have thus passed the impugned order whereby the applicant and some other persons have been reverted from the post of Assistant Director vide order dated 03.11.2005 (Annexure A/2). It is these orders which have been challenged before this Tribunal.

3 When the matter was listed before this Bench on 06.12.2005, this Tribunal has granted stay regarding reversion of the applicant thereby holding that the action of the respondents is wholly illegal on

the face of judgement rendered by the CAT Jodhpur Bench, which decision has been affirmed by the Hon'ble High Court of Rajasthan.

4. Notice of this application was given to the respondents. The respondents have filed their reply thereby opposing the claim of the applicant. They have justified their action in compliance of the decision rendered by the Chandigarh Bench of the Tribunal in OA No. 126/CH/2003, Pawan Kumar Mattu.

5. We have heard the learned counsel for the parties. We are of the view that once the judgement has been rendered by the Jodhpur Bench of the Tribunal, the validity of which has been affirmed by the Hon'ble Rajasthan High Court, it was not permissible for the respondents to revert the applicant vide Annexure A/2 and canceling these order of promotion vide Annexure A/1. Once the judgement rendered by the Jodhpur Bench was approved & affirmed by the Hon'ble High Court of Rajasthan, the respondent department should have given importance to the decision rendered by the Jodhpur Bench ^{as the} then following the decision of Chandigarh Bench. Be that as it may, since we are of the view that reversion order dated 03.11.2005 (Annexure A/2) has been stayed by the different Benches of the Tribunal and further that the said order was also the subject matter in OA No. 1066/HR/2005 decided on 25.07.2008 before the Chandigarh Bench of the Tribunal and Chandigarh Bench has also taken the view in conformity with the judgement rendered by the Jodhpur Bench in the case of R.S. Rathore vs. Union of India & Others, thus we are of the view that the impugned order of the applicant dated 03.11.2005 is required to be set aside, which is accordingly set aside. The respondents shall proceed further in the matter in the light of the judgement rendered by the Chandigarh Bench of the Tribunal in the case of Urmilla Sharma (OA No. 1066/HR/2005 decided on 25.07.2008). At this stage, it will be useful to quote the following finding of the Chandigarh Bench of the Tribunal, which thus reads as under:-

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"The applicant has mainly challenged the impugned order dated 3.11.2005 (A-17), whereby she, alongwith 10 others, has been reverted to the post of Office Superintendent from that of Assistant Director. This order is stated to have been passed in compliance with the order of this Tribunal in OA 126/CH/2003 in the case of P.K. Mattu. Before proceeding further, it would be relevant to reproduce below the following observations made by this Bench in its order in OA 126 ibid:

"Without going into the details, one can say on the bare reading of proceedings of DPC held on 13.8.2001 and reading of order at Annexure A-28 as modified by Annexure A-30 that the proceedings in no manner can be called a review DPC of proceedings held on 24th January, 1992 or of 1995. It is apparent that it is a fresh DPC in which private respondents have been considered as office Superintendent as in August 2001. A chart attached with the DPC proceedings indicates that the DPC has taken into consideration not only the personal observation as in the month of August 2001, but their ACRs upto the year 1998-99. It is an added fact to conclude that this was a fresh DPC rather than a meeting held to review the proceedings of earlier DPC. We also declare that respondents have wrongly interpreted the judgement of the learned Jodhpur Bench of CAT while holding the proceedings of DPC in August, 2001. Review DPC generally relates to the point of time as it existed on the date the earlier DPC was held and the record relevant prior to that only could be taken into consideration. Negatively put, once respondents were considering the appointees of September, 1992 for their promotion to the post of Assistant Director as well, they were duty bound to consider a roster point for SC and if that was so available which possibly should have been they could not ignore the applicant for being considered for such promotion as per his seniority and against such reserved point. We need not go into other questions raised by the parties. Finding that respondents have held a fresh DPC as is clear from reading of the proceedings produced before us from the original file of the respondents, we declare the same to be illegal as applicant has been wrongly ignored from consideration of his promotion."

Here, it would also be relevant to reproduce the directions given by the Jodhpur Bench of the CAT in R.S. Rathore's case (supra):-

- (i) The impugned order dated 6.6.95 (Annexure A/1) is hereby quashed.
- (ii) The respondents should finalise the seniority list of the Assistant and Shri S.K. Mehta, respondent

no. 4 should be shown as having appointed on the post of Assistant with effect from 1.4.88. This would imply that the applicant who was appointed on the post of Assistant on 15.4.87 would be senior to the respondent NO. 4, Shri S.K. Mehta.

- (iii) The respondents should convene review DPC for the post of Office Superintendent and Assistant Director and consider the candidature of all the three persons namely, the applicant, S/Shri R.R. Bharti and S.K. Mehta (respondent no. 4) for promotion to the post of Office Superintendent and the Assistant Director respectively as per their seniority fixed in terms of our present order.
- (iv) The applicant is awarded a cost of Rs.2000."

Reading of the above directions given by the Jodhpur Bench make it manifestly clear that the respondents were directed to first redraw the seniority of Assistants, wherein the applicant Rajinder Singh Rathore was to be shown senior to Shri Mehta who had been promoted as Asstt. Director vide order dated 6.6.95. Thereafter, Review DPC was to be convened to consider cases for promotion to the post of Office Supdt. and Asstt. Director and to consider the cases of Shri Rathore, R.R. Bharti and Sh. Mehta.

However, vide order dated 13.8.2001, instead of strictly complying with the directions as above, what the respondents did was that they considered ACRs of the officials upto 1998-99 and held a fresh DPC. Apparently, this was not the direction given by Jodhpur Bench and it was in this context that the Bench had observed in OA 126 Ibid that the respondents have misinterpreted the judgment of CAT Jodhpur Bench while holding the DPC in August 2001 and that Review DPC relates to a point of time when the earlier DPC was held and the relevant record prior to that only could be considered. But, as pointed out above, the DPC held in August, 2001 had considered the relevant records upto 1998-99. Since it was a fresh DPC and case of Mr. Pawan Kumar Mattu, a SC category candidate, was not considered, and also the fact that the DPC held in August 2001, termed as Review DPC, was not as per direction of the Jodhpur Bench, this Bench of the Tribunal had quashed the promotion of respondents 4 to 13 including the applicants herein. However, while doing so, it was also mentioned that since one person has to go other may be allowed to continue till further orders are passed. Till date, fresh orders have not been passed by the respondents and thus the applicants should not have been reverted. It was also informed that P.K. Mattu has been promoted.

Another controversy raised in this OA is about the number of posts of Assistant Director. The case of the applicant is that as

per report of SIU, the required strength should be $55+70 = 125$ as against the earlier strength of 122. The applicant has specifically pointed out the recommendation of the SIU that where the number of inmates exceeds 45, there should be a post of Assistant Director and where the number of inmates is less than 45, senior coach may be given the charge to look after the Centre. According to her, there are 70 such Centres, where the number of inmates is more than 45 and thus there is need of 70 more posts.

Respondents 1 to 3 have filed an additional affidavit, wherein it is stated that the report of the SIU was accepted by the Governing body of SAI in its 26th meeting held on 16.10.1988 and that thereafter the Govt. of India has not sanctioned any post beyond the restricted figure of 55 laid down by the said Staff Inspection Union report. In this connection, the Union of India in its reply has stated that the SAI is an autonomous body and it governed by rules and instructions by GOI. Nevertheless, the governing body of SAI is competent to assess its own requirement as regards the staff strength in various cadres. It has been further stated that though creation of posts is banned in GOI. However, where it is absolutely essential and justified proposals submitted by the cadre authorities will be considered and referred to Ministry of Finance for relaxation and that in the case of Asstt. Director, no such proposal has been received from the governing body of SAI.

It is thus apparent that the SAI has not taken steps to identify the Centres where the number of inmates is more than 45 and need the post of Asstt. Director as per report of SIU and no proposal for sanction of additional posts based on SIU has been forwarded to the Union of India. We hope and expect that the SAI will now make this exercise and send a proposal to UOI for sanction of additional posts of Asstt. Director, if need be.

From the additional affidavit dated 31.7.2006, filed by the respondents, it is notified that there are still two vacant posts of Asstt. Director available with the respondents. In this connection para 4 of the affidavit is reproduced below:

"4. That as stated in the earlier affidavit dated 09.05.2006, the limited posts which can exist in the cadre of Assistant Director after implementation of SIU report is restricted to 55. On account of the DPC held by the SAI in February, 2006, 6 Assistant Directors stand promoted to the post of Deputy Directors and thus by adjusting the surplus four Assistant Directors working beyond the limit of 55 imposed by the SIU Report there exist 2 posts in the cadre of Assistant Director technically. However, at least 5 persons namely Ms. Urmilla Sharma, Sh. Dalbara Singh, Sh. Pritpal Singh, Sh. Anil Kumar and Sh. R.S. Rathore are

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continuing as Assistant Directors despite having been reverted, on account of status quo/ Restrain orders granted by various Hon'ble Courts including two by this Hon'ble Tribunal. Thus in view of this factual position the SI is not in a position to hold a DPC to even fill up these 2 available posts in the cadre of Assistant Director."

Having regard to the facts and circumstances of this case, this OA is disposed of with the following directions:-

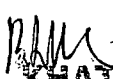
- (i) The respondents are directed to consider and pass orders in accordance with the court orders as passed by the Jodhpur Bench (supra) by holding Review DPC and considering the candidature of three persons namely, R.S. Rathore, R.R. Bharti and S.K. Mehta for the posts of Office Supdt. And Asstt. Director as per their seniority, if the same is not already done.
- (ii) The respondents may also examine if Mr. P.K. Mattu has already been promoted in pursuance of directions passed by Chandigarh Bench in OA 126/CH/2003 decided on 19.7.2005 and whether the cases of the applicants were also consider in view of the direction given that only one junior most person has to go out, and if not, they are directed to implement the said order of the Chandigarh Bench in all respects. After examining the aforesaid facts, the respondents are directed to consider the regular promotion of the applicants according to their seniority as per Rules and also considering their cases for making the ad hoc period as regular as the applicants have been working uninterruptedly and continuously even after passing of orders by this Bench in OA 126 ibid.
- (iii) The above directions may be complied with within a period of 3 months from the date of receipt of a copy of this order.
- (iv) However, it is made clear that action taken pursuant to orders of this Court in the present Original Applications would be subject to outcome of the cases pending in higher courts, particularly where identical controversies are involved.

Both the OAs stand disposed of in the above terms. No costs."

6. Thus in the light of the findings as given above, which will also be applicable in the case of the applicant of this OA, the present OA is allowed. The respondents are directed to consider the case of the applicant in the light of the directions given by the Chandigarh Bench,

as reproduced above. It is, however, clarified that since we are deciding this OA on the basis of judgement of Chandigarh Bench in the case of Urmilla Sharma as such we are not going into the larger issue whether respondent no. 4 was eligible for promotion. The respondents may examine this issue independently.

7. With these observations, the OA is disposed of with no order as to costs.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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