

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. No. 945/2015

Reserved on : 02.05.2016

Pronounced on : 17.05.2016

**HON'BLE MR. P.K. BASU, MEMBER (A)
HON'BLE DR. BRAHM AVTAR AGRAWAL, MEMBER (J)**

HC Sumer Singh, No. 7028 DAP,
S/o Late Shri Ranjit Singh,
Aged about 48 years,
Presenting working in 3rd Bn. DAP
Vikas Puri
R/o House No.RZ-269,
Durga Vihar, Phase I,
Near Arya Convent Public School,
Najafgarh, New Delhi.

.. Applicant

(By Advocate: Shri Nilansh Gaur)

Versus

1. Govt. of NCT of Delhi,
Through its Chief Secretary,
Delhi Secretariat,
I.P. Estate,
New Delhi-110002.

2. Commissioner of Police,
Delhi Police,
Police Head Quarters,
I.P. Estate,
New Delhi-110002.

.. Respondents

(By Advocate: Mrs. Sumedha Sharma)

ORDER**By Hon'ble Mr. P.K. Basu**

The applicant was appointed as a Constable in Border Security Force (BSF) in the year 1984 initially and confirmed in 1988 against the same post. In 1991, he passed PPC List 'A' test, which is required to be promoted to the next higher post of Lance Naik, and was promoted as Lance Naik on 23.12.1991.

2. In July, 1992, the applicant came over on deputation to Delhi Police against the post of Constable, which carried a lower pay scale than that of Lance Naik in BSF, initially for a period of one year, which was extended from time to time. On 05.08.1996, he was permanently absorbed as Constable (Executive) in Delhi Police w.e.f. 01.07.1996.

3. In July, 1997, BSF directed him to report in List 'B' cadre test which was for the next higher post of Naik in BSF. However, since by that time, he had been absorbed in Delhi Police, he did not participate. In November 2007, the applicant was promoted as Head Constable, i.e. the next higher post above Constable by Delhi Police in promotion list 'C' and confirmed on the same post in November, 2009.

4. On 31.12.2014, the applicant made a representation for correct fixation of seniority as Head Constable at par with List 'A' in

BSF w.e.f. 23.12.1991, i.e. the date on which he got promoted as Lance Naik in BSF. The respondents rejected his prayer vide order dated 20.01.2015 (Annexure A-1) on the following grounds:

(i) He did not undergo promotion Cadre LNK to NK in BSF at his own unwillingness dated 28.02.1994 which was submitted by him to his parent department i.e. 93 BN/BSF/PO Jalalabad, Ferozepur (Punjab) and the same was forwarded to Delhi Police by his parent department vide their letter No. 3048/Estt./93/94/5104/HQ 93 BN/BSF dated 23.04.1994.

(ii) He has neither appeared in promotion list 'A' test conducted by Delhi Police nor declared qualified to bring his name on promotion list 'A' (Exe) in accordance with Rule 12 (i)(a) of the Delhi Police (Promotion & Confirmation) Rules, 1980.

(iii) He was eligible for promotion list 'C' (Exe) in the year 2007, thus his name was considered for promotion list 'C' (Exe) w.e.f. 02.11.2007 by the Departmental Promotion Committee (DPC) on the basis of seniority-cum-suitability based on his service record and subsequently promoted to officiate as Head Constable (Exe) vide Delhi Police Notification Nos. 27003/P.Br. AC-III/PHQ & 27065/P.Br.A-III/PHQ both dated 06/11/2007.

5. Being aggrieved by this order, the applicant has filed this O.A. seeking the following specific prayer:

“8.1 Quash and set aside the impugned order dated 20.01.2015;

- 8.2 Direct the respondents to consider the applicant as Constable in List "B" and further be accorded ante-dated promotion as Head Constable w.e.f. 1996 with due seniority and further consequential benefits."

6. The grounds for seeking the claim by the applicant are as follows:

(a) that he did not undergo promotion list 'B' test at his own willingness is not an impediment for his consideration. He has sought equivalence of PPO List 'A' test with that of List 'A' test in Delhi Police (Head Constable), but the respondents have not considered his case.

(b) It is argued that promotion list 'A' conducted in BSF which resulted in his promotion as Lance Naik from Constable is at para materia with promotion list 'A' test under Rule 12 of Delhi Police Rules. The applicant has qualified all the standards as prescribed under Rule 12 of Promotion Rules in Delhi Police and has also undergone three months' training which places him equivalent to a Constable in List 'B', who has qualified lower training course. It is, therefore, argued that right after permanent absorption, the applicant should have been offered promotion List 'B' and promoted as Head Constable, but they have wrongly considered him in promotion list 'C' for promotion as Head Constable, whereas he was entitled for such promotion right in the year 1996.

(c) Since the applicant was Lance Naik having passed List 'A' test, he should have been absorbed as Constable and immediately placed in List 'B' under Rule 13 of Promotion Rules.

(d) That the applicant has been doubly jeopardized in the matter. On account of his permanent absorption, he has not only been denied promotion as Head Constable in BSF but also denied promotion as Head Constable in Delhi Police.

7. The respondents in their reply have stated that neither had the applicant appeared in promotion list 'A' test conducted by Delhi Police nor he was declared qualified to bring his name in promotion list 'A' (Exe) in accordance with Rule 12 (1) of the Delhi Police (Promotion & Confirmation) (Amendment) Rules, 2015. However, he was eligible for promotion list 'C' (Exe) in the year 2007 and, hence, his name was considered under promotion list 'C' w.e.f. 02.11.2007 by the DPC and he was promoted to officiate as Head Constable (Exe) w.e.f. 02.11.2007.

8. Heard the learned counsel for the parties and perused the pleadings.

9. The applicant was Lance Naik after promotion in BSF. In 1992, on his own willingness, he came and joined Delhi Police on a lower level, that of Constable and got absorbed in Delhi Police. Neither at the time of his joining nor for any reasonable period thereafter, he raised the question of his being absorbed against the

post of Head Constable in Delhi Police as he had already been promoted as Lance Naik in the BSF. Why he joined against the post of Constable in Delhi Police, which was lower in status and pay as compared to Lance Naik in BSF is not explained by the applicant. We may, however, guess the circumstances.

10. The BSF is an elite force of this country which protects the border. They have to work in extremely harsh conditions across the international border. They have to leave their family behind while they are posted at the border. They are always under the threat of attack from terrorists and enemies as well as face harsh weather from +50°C to -50°C, and they sacrifice their lives to ensure that the rest of us can enjoy peace and freedom in this democracy. They have to pay a very heavy cost. We do not wish to undermine the contribution of Delhi Police as they also do a commendable job, but it can be fairly said that the job of a BSF personnel is much more hazardous and life threatening. Moreover, in Delhi Police one can always stay in India's Capital, i.e. Delhi, with all its advantages. So, the reason is not far to see. However, having joined and getting absorbed in Delhi Police and not raising this issue for so many years, the first issue that arises is whether this O.A. is at all maintainable on the ground of limitation. The learned counsel for the applicant could not explain why this delay.

11. Therefore, we are of the opinion that this O.A. is not maintainable on the ground of limitation under Section 21 of the Administrative Tribunals Act, 1985. Even on the question of merits, we do not find how the applicant claims that he has a right to be considered as a Head Constable from the date he joined in Delhi Police, just because he was Lance Naik in BSF at that point of time. As explained above, he willingly joined on a lower post of Constable. The applicant has not produced any document to show that there ever was any promise at that point of time that the respondents would consider absorbing him as a Head Constable. Therefore, no right accrues to him to claim that now. The O.A., therefore, does not succeed and is dismissed. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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