

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.2667/2012

MA No.2409/2012

Order Reserved on :30.09.2015

Order Pronounced on:21.12.2015

Hon'ble Mr. Justice B.P.Katakey, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Bhuwan Chandra,
ACIO-II/G
R/o 98K, DIZ Area Sec-4
Gole Market,
New Delhi.

.... Applicant

(By Advocate:Shri Padma Kumar S)

Versus

1. Union of India, through
Secretary, Ministry of Home Affairs
Govt. of India,
North Block, New Delhi-110001
2. Director
Intelligence Bureau
Ministry of Home Affairs
Govt. of India, 35, New Complex
S.P.Marg, New Delhi-110001
3. Director General
HQ CRPF, Block-I
CGO Complex, Lodhi Road,
New Delhi.
4. Shri Bachan Singh, PIS No.118917
D.O. Aptt.5/11/1983

ACIO-II/G, through
I.B., (MHA)Govt. of India,
35,S.P.Marg, New Delhi.

5. Shri Pratap Singh, PIS No.102385
D.O. Aptt.8/9/1983
ACIO-II/G, through
I.B., (MHA)Govt. of India,
35,S.P.Marg, New Delhi.
6. Shri Subhash Chand Sain, PIS No.124467
D.O. Aptt. 13/12/1984
ACIO-II/G, through
I.B., (MHA)Govt. of India,
35,S.P.Marg, New Delhi.
7. Shri Ramesh Purohit, PIS No.123185
D.O. Aptt. 15/12/1984
ACIO-II/G, through
I.B., (MHA)Govt. of India,
35,S.P.Marg, New Delhi.
8. Shri Sidh Nath, PIS No.119951
D.O. Aptt. 14/5/1985
ACIO-II/G, through
I.B., (MHA)Govt. of India,
35,S.P.Marg, New Delhi.
9. Shri M.L.Sharmah, PIS No.119906
D.O. Aptt.23/01/1985
ACIO-II/G, through
I.B., (MHA)Govt. of India,
35,S.P.Marg, New Delhi.
10. Shri Ravinder Singh, PIS No.120541
D.O. Aptt.4 /4/1986
ACIO-II/G, through
I.B., (MHA)Govt. of India,
35,S.P.Marg, New Delhi.
- 11 Shri Binod Kumar, PIS No.120382
D.O. Aptt. 25/7/1986
ACIO-II/G, through
I.B., (MHA)Govt. of India,
35,S.P.Marg, New Delhi.

12. Shri Mahipal Singh, PIS No.103785
D.O. Aptt. 3/6/1987
JIO-I/G, through
I.B., (MHA)Govt. of India,
35,S.P.Marg, New Delhi.
13. Shri Manoj Rawat, PIS No.121369
D.O. Aptt.23/06/1987
JIO-I/G, through
I.B., (MHA)Govt. of India,
35,S.P.Marg, New Delhi.
14. Shri H.C.Gogai, PIS No.121668
D.O. Aptt. 12/9/1988
ACIO-II/G, through
I.B., (MHA)Govt. of India,
35,S.P.Marg, New Delhi.
15. Shri R.Suryavanshi, PIS No.121573
D.O. Aptt. 10/6/1988
ACIO-II/G, through
I.B., (MHA)Govt. of India,
35,S.P.Marg, New Delhi.
16. Shri Ved Kumar, PIS No.122316
D.O. Aptt.24/5/1989
ACIO-II/G, through
I.B., (MHA)Govt. of India,
35,S.P.Marg, New Delhi.
17. Shri Rameshwar Dayal, PIS No.118917
D.O. Aptt. 3/3/1989
JIO-I/G, through
I.B., (MHA)Govt. of India,
35,S.P.Marg,New Delhi.

... Respondents

(By Advocate: Shri M.K.Bhardwaj)

ORDER

By Hon'ble Shir K.N.Shrivastava, M(A)

This OA has been filed by the applicant under Section 19 of Administrative Tribunal Act, 1985. The specific relief(s) sought in the OA read as under:-

- "(a) *Quash an set aside impugned orders dated Nil (Annexure A-1) and impugned order dated 14.5.2012 (Annexure A-2)*
- (b) *Direct the respondents to consider the case of the applicant as in the case of all similarly situated both in terms of the law laid down in SI Roop Lal and grant seniority to the applicant from 25.5.1983 and also in terms of consideration given to other employees for promotion to the post of JIO II before absorption as per the procedure followed in IB.*
- (c) *Direct the respondents to hold a review DPC to the grade of JIO II based on the revised seniority as assigned above.*
- (d) *Grant the applicant consequential benefits from the above based on the Review DPC results.*
- (e) *Any other relief which this Hon'ble Tribunal may be pleased to pass under the facts and circumstances of the case."*

2. The brief facts of the case are as under:-

- (a) On 25.5.1983 the applicant joined the CRPF as a Constable.

(b) On 30.06.1989 he was deputed to the Intelligence Bureau (IB) to a analogous post of security guard.

(c) The applicant was absorbed in IB on '*transfer of service basis*' vide IB order dated 24.11.1998,

(d) Vide IB order dated 17.12.1994 he was assigned seniority at SL. No.1617(A) in the grade of JIO-II.

(e) On 20.8.2004 he was promoted as JIO-I

(f) Vide IB order dated 9.9.2004, his seniority in the grade of JIO-II was re-assigned at Sl.No.2017 (C) stating that his date of absorption in IB has been changed from 30.06.1994 to 24.07.1995. Consequent upon this re-assigned in the seniority, his promotion to the grade of JIO-I vide order dated 20.8.2004 was withdrawn.

3. Aggrieved by the order dated 09.09.2004(supra) the applicant approached this Tribunal in O.A.No.1549/2005 which was disposed of on 25.4.2007 with following observation and direction:

"9. In the light of above, we have no doubt in our mind that by relegation of seniority, which has been settled and cancellation of promotion even under the guise of correction of mistake and also civil consequences have been ensued upon the applicant, he has a right to be heard and the action of the respondents whereby pre-decisional hearing has been done, is a deprivation of reasonable opportunity to the applicant, which, in

turn, is an infraction to the principles of natural justice.

10. On the above score alone, OA is partly allowed. Impugned order is set aside. Respondents are directed to restore seniority to the applicant as well as his promotion with all consequential benefits. However, respondents are not precluded, if so advised, to proceed in accordance with law. No costs."

4. Pursuant to the order of this Tribunal dated 25.04.2007, the respondents vide memorandum dated 14.11.2008 called upon the applicant to explain as to why the promotion granted to him as JIO-I vide order dated 20.08.2004 should not be withdrawn. Considering the reply of the applicant vide his letter dated 10.12.2008, the respondents passed the order dated 13.05.2009 which reads as under:

"11. Now, it has been decide that the name of Shri Bhuwan Chandra may be deleted from the list of officers recommended for promotion to the rank of JIO-I/Exe. Vide IB Hqrs memo No.15/Prom(G)/04(1)-2411-14 dated 19.08.2004 which was based on his seniority pension at Sen No.1617/a.

12. Therefore, the name of Shri Bhuwan Chandra stands restored at serial No.227 in the promotion panel issued vide IB Hqrs. Memo No.15/Prom(G)/2005(1)-890 dated 04.04.2005. The name of Shri Bhuwan Chandra figured at Serial No.227 of panel issued under endorsement No.15/Prom(G)/2005(1)-888-92 dated 04.04.05 on the basis of the recommendation of DPC 2005-

06 by virtue of his position at serial No.2017(c) in the seniority list of JIO-II/Exe. Issue vide IB Hqrs memo 2/Sen(CC)/95(18) dated 27-11-98."

5. Against the order of the respondents dated 13.5.2009 (supra), the applicant approached this Tribunal in O.A.No.840/2010 which was decided on 25.08.2011. The operative part of the said order reads as under:

"... the contention of the applicant is that he along with 12 others had approached this Tribunal in OA No.2963/1993. They have also been absorbed immediately after completion of five years of deputation in I.B. with retrospective effect while they were also similarly working as JIO-II on promotion during their deputation as Security Assistant but their seniority has been reckoned from the respective dates of their absorption themselves and not from the date of actual promotion as JIO-II as in the case of applicant alone. The learned counsel has, therefore, submitted that the applicant was discriminated in the matter of granting him seniority in the grade of JIO-II and the consequential promotions in the higher grade.

The applicant may file an additional affidavit within two weeks explaining the above position with an advance copy to the learned counsel for the respondents. Respondents shall respond to the same within two weeks thereafter."

6. Thereafter, the applicant found that all the deputationists except him were considered for the post of JIO-II on completion of just 8 years service including the service rendered by them in their parent cadre

whereas in the case of the applicant such a period considered was 12 years. Placing reliance on the ratio laid down by the Hon'ble Apex Court in the case of **SI Roop Lal** and in the case of **A.K.Choudhary & Ors.**, the applicant approached this Tribunal in O.A. No.1696/2012 which was disposed of by the Tribunal on 11.05.2012 with the following directions:-

"... We, therefore, dispose of this O.A. with a direction to the respondents to take a decision on the applicant's aforesaid representation dated 03.02.2012 as expeditiously as expeditiously as possible but in any case within a period of two months from the date of receipt of a copy of this order under intimation to him. In case the applicant is still aggrieved by the decision of the respondents, he will be at liberty to approach this Tribunal again through appropriate proceedings, if so advised."

7. Pursuant to the orders of this Tribunal dated 11.05.2012 passed in OA-1596/2012, the respondents have issued the impugned memorandum No.15/Prom(G)/12(1)-660-61 dated 14.05.2012 and the same is reproduced below:-

"The request of Shri Bhuwan Chandra dated 03-02-2012 for re-fixation of his seniority and review of promotion w.r.t. Shri Krishan Kumar and other 6 officers has been examined thoroughly.

2. No similarity has been found in the promotion cases of Shri Bhuwan Chandra and other 6 officers

as they were senior to him in joining Central Government service as well as in IB. Also, they were absorbed in the officiating post of JIO-II/Exe before him. As such, the request of Shri Bhuwan Chandra can not be acceded to for notional promotion w.r.t. them.

3. Further, the AD/CC, dealing with fixation of seniority, has informed that the seniority of Shri Bhuwan Chandra was fixed correctly from the date of his absorption in the higher grade of JIO-II/Exe. In light of the instructions contained in DoP&T OM dated 03-10-89. Accordingly, he was not extended the benefits of past service rendered in the lower scale of Constable in CRPF. Any further, representation in the matter of seniority may be sent to AD/CC.

4. Shri Bhuwan Chandra, JIO-II/Exe may please be apprised of the position suitably."

8. Vide impugned memorandum No.15/Prom(G)/2004(1)-796 dated Nil the decision taken by respondents vide memorandum dated 14.5.2012(supra) has been communicated to the applicant. Aggrieved by these two memoranda, the instant OA has been filed by the applicant.

9. Pursuant to the notice issued, respondents entered appearance and filed their reply. Applicant also filed the rejoinder. As the pleadings were complete, the case was taken up for final hearing on 30.09.2015. Shri Padma Kumar S., learned counsel for the applicant and Shri M.K. Bhardwaj learned counsel for the respondents argued the case.

10. Learned counsel for the applicant beside highlighting the issue raised by the applicant in the OA and in the rejoinder, submitted that in terms of the ratio laid down by Hon'ble Apex Court in the cases of **SI Roop Lal** and **A.K.Choudhary & Ors.**, the applicant is entitled to his promotion in the respondent - organization by way of taking into account the past services rendered by him in his parent organization i.e. CRPF. It was also contended that if the said ratio is taken into account, there he is entitled to the same benefits that have been granted by the respondents to similarly placed employees viz., Krishan Kumar, Krishan Lal, Shakruddin Khan, Vikram Singh etc. It was also submitted that all these employees have been promoted as JIO-II on completion of 8 years of service whereas the said promotion has been given to the applicant on completion of 12 years of service. Hence, there is discrimination against the applicant. Learned counsel further submitted that wrongly the respondents have modified his seniority vide order dated 09.09.2004 whereby his seniority in the grade of JIO-II was pushed down from Sl. No.1617(a) to Sl. No.2017(c) and consequently, the promotion given to him as JIO-I vide order dated 20.08.2014 has been

withdrawn. Concluding his argument, learned counsel said that the applicant is entitled to the prayer made in the OA and same may be allowed.

11. Per contra, learned counsel for the respondents submitted that the applicant was admittedly absorbed in IB w.e.f. 30.06.1994 vide order dated 24.11.1998 (Annexure A-1) in the officiating rank of JIO-II/. The said absorption was modified to 24.07.1995 vide order dated 12.02.1999 (Annexure A-2). Learned counsel further drew our attention to the memorandum dated 02.11.1998 to the effect that this change has been acknowledged as well as consented to by the applicant (Annexure-3). He further stated that this change has been done in terms of the DOPT OM dated 29.05.1986 (Annexure A-4). Consequent to the change of date of absorption of the applicant, his seniority position got downwardly altered and the promotion given to him to the cadre of JIO-I w.e.f. 20.08.2004 was withdrawn. Learned counsel further submitted that the orders passed by this Tribunal in various OAs filed by the applicant from time to time, have been duly complied with. He also stated that the Hon'ble Supreme Court in the case of **SI Roop Lal** has held that ***if an employee***

has been taken on deputation on the post equivalent to that in the parent cadre, he shall, on absorption, be given seniority from the initial date of appointment in the parent cadre by counting his past service rendered in the equivalent rank. But in

the present case, the applicant was in the rank of Constable in his parent cadre and he came on deputation to IB to the analogous post of Security Assistant (SA) but was absorbed in the higher rank of JIO-II and hence, his case does not fall under the purview of the law laid down in Apex Court in the case of **SI Roop Lal**. This position has been communicated to the applicant vide impugned memo dated 14.5.2012. Concluding his arguments learned counsel for the respondents stated that the OA is devoid of substance and hence deserves to be disallowed.

12. We have considered the arguments learned counsel for both the parties and also their pleadings as well as the documents annexed thereto.

13. Admittedly, the applicant joined as a Constable in CRPF on 20.5.1983 and came on deputation to IB to the analogous post of Security Assistant (SA) on

30.06.1989. He was absorbed in IB on 30.06.1984 not in the grade of SA but in the higher grade of JIO-II. His date of higher appointment in the grade of JIO-II has been fixed as 24.7.1995 per instructions of the Govt. contained in DOPT OM dated 3.10.1989. We are not inclined to accept the contention of the learned counsel for the applicant that the applicant has been discriminated against in view of a categorical statement made by the respondents that those similarly placed employees promoted earlier to the applicant were senior to him and they were absorbed in the grade of JIO-II before his higher appointment in the said cadre w.e.f. 24.7.1995.

14. In the instant case, the applicant admittedly was absorbed not in the grade in which he was earlier working in his parent cadre. We find that he was absorbed in a higher grade of JIO-II w.e.f. 30.06.1994 vide order dated 24.11.1998 which has been later corrected to 24.07.1995 in terms of the DOPT instructions contained in their OM No.AB 14017/71/99-Estt(RR) dated 3.10.1989.

15. We are, satisfied that the change of date of absorption of the applicant in IB from 30.06.1994 to 24.07.1995 is perfectly in order and in accordance with the instructions of the DOPT contained OM dated 03.10.1989 (supra) and the consent of the applicant has been taken for it. In view of the above, we are of the view that the impugned OMs issued by the respondents do not invite any intervention by this Tribunal. As such we hold that the OA is liable for dismissal and is accordingly done so. No order as to costs.

(K.N.Shrivastava)
Member(A)

(Justice B.P.Katakey)
Member(J)

/rb/