

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.1787/2014

Order reserved on 8th December 2016

Order pronounced on 20th December 2016

Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Manohar Singh Chana (Age 71 years)
s/o late Mr. Sampuran Singh
Ex. AIO-II (Tech./IB)
B-33, Bhagwati Garden, Uttam Nagar, New Delhi - 59

....Applicant

(Applicant in person)

VERSUS

1. Union of India through the Secretary
Ministry of Home Affairs
North Block, New Delhi -1
2. The Director
Intelligence Bureau (MHA)
North Block, New Delhi-1
3. Mr. J N Sharma
Then ACIO-II
4. Mr. J R Yadav
Then ACIO-II
5. Mr. R S Luthra
Then ACIO-II and
6. Mr. S C Dhawan
Then ACIO-II

c/o The Director, Intelligence Bureau (MHA)
North Block, New Delhi - 1

..Respondents

(Mr. Rajinder Nischal, Advocate for official respondents – Nemo for private Respondents)

O R D E R

Mr. K.N. Shrivastava:

The applicant, through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, has prayed for the following specific reliefs:-

“a) Allow the present original application filed by the applicant and issue directions to the Respondents (1 & 2) for setting aside the comparison of Shri R.S. Luthra (vide Annexures A-1 & A-2) with the applicant including all consequential actions including quashing of Ann. A-3 which have caused irreparable loss & injury to the applicant i.e. issue of promotion order as per LPA judgment, correct fixation of inter-se seniority as ACIO-II along with all consequential benefits on similar lines as given to others.”

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

2.1 The applicant, an ex-service man, joined Intelligence Bureau (IB) – respondent No.2 as Junior Intelligence Officer-I (Technical) (JIO-I/Tech.) on 01.03.1968. The said Branch of the IB had two Wings, namely, Wireless Telegraphy (WT) and Technical. The applicant was placed in the WT wing. He says that his placement in the WT wing was done without his knowledge. He was called as JIO-I/Tech. (WT). Apparently, the promotional prospects in the Technical Wing were better and faster in comparison to the WT Wing.

2.2 Between the years 1992 and 1996, several officers in the Technical Wing, purported to be juniors of the applicant, were promoted to the higher position of ACIO-II/Tech. when the applicant was not considered for promotion. Being aggrieved, he filed CWP No.1429/1979 in the Hon'ble High Court of Delhi praying therein for setting aside the unilateral action of respondent No.2 of placing the applicant in the WT Wing without his consent and against his non-consideration for promotion.

2.3 The said CWP was dismissed by the Hon'ble Single Judge of the High Court on 25.04.1980. The applicant preferred LPA No.216/1980 before the Division Bench of the Hon'ble High Court. The LPA was apparently allowed

in terms of the order dated 05.11.1999; the operative part of which reads as under:-

“Accordingly, we hold that the Appellant belonged to the Technical cadre which was a part of the W/T Wing of the IB..... We would accordingly direct the IB to consider the Appellant for promotion to the post of ACIO-II (Tech) with effect from 24th December, 1974 and upon his promotion, his pay be fixed accordingly..... For the reasons mentioned above, the appeal is allowed.....”

2.4 The applicant initially went on deputation to NTPC on 28.01.1982 and later got absorption in the said organization w.e.f. 01.04.1984. In the meanwhile, the official respondents, complying with the order of the Division Bench of the High Court, filed an Application before the Division Bench on 20.01.2000, informing therein that it is not possible for them to consider the applicant for promotion to the post of ACIO-II (Tech.) in view of the fact that the ACRs of the applicant for the relevant period had already been destroyed.

2.5 Taking cognizance of the submission of the official respondents, the Division Bench of the High Court vide order dated 20.10.2000 observed as under:-

“Mr. Jayant Bhushan states that the ACRs have been destroyed. Presumption is that there must not have been any adverse entry against the petitioner. Therefore, presuming that there was no adverse entry against the petitioner as none has been brought to our notice, petitioner should be given promotion as per our order and also fix his salary as per rules.”

Pursuant to the directions contained in the order passed by the Hon’ble High Court on 20.10.2000, the official respondent No.2 promoted the applicant to the post of ACIO-II (Tech.) on *ad hoc* basis w.e.f. 24.12.1974 and subsequently regularized his promotion vide order dated

29.06.2001 giving retrospective effect from 11.05.1976 – the date when the private respondent No.5 was granted promotion (Annexure A-11 (colly.)).

2.6 The applicant wanted details regarding regularization of promotion of respondent No.5. He filed O.A. No.2112/2006 before this Tribunal praying *inter alia* for production of DPC records of respondent Nos. 3 to 6. The said O.A. was dismissed on 14.08.2007. The applicant challenged the Tribunal's order in CWP No.8676/2007 before the Hon'ble High Court, which was also dismissed on 26.03.2009. He thereafter filed SLP No.17833/2010 before the Hon'ble Supreme Court, which too was dismissed.

The applicant in this O.A. has prayed for setting aside the stand taken by the respondent No.2 to compare his case with that of respondent No.5, and has sought correct fixation of his *inter se* seniority as ACIO-II (Tech.)

4. Pursuant to the notices issued, the respondents entered appearance. However, reply was filed on behalf of respondent Nos. 1 & 2, to which a short rejoinder, followed by brief submissions, was filed on behalf of the applicant. The respondent Nos. 1 & 2 have also filed an affidavit. With the completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 08.12.2016. The arguments of the applicant, who appeared in person, and Mr. Rajinder Nischal, learned counsel for respondent Nos. 1 & 2 were briefly heard on that date. There is no representation on behalf of private respondents.

5. The applicant joined IB on 01.03.1968. His expectation was that after four years of service he should have been promoted to the grade of ACIO-II (Tech.). For the reasons, described in paragraph (2) above, his case for

promotion was finally considered by the respondents pursuant to the order of the Division Bench of the Hon'ble High Court of Delhi and he was promoted to the post of ACIO-II (Tech.) on *ad hoc* basis w.e.f. 24.12.1974 and subsequently he was regularized vide order dated 29.06.2001 from retrospective effect, i.e., 11.05.1976. The applicant has thereafter entered into prolonged litigation right up to the Hon'ble Supreme Court for unsettling the seniority, which had been turned down. The applicant in this O.A. has prayed that his case should not be compared with that of respondent No.5. In fact, surrogately, he has attempted to unsettle the decisions of this Tribunal, High Court of Delhi and the Apex Court in regard to his *inter se* seniority with respondent No.5, which cannot be allowed, as the principle of *res judicata* would operate. As such, the prayer made in the O.A. cannot be granted.

6. We may further like to state that the Hon'ble Supreme Court in **B.S. Bajwa & another v. State of Punjab & others**, JT 1998 (1) SC 57 has held that "the Courts/Tribunals should not interfere in the seniority list after long delay".

7. In the conspectus of the discussions in the foregoing paragraphs, O.A. is dismissed, as it is found to be devoid of any merit. No order as to costs.

(**K.N. Shrivastava**)
Member (A)

(**Raj Vir Sharma**)
Member (J)

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