

**Central Administrative Tribunal  
Principal Bench**

**OA No.3171/2015**

New Delhi, this the 11<sup>th</sup> day of December, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman  
Hon'ble Mr. K. N. Shrivastava, Member (A)**

Smt. Kanwaljit Deol  
wife of Shri S. B. Deol, IPS (Retd.)  
aged about 60 years,  
R/o D-1/193, Satya Marg,  
Chanakyapuri, New Delhi.

... Applicant.

(By Advocate, Shri S. N. Kaul)

Versus

1. Union of India  
Ministry of Home Affairs  
Through Home Secretary  
Government of India,  
New Delhi.

2. The Secretary General  
National Human Rights Commission  
New Delhi.

... Respondents.

(By Advocate, Ms. Kiran Ahlawat and Shri R. V. Sinha)

**: O R D E R (ORAL) :**

**Justice Permod Kohli, Chairman :**

The applicant is an IPS Officer of 1977 batch. She joined the Indian Police Service on 12.07.1977 and was allocated AGMUT cadre. He earned promotions from time to time and was approved for empanelment as DG on 30.12.2010 by the Appointments Committee

of Cabinet (ACC). It is stated that the applicant got all promotions on due dates.

2. With the approval of the ACC, as many as, 37 IPS Officers were empanelled to hold the post of DG of Police/equivalent level post in the Centre vide order dated 30.12.2010 (Annexure A-4). The applicant was at Sl. No.5 whereas one Shri P. K. Mehta was at Sl. No.31 out of the list of 37 IPS officers approved by the ACC. Shri P. K. Mehta, IPS (HY.77) was promoted as Director General and posted as Director General of Railway Protection Force vide order dated 19.05.2011. He was granted apex pay scale of Rs.80,000/- (fixed) ignoring the applicant who is admittedly senior to him.

3. One Shri R. N. Ravi, another IPS Officer of 1976 batch filed OA No.823/2012 against the grant of apex scale of Rs.80,000/- (fixed) to Shri P. K. Mehta and Shri Ajay Chadha vide orders dated 19.05.2011 and December, 2011 respectively as both these officers were junior to Shri R. N. Ravi. This Tribunal vide its order dated 10.05.2012 allowed the aforesaid OA of Shri R. N. Ravi and directed for grant of apex scale of Rs.80,000/- (fixed) to the applicant w.e.f. 19.05.2011 when Shri P. K. Mehta was granted the said scale. Another IPS Officer, Shri O. P. S. Malik of 1975 batch filed OA No.1722/2012 claiming the apex scale of Rs.80,000/- (fixed) as granted to Shri P. K. Mehta on the basis of the order passed in the case of R. N. Ravi (supra). OA

No.1722/2012 was also allowed by the Tribunal vide order dated 29.05.2012.

4. Vide MHA's order dated 22.11.2012, services of the applicant, Smt. Kanwaljit Deol, IPS (AGMUT-77) were placed at the disposal of NHRC as Director General (Investigation) on deputation in the pay scale of Rs.75,500-80,000/- from the date of assumption of charge of the post. The applicant assumed the charge of the post of DG (Investigation) in NHRC on 07.12.2012. The NHRC vide its order dated 13.12.2012 informed the MHA that the deputation of the applicant would be till the date of his superannuation on 31.10.2014. NHRC sent a proposal to MHA for granting apex scale of pay to the applicant. The MHA, however, declined the proposal and communicated the same to the NHRC vide letter dated 06.05.2014. It is stated that on refusal to grant apex pay scale from MHA, the applicant met the then Home Secretary and also submitted a representation to the MHA claiming apex scale as granted to Shri P. K. Mehta, her junior. However, the respondents have not responded to the representation of the applicant. This Application has accordingly been filed claiming the following reliefs:-

"a. Direct the respondents to grant the apex scale of pay of Rs.80000/- (fixed) to the applicant from 07.12.2012 the date on which the applicant joined NHRC as Director General (Investigation) on the basis of the principle and point of law laid down by the Principal Bench of this Hon'ble Tribunal in the matter of R. N. Ravi in OA No.823 of 2012 decided on

10.05.2012 and in the matter of OPS Malik in OA No.1722/2012 decided on 29.05.2012.

b. Direct the respondents to re-fix the pension of the applicant on the basis of the apex scale of Rs.80000/- as the applicant had retired on superannuation from the post of Director General (Investigation) NHRC on 31.10.2014.

c. Direct the respondents to give all consequential benefits to the applicant.

d. May pass any other order or direction which this Hon'ble Tribunal deem fit, proper and just in the facts and circumstances of the case.

e. Cost of the present case may be awarded in favour of the applicant."

5. Respondent No.2, i.e., NHRC in its short reply affidavit stated that the apex scale is to be granted by the MHA and thus it is for the MHA to respond to the averments made in the OA. It is also stated that the NHRC sent a detailed proposal justifying the upgradation of the post of DG (Investigation), NHRC along-with the proposal for reframing/ amendment or modification of the Recruitment Rules for the said post. It is further stated that as desired by the MHA, proposal for up-gradation of the post of DG (I), NHRC is being prepared and submitted to MHA shortly.

6. MHA in its separate counter affidavit, however, contested the claim of the applicant, stating therein that the apex scale is post specific and has nothing to do with the seniority of the officers. It is, however, admitted in the counter affidavit that Shri P. K. Mehta, IPS,

was junior to the applicant. It is also admitted that the OA filed by Shri R. N. Ravi, IPS, i.e., OA No.823/2012 has been allowed by this Tribunal. Similarly, OA filed by Shri O. P. S. Malik, IPS has also been allowed by this Tribunal. The respondents have also admitted that the judgments passed in cases of R. N. Ravi and OPS Malik were challenged before the Hon'ble Delhi High Court in W.P. (C) No.4658/2012 and W.P. (C) No.4660/2012 respectively. However, the Hon'ble Delhi High Court vide its order dated 25.02.2013 dismissed the aforesaid writ petitions filed by UOI. The SLP (Civil) CC No.3907/2014 filed before the Apex Court against the order of the Hon'ble Delhi High Court dated 25.02.2013 has been converted into Civil Appeal No.4648/2014, and is pending before the Apex Court. It is accordingly stated that the matter being *sub judice* before the Apex Court, the applicant is not entitled to the relief claimed.

7. In the rejoinder filed by the applicant, the averments made in the OA have been reiterated. It is, however, stated that the Hon'ble Supreme Court has not stayed the orders passed by the Tribunal and the Hon'ble Delhi High Court. The applicant has also referred another case of Mr. Shafi Alam, an IPS Officer of 1977 batch, who filed OA No.1946/2013 for grant of apex scale. It is stated that in the said case of Mr. Shafi Alam, the respondents had taken a plea of pendency of the matter before the Apex Court, but the Tribunal has granted relief to the applicant and allowed the OA with the condition

that in the event SLP pending before the Apex Court is allowed, the applicant would be liable to refund the benefits.

8. We have heard learned counsel for the parties.

9. Neither the facts are in dispute, nor the judgment passed by this Tribunal and upheld by the Hon'ble High Court of Delhi. It is admitted case of the parties that the applicant is senior to Shri P. K. Mehta who was granted the apex scale of Rs.80,000 (fixed). Two seniors to Shri P. K. Mehta, namely, Shri R. N. Ravi and Shri O. P. S. Malik had earlier approached this Tribunal and their OAs were allowed granting them the relief claimed, i.e., the apex scale of Rs.80,000/- (fixed) retrospectively from the date their juniors were granted the apex scale. The pleas raised by the MHA in their counter affidavit were raised in the case of Mr. Shafi Alam and in other cases also that the apex scale is post specific. This plea has been rejected. Hon'ble Delhi High Court has already upheld the judgments passed by this Tribunal. Though the judgment of Hon'ble Delhi High Court is under challenge before the Hon'ble Supreme Court but the same has not been stayed. As on date, there are concluded judgments of this Tribunal and the Hon'ble Delhi High Court which are in operation. The applicant cannot be treated differently. Undisputedly, the applicant is senior to Shri P. K. Mehta. No law or provision has been brought on record which may indicate that the

apex scale is post specific. Shri P. K. Mehta was appointed as DG, Railway Protection Force, whereas the applicant was appointed as DG (Investigation) NHRC. They have equal status. While empanelling 37 IPS Officers for the post of DG, the applicant was ranked senior to Shri P. K. Mehta. Denial of apex scale to the applicant, even while posting him as DG is clearly a case of hostile discrimination and is thus violative of Articles 14 and 16 of the Constitution of India.

10. In case of Mr. Shafi Alam also, the plea raised by the MHA was pendency of an Appeal before the Apex Court. This Tribunal considering the OA of Mr. Shafi Alam, passed the following orders:-

“In the wake, the Original Application is allowed with a direction to the respondents to grant the apex scale of Rs.80,000/- to the applicant with effect from the date it was granted to Mr. P. K. Mehta. Nevertheless, it is made clear that in the event the aforesaid orders passed by this Tribunal and the Hon’ble High Court are reversed in the aforementioned SLP, the applicant would be liable to refund the benefits.”

The case of the applicant is no different.

11. In view of the above circumstances, this OA is allowed. The respondents are directed to grant apex scale to the applicant w.e.f. the date Shri P. K. Mehta was granted the said scale, i.e., 19.05.2011. The respondents are further directed to re-determine the retiral benefits of the applicant in view of the grant of apex scale to her and work out the arrears to be paid to her from 19.05.2011 till the date of

superannuation of the applicant, i.e., 31.10.2014 within a period of two months from the date of receipt of certified copy of this order. Suffice it to say that in the event judgments passed in Shri R. N. Ravi and Shri O. P. S. Malik which are affirmed by the Hon'ble Delhi High Court are reversed by the Apex Court, the applicant would be liable to refund the benefit which she may receive by virtue of the present judgment and thus for this purpose this judgment shall remain subject to the outcome of Civil Appeal No.4648/2014 pending before the Apex Court. No order as to costs.

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

**(Justice Permod Kohli)**  
**Chairman**

/pj/