

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

OA No. 2885/2013

Order Pronounced on: 11.02.2016

Hon'ble Mr. A. K. Bhardwaj, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)

Pankaj Sanghi
S/o sh. M.C.Sanghi
R/o J-214, AgrasenAwass,
Plot No.66, I.P.Extension,
Patparganj, Delhi-110092.

- Applicant

(By Advocate: Sh. L.K.Singh)

Vs.

1. The Hon'ble Lt. Governor,
Govt. of NCT of Delhi,
Raj Niwas,
Delhi.
2. Govt. of NCT of Delhi,
Through its Joint Secretary (Home),
(Home-Police II) Department,
5th Level, C Wing,
Delhi Secretariat,
I.P.Estate,
New Delhi.
3. Govt. of NCT of Delhi,
Through Director of Prosecution,
Room No.159, 1st Floor,
Tis Hazari Courts,
Delhi-110054.

- Respondents

(By Advocate: Ms. Alka Sharma)

ORDER**Hon'ble Shri V.N.Gaur, Member (A)**

The applicant has filed this OA with the following prayer:

- “(a) Quash and set aside the impugned office order dated 22.10.2012.
- (b) Declare that the regular promotion as Chief Prosecutor granted to the applicant vide office order dated 16.11.2011 ought to be reckoned to be effective w.e.f. 01.11.2007 and not from 16.11.2011 for the purpose of seniority and counting of period of service in the cadre of Chief Prosecutor.
- (c) Declare that the office order dated 01.11.2007 asking the applicant to officiate as Chief Prosecutor without any extra remuneration was non-est and null & void and consequently direct the respondents to release to the applicant the extra remuneration and other monetary benefits attached to the post of Chief Prosecutor for the period w.e.f. 01.11.2007 till 16.11.2011.
- (d) Declare that the denial of benefit of the MACP Scheme to the applicant was illegal and arbitrary and as a consequence direct the respondents to grant and release in favour of the applicant, the benefit under the MACP Scheme of the scale and benefit attached to the post of Chief Prosecutor w.e.f. 14.04.2006.”

2. Briefly, the facts of the case are that the applicant who was appointed as Assistant Public Prosecutor (Asstt. PP) on 26.06.1989 got ad hoc promotion as Additional Public Prosecutor (Addl. PP) on 15.04.1996. He was regularised in that post on 02.05.2005. On 01.11.2007 the applicant was asked to look after the work of Chief Public Prosecutor (Chief PP) in New Delhi District and IGI without any extra remuneration. The applicant was promoted as Chief PP on regular basis on 16.11.2011. The

applicant made a representation to the respondents on 31.07.2012 seeking antedating of his regular appointment as Chief PP to 01.11.2007, the date on which he was given the look after charge of the post, and salary and other consequential benefits. The applicant also sought the scale of Chief PP under MACP Scheme counting 10 years in the grade of Addl. PP from 14.06.1996. The respondents have rejected his representation on 22.10.2012 and hence this OA.

3. Learned counsel appearing for the applicant submitted that vide order dated 01.11.2007 the applicant was asked to look after the work of Chief PP, New Delhi District without any extra remuneration till further orders. From the order it can be seen that the appointment of the applicant was against a regular vacancy and that he fulfilled the eligibility criteria on 01.11.2007 for promotion to the post of Chief PP on regular basis. The respondents, however, instead of filling up the vacancy on regular basis by considering the applicant, resorted to the illegal practice of giving look after charge without the pay and allowances attached to the post. The applicant made representations on 17.12.2009 and 20.01.2010 asking for the next pay scale under the MACP Scheme. However, the respondents did not respond to his representations and on 16.11.2011 the applicant was informed that he had been promoted on regular basis as Chief PP on the recommendation of DPC with immediate effect. According

to the learned counsel, the promoting the applicant from 16.11.2011 instead of 01.11.2007 was illegal and arbitrary act of the respondents. The applicant made another representation on 31.07.2012 which was rejected by the respondents vide impugned order dated 22.10.2012. The learned counsel also questioned the decision of the respondents to deny financial benefits of order dated 01.11.2007 by treating it as officiating promotion under FR 49 (v).

4. The learned counsel for the respondents contested the submissions made by the applicant and stated that the applicant was not eligible for promotion to the post of Chief PP prior to 01.11.2011 and that is why he was given the charge of the post from 01.11.2007 to 16.11.2011 on look after basis. He was promoted as Addl. PP, the feeder grade for Chief PP, on regular basis on 02.05.2005. He became eligible for promotion only on 01.11.2011 after completion of 5 years of service in the grade. Therefore, there was no basis for considering the prayer of the applicant made in this OA and the same was liable to be dismissed.

5. Replying to the submissions of the learned counsel for the respondents, learned counsel for applicant stated that it was wrong to say that he was not eligible for promotion on 01.11.2007, the date on which he was given the charge of Chief

PP on look after basis. The applicant was appointed as ad hoc Addl. PP on 15.04.1996 for a period of 6 months, i.e., from 15.04.1996 to 15.10.1996, which was extended from time to time till his regularisation in the year 2005. During the currency of the ad hoc appointment, the applicant completed 7 years in the grade of Asstt. PP, thereby becoming eligible for promotion as Addl. PP. It is also confirmed that a vacancy existed in the grade of Addl. PP when the applicant was appointed on ad hoc basis to the post. Thus from 15.10.1996 till 2005 he was illegally denied the benefit of regular promotion as Addl. PP. Had he been promoted in time, by 2007 he would have completed more than 10 years of service and would be eligible for regular promotion to the post of Chief PP which was eventually given to him w.e.f. 16.11.2011. The respondents ought to have counted the period of his ad hoc promotion and given him requisite seniority while promoting as regular Addl. PP on 02.05.2005. Even counting from 02.05.2005, he became eligible for promotion to the post of Chief PP on 02.05.2010 and as such he should be considered as officiating on the vacant regular post with effect from that date. He would be entitled for antedating of his promotion to the post of Chief PP to 01.05.2010. Learned counsel further submitted that some similarly situated persons had earlier approached this Tribunal against refusal of the respondents to count the entire period of ad hoc service in the post of Addl. PP for the purpose of

fixation of seniority in OA No.1171/2006. This Tribunal, however, dismissed the same on 21.07.2006. According to the learned counsel, the aforesaid order of the Tribunal was based on a wrong submission of the respondents that ad hoc appointment on the post of Addl. PP was not made on an existing regular post. The aforesaid order has been challenged in the Hon'ble High Court of Delhi by way of WP (C) No. 1438/2007. The applicant has also impleaded in the said writ petition, which is pending before the Hon'ble High Court.

6. We have heard the parties and perused the record. At the outset, we find that the applicant has clubbed unconnected prayers in the same OA. The first prayer is to set aside the impugned order dated 22.10.2012 in which two distinct issues, i.e., the payment of salary for the post of Chief PP for the period 01.11.2007 to 16.11.2011 and grant of MACP in the grade of Chief PP have been dealt with. His second prayer in this OA is for antedating his appointment as Chief PP w.e.f. 01.11.2007 and the third prayer is to grant him MACP of the scale and benefits attached to the post of Chief PP w.e.f. 14.04.2006. It can be seen that benefit under MACP Scheme is not linked to his regular promotion to the grade of Chief PP. The benefit of MACP is under the scheme notified by the respondents following the recommendations of the 6th Pay Commission, while regularisation of the applicant in the post of Chief PP from an earlier date is

governed by the recruitment rules. We, therefore, find that the OA is hit by Rule 10 of CAT (Procedure) Rules, 1987.

7. The applicant has claimed that the action of the respondents in giving the charge of the post of Chief PP on look after basis on 01.11.2007 itself was illegal as he was eligible for promotion on that date and a regular vacancy existed in that grade. The respondents have, however, pointed out that he was not eligible on 01.11.2007 for promotion, as after his regularisation in the grade of Addl. PP on 02.05.2005 he had not completed the required 5 years of service in the feeder grade. To this, the response of the learned counsel for the applicant was that the applicant ought to have been promoted as Addl. PP on regular basis way back in 1996 when he was given ad hoc promotion against a clear vacancy. In all fairness, the learned counsel also admitted that similarly situated persons had approached this Tribunal with similar grievance in OA No.1171/2006 which was dismissed on 11.07.2006. The applicants in that OA have filed WP (C) No.1438/2007 in the Hon'ble High Court of Delhi in which the applicant has also impleaded himself. It is, thus, an admitted position that the applicant's claim for the benefit of ad hoc service in the grade of Addl. PP from 1996 till the date of regularisation in 2005 is sub judice. In such a situation, the applicant cannot simultaneously seek relief from two forums. He also cannot claim that he fulfilled the eligibility condition of 5 years of service in the

grade of Addl. PP on the date he was given look after charge of the post of Chief PP on 01.11.2007 when the issue is yet to be adjudicated by the Hon'ble High Court. The applicant, therefore, did not have the required residency period in the feeder grade on 01.11.2007 for promotion to the post of Chief PP.

8. As observed earlier, we do not find the prayer pertaining to grant of MACP linked to the issue under consideration in the preceding paras. The learned counsel for the applicant also did not put forth his arguments on this issue. We, therefore, do not pursue it further.

9. In the light of the foregoing discussion and for the reasons stated, the OA is dismissed as devoid of merit.

(V.N. Gaur)
Member (A)

(A.K.Bhardwaj)
Member (J)

February 11, 2016

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