

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.4406/2014

Order Reserved on: 12.02.2016
Order pronounced on 26.02.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri P. K. Basu, Member (A)

S.I. Surender Singh Yadav, No.D/2798 (OBC), Age 43 years
S/o Sh. Ishwar Singh
R/o A-39, Shri Balaji CGHS Ltd.
Plot No.37, Sector-6, Dwarka
New Delhi. ... Applicant

(By Advocate: Sh. Rajiv Bakshi)

Versus

1. Commissioner of Police
Police Head Quarters, Indraprastha Estate
New Delhi.
2. Additional Deputy Commissioner of Police (Establishment)
Police Head Quarters, Indraprastha Estate
New Delhi.
3. Deputy Commissioner of Police (South)
Hauz Khas, New Delhi. ... Respondents

(By Advocate: Sh. Vijay Pandita)

ORDER

By V. Ajay Kumar, Member (J):

In pursuance of a notification issued for selection to the post of
Sub Inspector (Exe.) Delhi Police, the applicant, who belongs to OBC

category, applied and on qualifying the consequential examination, was directed to attend the Recruitment Cell of the respondents for completion of medical and verification formalities. During September, 1996, he visited the Office of the respondents and completed all the formalities but he was not sent for training though certain other candidates of the same 1996 batch were sent for training. On making representations he was informed that the permanent address of the applicant is of Rewari (Haryana) and he belongs to Ahir caste, which did not come under OBC category as per the list of OBC, and that some OAs are pending adjudication before this Tribunal on identical issues.

2. Certain identical OAs filed by similarly situated persons were allowed by this Tribunal by way of a common judgement dated 24.10.1997. The OA No.1515/1997 filed by the applicant was disposed of on 12.12.1997 (Annexure P6) with a direction that the benefit of the judgement passed in OA No.2410/1996 shall be made applicable to the applicant on *mutatis mutandis* basis.

3. Though the Hon'ble High Court in CWP No.1073/1998 and CWP No.4706/1998, initially stayed the operation of the common judgement dated 24.10.1997, but later by order dated 24.09.1998 (Annexure P7), vacated the said stay, and observed that the appointments made in pursuance of the directions of the Tribunal are subject to the final result of the Writ Petition. The SLP filed by the

respondents against the said order was dismissed on 15.03.1999 (Annexure P8).

4. Thereafter, the respondents vide Annexure P11, dated 12.11.1999, appointed the applicant as SI (Exe.) in Delhi Police and accordingly the applicant joined in service on 18.11.1999, and completed the training in August, 2002 and when the respondents not fixed his inter-se seniority and salary with the SIs (Exe.) of 1996 batch, he was informed that his inter-se seniority is fixed as and when the CWP Nos.1073 and 4706 of 1998 are decided by the Hon'ble High Court (vide Annexure P13).

5. The Hon'ble High Court of Delhi dismissed the CWP Nos.1073/1998 and 4706/1998 and batch, by its common order dated 23.04.2009 (Annexure P15). Thereafter the respondent No.1 vide Office Order dated 01.09.2009 (Annexure P18) fixed the seniority of the applicant rightly at Sl. No.9A i.e., between the name of SI (Exe.) Rajesh Kumar mentioned at Sl.No.9 and SI (Exe.) Darshan Lal, at Sl. No.10 in inter-se seniority list circulated vide order dated 03.05.1999. However, the respondents did not fix the pay of the applicant notionally in accordance with his seniority on par with his batch-mates.

6. This Tribunal, in the identical circumstances in the case of SI-Anil Kumar in OA No.312/2005, vide order dated 31.07.2006 directed the respondents to fix the seniority of the said SI Anil Kumar notionally from the date when his junior in the seniority list joined in service (Annexure P21).

7. When the identical requests of the applicant were unanswered, he filed OA No.4304/2011 and this Tribunal by its order dated 20.04.2012 (Annexure P22) disposed of the same by directing the respondents to have a re-look over the entire matter, and the operative part of the same reads as under:

"In the present case, of course, in view of the order of this Tribunal passed in OA No.1515/1997 adjudicating the claim of applicant regarding his appointment as SI (Exe.) in Delhi Police which was finally upheld by Hon'ble Delhi High Court, no interference from us at this stage could be called for. However, in assigning seniority to the applicant at serial no.9-A of the seniority list of SI (Exe.), i.e., above those who were appointed as SI (Exe) from a date earlier than the date of appointment of applicant and by fixing the pay of applicant at a stage lower than the pay drawn by junior, respondents have given rise to anomalous situation. In the circumstances OA is disposed of with a direction to respondents to have a re-look over the entire matter and take a view regarding resolving the aforementioned anomalous situation of the applicant, in accordance with rules and instructions. The view so taken shall be communicated to applicant by way of a speaking order.

OA stands disposed of. No cost."

The Review Application No.177/2012 filed by the applicant was dismissed by this Tribunal on 24.07.2012 for non-appearance, and during the pendency of the application for revival of the same, the respondents passed an order dated 03.08.2012 declining to accede to the request of the applicant. The application for restoration of the R.A. was dismissed as withdrawn on 20.09.2012.

8. Thereafter, the applicant challenged the order dated 03.08.2012 by filing OA No.3392/2012. During the pendency of the said OA, the applicant was promoted to the post of Inspector. This Tribunal disposed of the OA No.3392/2012 vide Order dated 12.05.2014 as under:

"4. In the circumstances, once the applicant has been assigned seniority of 1996 Batch of SI, his claim for stepping up the pay needs to be examined by the respondents. Thus, the OA is disposed of with a direction to the respondents to consider stepping up pay of the applicant with reference to the pay of his immediate juniors, in view of the judgment referred to by them in Para-2 of their counter reply and take a decision within a period of three months from the date of receipt of a certified copy of this order under intimation to the applicant. OA stands disposed of. No cost."

The respondents, in pursuance of the said orders of this Tribunal passed the impugned Annexure P1 order dated 28.07.2014 whereunder though they have re-fixed the pay of the applicant notionally by stepping up at par with his immediate juniors, i.e., SI (Exe.) Darshan Lal, but without payment of arrears of salary upto the date of Judgement dated 12.05.2014.

9. Aggrieved with the said order, to the limited extent of not paying the arrears from the date of his actual joining in the service, i.e., from 18.11.1999 to the date of Judgement in OA 3392/2012, i.e., till 20.04.2012, the present OA has been filed.

10. Heard both sides and perused the pleadings on record.

11. The learned counsel for the applicant contends that when the applicant joined service on 18.11.1999 and his pay was fixed notionally by stepping up at par with his immediate junior SI (Exe.) Darshan Lal, not paying the arrears from the said date is illegal and arbitrary. The learned counsel also placed reliance on **Food Corporation of India v. S.N.Nagarkar**, (2002) 2 SCC 475.

12. The learned counsel for the respondents while not disputing the aforesaid sequence of facts submits that the OA is hit by the principle

of res-judicata, since the applicant's OA Nos.1551/1997, 4304/2011, RA No.177/2012 and OA No.3392/2012 were disposed of without granting the identical relief, and also liable to be dismissed since this Tribunal already dismissed an identical OA No.312/2005 in SI Anil Kumar (supra).

13. The OA No.1515/1997 was disposed of by this Tribunal vide its order dated 12.12.1997 (Annexure P6), directing the respondents to extend the benefits given in the Judgement in OA No.2410/1996 to the applicant also *mutatis mutandis*. It is not forthcoming from the pleadings that the applicant filed the said OA seeking payment of salary from any particular date and that the same was rejected by this Tribunal.

14. The applicant filed OA No.4304/2011 seeking issuance of a direction to the respondents to re-fix his salary notionally on the basis of seniority granted to him with his batch-mates so that the present salary of the applicant is not less than those who are immediately below him in seniority, but this Tribunal while disposing of the said OA on 20.04.2012 (Annexure P22), not rejected or granted the said claim but only directed the respondent to have a re-look over the entire matter and take a view regarding resolving the anomalous situation of the applicant, in accordance with rules and instructions. The RA No.177/2012 filed therein was dismissed for non-prosecution.

15. OA No.3392/2012 (a copy of the Original Application filed as Annexure P23) was filed by the applicant seeking the following relief(s):

"i) Quash the Order No.17955-56 dated 03.08.2012 (received on 31.08.2012) (Annexure P-1) passed by the respondents;

ii) direct the respondents for re-fixation of present salary of the applicant notionally on the basis of inter se seniority granted to him with his batch mates (1996 Batch) vide Order dated 01.09.2009 (Annexure P-18) so that the present salary of the applicant is not less than those who are immediately below him in the seniority list with all consequential benefits.

iii) Direct the respondents to pay arrears of difference in salary paid to his counterparts for the period which the applicant spent on duty;

iii) pass any other or further order which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case."

After hearing both sides, this Tribunal disposed of the said OA on 12.05.2014 as under:

"As has been captioned in the counter reply of the respondents, the applicant was selected to the post of Sub Inspector (Exe.) on the basis of examination conducted by the SSC during the year 1994 as an OBC candidate. Since there was some impasse regarding the status of the applicant as OBC candidate, he could not be offered appointment, despite selection. He filed OA No.1551/1997 before this Tribunal and the OA was decided in view of the order dated 12.12.1997 passed in OA No.2410/1996. The order of the Tribunal was challenged before the Honble Delhi High Court by way of CWP No.4706/1998. Initially the High Court stayed the order of the Tribunal but subsequently vacated the interim order. Thus, the applicant was appointed as Sub Inspector (Exe.) in Delhi Police provisionally subject to final outcome of CWP Nos. 4706/1998 and 1073/1998. He joined for training on 18.11.1999 and completed the basic training course with Batch No.25 in August 2002. The respondents assigned him seniority on the basis of his merit position in 1994 Select List and placed him at Sl.No.9A of the Seniority List of Sub Inspector (Exe.). The applicant filed OA No.4304/2011 claiming the same pay, as granted to his juniors. The OA was disposed of with the following orders:

In the present case, of course, in view of the order of this Tribunal passed in OA No. 1515/1997 adjudicating the claim of applicant regarding his appointment as SI (Exe.) in DP which was finally upheld by Honble Delhi High Court, no interference from us at this stage could be called for. However, in assigning seniority of the applicant at serial no. 9-A of the

seniority list of SI (Exe), i.e., above those who were appointed as SI (Exe) from a date earlier than the date of appointment of applicant and by fixing the pay of applicant lower than at the level lower than the pay of junior, respondents have given rise to anomalous situation. In the circumstances OA is disposed of with a direction to respondents to have a re-look over the entire matter and take a view regarding resolving the aforementioned anomalous situation of the applicant, in accordance with rules and instructions. The view so taken shall be communicated to applicant by way of speaking order.

OA stands disposed of.

2. In implementation of the aforesaid order, the respondents passed a speaking order dated 03.08.2012 taking a view that the applicant cannot be granted the benefit of fixation of notional pay retrospectively with reference to his seniority position. There is no infirmity in the order passed by the respondents. In terms of the provision of FR-26 (a), all duty in a post on a time-scale counts for increments in that time scale. Thus, the period during which an employee does not perform duty or remains under training, he does not earn any increment. The seniority of the applicant was fixed by the respondents as per his position in the merit list and his date of joining was kept only on 18.11.1999. Thus, there can be no justification to grant him increment with the Sub Inspectors (Exe.) of 1996 Batch. It is different issue that an employee may be given the benefit of step up of pay at par with his juniors. There is no such rules/instructions, which provide for notional increments or fixation of pay from the date when an employee had not even entered into the service of the organization at all. Nevertheless, in the counter reply filed by them, the respondents themselves have referred to the Supreme Court judgment in the case of State of Haryana and Others vs. O.P.Gupta and Others reported in 1996 (7) SCC 533 wherein the earlier judgment in Paluru Ramkrishnaiah vs. Union of India reported in (1989) 2 SCC 541 has been referred to. In view of the said judgment of the Honble Supreme Court, senior is entitled to step up the scale of pay with reference to the date of promotion of his junior. For reference, Para-2 of the reply filed by the respondents is extracted herein:

That the Honble Supreme Court judgment in the case of State of Haryana and Others vs. O.P.Gupta and Others reported in 1996 (7) SCC 533. In that case, it was held though promotion may be given retrospectively but since he had not worked on the post no claim of arrears is made out. That the Apex Court further in para 7 of State of Haryana and Others vs. O.P.Gupta and Others held as follows:

7. This Court in Paluru Ramakrishnaiah v. Union of India, (1989) 2 SCR 92 at page 109 : (AIR 1990 SC 166 at p. 195), considered the direction issued by the High Court and upheld that there has to be "no pay for no

work", i.e., a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of higher post although after due consideration, he was given a proper place in the gradation list having been deemed to be promoted to the higher post with effect from the date his junior was promoted. He will be entitled only to step up the scale of pay retrospectively from the deemed date but is not entitled to the payment of arrears of the salary. The same ratio was reiterated in *Virender Kumar v. Avinash Chandra Chand*, (1990) 3 SCC 472 : (AIR 1991 SC 958), in paragraph 16.

(Emphasis supplied)

3. In terms of Government of India's order under FR 22, read with GI MF OM No.F.2 (78)-E.III (A)/66, dated 04.02.1966, in order to remove the anomaly in the pay of a Government servant promoted or appointed to a higher post on or after 01.04.1961 drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, the pay of the senior officer should be stepped up to a figure equal to the pay as fixed for the juniors officers in that higher post.

4. In the circumstances, once the applicant has been assigned seniority of 1996 Batch of SI, his claim for stepping up the pay needs to be examined by the respondents. Thus, the OA is disposed of with a direction to the respondents to consider stepping up pay of the applicant with reference to the pay of his immediate juniors, in view of the judgment referred to by them in Para-2 of their counter reply and take a decision within a period of three months from the date of receipt of a certified copy of this order under intimation to the applicant. OA stands disposed of. No cost."

16. It is to be seen that this Tribunal after noting the decisions of the Hon'ble Apex Court in **O. P. Gupta** (supra), **Paluru Ramakrishnaiah**, (supra), and **Virender Kumar** (supra) observed that a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of higher post although after due consideration, he was given a proper place in the gradation list having been deemed to be promoted to the higher post w.e.f. the date his junior was promoted and that he will be entitled only to step up the scale of pay

retrospectively from the deemed date but is not entitled to the payment of arrears of the salary, held that once the applicant has assigned seniority of 1996 batch of SI, his claim for stepping up of the pay needs to be examined by the respondents and accordingly directed the respondents to consider the stepping up pay of the applicant with reference to the pay of his immediate juniors, in view of the Judgement [(O.P.Gupta (supra))] referred in Para 2 of their counter and take a decision. In terms of the said direction, the respondents passed the impugned order.

17. It is not the case of the applicant that the impugned order is not passed in accordance with the directions of this Tribunal in O.A.No.3392/2012, which has attained finality. Once this Tribunal held that applicant though entitled for stepping up the scale of pay retrospectively, but not entitled for payment of arrears, and the impugned order was passed in terms of the said directions, the present OA claiming the same relief which was already decided by this Tribunal, is liable to be dismissed.

18. It is another thing that this Tribunal while deciding the earlier O.A. filed for the same relief, dealt the same as if it is a case of delayed promotion and that the applicant not worked in the promotional post etc., and applied the case law of the nature, but the fact remains that the applicant allowed the said order to attain finality. In this backdrop of the facts, the decision in **S.N.Nagarkar** (supra) does not help the applicant's case.

19. In OA No.312/2005 filed by SI Anil Kumar this Tribunal by its order dated 31.07.2006 specifically denied the payment of arrears.

20. In the circumstances and for the aforesaid reasons, we do not see any merit in the OA and accordingly, the same is dismissed. No costs.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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