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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.263/2003

New Delhi, this the 1st day of November, 2004

Hon'ble Shri Shanker Raju, Member(J)
Hon'ble Shri S.K. Naik, Member(A)

Joginder Pal
GI 757, Sarojini Nagar, New Delhi .. Applicant
(Shri V.S.R.Krishna, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Home Affairs
North Block, New Delhi
2. Director General
Border Security Force
Block 10, CGO Complex
Lodhi Road, New Delhi .. Respondents
(Shri A.K.Bhardwaj, Advocate)

ORDER(oral)

Shri S.K. Naik

By filing this OA, applicant has prayed for quashment of orders dated 29.8.2002 and 25.9.2002 and to place him in correct seniority in the rank where his immediate junior Shri R.C.Randhawa has been promoted as Deputy Commandant with all consequential benefits. This OA was decided on 21.7.2003, after an indepth deliberation of various points raised by both parties. While one of us (Shri Shanker Raju) was in favour of allowing the OA and quashment of the impugned orders, the other (Shri S.K. Naik) was not in agreement of the same, for the detailed reasons enumerated therein, and concluded that the OA deserves to be dismissed. In view of the difference of opinion between us, the matter was placed before the Hon'ble Chairman for referring the matter to a third Member under Section 26 of the Administrative Tribunals Act, 1985. The following points emerged as a result of this for a decision before the third Member:

(i) Whether is it permissible for the applicant to seek parity with Shri Randhawa when he has been accorded all the benefits in pursuance of reconsideration of his request by the respondents in the light of order passed in OA No.2459/2000 and in the circumstances when Shri Randhawa had changed his track and opted for general duty which has not been exercised by the applicant?

Shankar

- (ii) Whether is it open for the applicant who had opted for reversion to his parent cadre post (ministerial cadre) and in the light of his foregoing the right of changed seniority in the cadre of deputation PAD to seek further benefits in the borrowing department including continuation upto the age of superannuation i.e. 60 years?
- (iii) Whether applicant is entitled to be promoted to the rank of Assistant Commandant at par with Shri Randhawa having not passed the qualifying prescribed test? And
- (iv) Whether it is open for the applicant, who has sought relief in the application to receive the benefit of parity with Shri Randhawa to seek alternate relief of continuing in the borrowing department upto the age of 60 years.

2. The third Member (Hon'ble Shri Kuldip Singh) after a detailed discussion gave his verdict in the following terms:

- (i) It is not permissible for the applicant to seek parity with Shri Randhawa who had changed his track by opting for general duty which option could not be exercised by the applicant as at the appropriate time applicant was away on deputation on the strength of PAD cadre. Since there are certain rules which had to be followed for changing the track from ministerial duty to general duty (executive cadre) and the applicant has already missed that option while seeking absorption in PAD cadre so that option at this stage could not be given to the applicant so it is not possible for applicant to seek parity with Shri Randhawa. He can seek parity at best in his parent cadre. Moreover, in the earlier OA also applicant has sought repatriation to his parent cadre and not in the executive cadre and probably the applicant could not have been sent to executive cadre. Though the applicant had sought parity with a Shri Randhawa but he has specifically asked only for repatriation to parent cadre, i.e. ministerial cadre. Hence I am of the considered opinion that it is not permissible for the applicant to seek parity with Shri Randhawa;
- (ii) On this aspect also I may mention that once applicant had sought an option to revert back to his parent cadre and had also obtained a judicial order from this Tribunal, it is not open for the applicant to seek further benefits in the borrowing department including continuation of service upto the age of superannuation upto 60 yrs as was available in PAD.
- (iii) In view of the above, my opinion is recorded with regard to points No.(i) and (ii). Points No. (iii) and (iv) are also answered in negative.

JKR

3. The above position makes it abundantly clear that the Hon'ble third Member was in agreement with the opinion expressed by one of us (Shri S.K. Naik) that the applicant is not entitled for the reliefs prayed for. In other words, majority of the Bench i.e. two out of the three Members are of the considered opinion that the application deserves to be dismissed.

4. In view of this position, the present OA is accordingly dismissed. No costs.

Naik
(S.K. Naik)

Member(A)

S. Raju
(Shanker Raju)
Member(J)

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