

* **HIGH COURT OF DELHI : NEW DELHI**

+ **Judgment reserved on : 15.11.2007**
Judgment delivered on : 04.07.2008

% **W.P. (C) No. 12011/2006**

Joginder Pal ... Petitioner
Through: Mr. Manohar Lal, Advocate.

versus

Union of India & Anr. ... Respondents
Through: Mr. Dalip Mehra, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

VIPIN SANGHI,J.

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1. The instant Writ Petition is filed under Article 226/227 of the Constitution of India for issuance of an appropriate writ to quash the order passed by the learned Central Administrative Tribunal Principal Bench, New Delhi (The Tribunal) dated 1st November 2004 in OA No.263/2003.

2. The petitioner joined BSF as Havaldar/Clerk in the year 1966 in the Combatised Ministerial cadre and underwent the prescribed basic training successfully. Thereafter he was promoted to the scale of sub-Inspector (Clerk) in 1970, where he remained posted

with the field formation of BSF.

3. Later, the petitioner on being selected, joined the Pay & Accounts Division (PAD for short) of BSF as a Senior Accountant (S.A.) w.e.f. 10th November 1980 on deputation. The initial period of deputation of one year was extended by PAD from time to time.

4. The petitioner states that he opted for repatriation to his parent cadre in the year 1986 when his promotion as Inspector became due in the parent Cadre. However, the PAD hierarchy was unwilling to relieve the petitioner for joining his parent cadre in the promotion post as Inspector. On the contrary, the petitioner was permanently absorbed in the PAD with retrospective effect from 28th October 1984 vide order dated 11th August 1987. The petitioner states that he accepted his absorption in PAD, in a lower scale of pay as compared to the pay scale of an Inspector in his parent cadre with a clear understanding that being the senior most Senior Accountant, he will be entitled to his subsequent promotions as Junior Accounts Officer (JAO) and Accounts Officer (AO) in the near future. However, to the petitioner's shock and disappointment, in the seniority list published by PAD on 14.5.1991, the petitioner's name was relegated to a lower position and 15 SAs actually junior to him in PAD, were illegally and arbitrarily shown senior to him. All these 15 SAs had been appointed on substantive basis in December 1984 vide order dated 28.4.1987, i.e. after the date of absorption of the petitioner in October 1984. The petitioner contends that his name should have appeared higher than

these 15, Sr. Accountants one of whom i.e. Shri Ashok Kumar-his immediate junior, was also promoted as JAO w.e.f. 29.10.1992. Aggrieved by this conduct of the respondents, the petitioner made several representations to his superiors during the years 1991-1996, but reply was received only in respect of his representation dated 12.9.1995. The petitioner was simply informed about his representation being rejected. The petitioner submits that this order was non-speaking. Later, some more SAs junior to him were also promoted as JAO in the PAD, but the Petitioner's claim was not considered. Left with no other alternative, the petitioner appeared before the Director General, BSF, New Delhi in February, 1997 under whose instructions the Petitioner's case was referred to the Ministry of Home Affairs (MHA) (the Controlling Ministry) who, in turn sought the advise of Department of Personal & Training (DOPT).

5. MHA/DOPT advised in year 1997 and 1998 that the petitioner be given promotion at par with his next junior, Shri Ashok Kumar in PAD who was promoted in October 1992 and be given all consequential benefits or, in the alternative, to revert him back to the parent ministerial cadre and to give him promotion to the rank of Inspector from the date of his immediate junior R.C. Randhawa, who was promoted on 15.3.1993 against the 10% quota in general duty stream reserved for combatised ministerial cadre and to deem the petitioner as promoted to the rank of Assistant Commandant, and in case he is required to qualify the prescribed test, he be given an

opportunity to qualify and that in case he failed to qualify, his case be considered for promotion as office superintendent in his present cadre. The petitioner has extracted the ruling given by the MHA/DOPT in his case in para II(e) of the petition, which has not been denied by the respondents. We, therefore, take note of this uncontroverted ruling, which reads as follows:

“Either count the seniority of the applicant in PAD w.e.f. 28.10.1984 with reference to his immediate Junior Sh. Ashok Kumar or to give promotion to the rank of Asst. Commandant in the parent cadre from the date Sh. R.C. Randhawa had been promoted w.e.f. 15.3.1993 against 10% quota reserved for combatised Ministerial Cadre MHA further advised that applicant may be asked to complete prescribed training course within reasonable time, adding that if the Applicant failed to meet the requirement of qualifying the prescribed courses in a reasonable period then his case is to be considered for promotion to the post of office suptd (Rs.6500-10500).”

6. The petitioner submits that the lien of a permanent Government servant could not have been terminated unless he is provided another permanent post. The respondents, however, altered the date of Petitioner's permanent absorption in PAD from 28.10.1984 to 11.8.1987 by an order dated 26.4.2000, which was given retrospective effect and was passed after a gap of about 15 years, without any rhyme or reason.

7. Being aggrieved by the said actions of the respondents, the petitioner filed O.A. No. 2459/2000 before the Central Administrative Tribunal Principal Bench, New Delhi (The Tribunal) wherein he prayed for, inter alia, the following relief:

“(i) Direct the respondents to produce the entire record of the case in hand including the opinion of the DOP &T dated June 1997 and the direction of the MHA in the matter, where-by the BSF authorities were asked to promote the applicant as JAO in the correct place of his seniority as per his absorption as Senior Accountant w.e.f. 28.10.84 or else re-patriate him to his parent cadre and assign him his correct seniority, for perusal of the Hon'ble Tribunal.

(ii)Quash and set aside the impugned order dated 26.04.2000, whereby the date of absorption and substantive appointment of the applicant in the rank Senior Accountant has been changed from 28.10.1984 to 11.08.1987.

(iii)Direct the respondents to place the applicant at his correct place of seniority of Senior Accountant and give him his due seniority in the said rank w.e.f. 10.11.1980 i.e. from the date he is working on the said post continuously or alternatively from 28.10.1984 i.e. the date he was appointed as Senior Accountant in substantive capacity and absorbed in the said rank.

*(iv)Command the respondents to promote the applicant to the rank of Junior Accounts Officer in the PAD BSF, or any other post held by the juniors to the applicant w.e.f. The date his Juniors were promoted to the said rank, with all consequential benefits and full back wages of the promotional post; **or alternatively** Repatriate the applicant to his parent cadre and place him at his correct place of seniority in the rank where the immediate junior Shri R.C. Randhava has been promoted as Deputy Commandant with all consequential benefits and arrears of pay in the promotional posts viz. Subedar/Assistant Commandant/or, as enjoyed by his juniors in the parent cadre.”(emphasis supplied).“*

8. The Tribunal vide its order dated dated 6.2.2002 disposed off the aforesaid O.A., without going into the legality of the impugned

orders and actions of the respondent. The Tribunal focussed on the alternative relief claimed by the petitioner and gave the following direction:-

“The respondents/DG, BSF shall consider the applicant's alternative prayer mentioned above for repatriation to his parent cadre, i.e., the combatised Wing/Ministerial cadre of BSF for absorption in the parent cadre from where he was sent on deputation to PAD, BSF on 10.11.1980, at an early date and in any case within two months from the date of receipt of a copy of this order. They shall also keep in view the promotion order dated 22.10.986 promoting the applicant in the parent cadre to the post of Inspector/Head Clerk and shall pass necessary orders in accordance with relevant provisions of law, rules and instructions. No order as to costs.”

9. The Respondents issued two orders on 29th August 2002. By these orders the petitioner was repatriated back from PAD to his parent cadre i.e. SI (Clerk) in the combatised ministerial cadre of BSF retrospectively w.e.f. 2nd November, 1986 (AN). He was also informed that consequent to his repatriation he will superannuate on 31st August, 2002 (AN) upon attaining the age of 57 years. On 25th September, 2002 the respondents issued an order conveying the result of the review DPC held on 13.9.2002 for consideration of the petitioners case for promotion to the post of Sub (Clk), SM (OS) and SO (AC) originally held on 26.9.1986, 11.3.1997 and 21.3.2001, at par with his next junior in the parent cadre. The review DPC found him “FIT” for promotion to these posts. The petitioner was accordingly promoted to the following posts retrospectively from the dates and in the pay scales shown below:

“a) Sub(Clerk) : In the pay scale of Rs.1640-2900 w.e.f. 03.11.1986 to 31.12.1995 and in the pay scale of of Rs.5500-9000 w.e.f. 01.01.1996 to 12.03.1997.

b) SM(OS) In the pay scale of Rs, 6500-10500 w.e.f. 13.03.1997 to 09.10.1997 and in the pay scale of Rs.650-10500 plus Rs.200 PM as appointment pay w.e.f. 10.10.1997 to 05.02.2002.

c)SO(AC) In the pay scale of Rs.6500-10500 w.e.f. 06.02.2002 to 31.08.2002 i.e till his retirement on superannuation on attaining the age of 57 years.”

10. The petitioner submits that these orders repatriating/retiring him to the BSF Combatised Cadre passed after four years from the date of MHA/DOPT's ruling, without giving him a notice, or the reasons for not giving him promotional benefits as accorded to Shri Randhawa is contrary to the principles of natural justice.

11. Being thus aggrieved, the petitioner filed another original application being O.A. No. 263/2003 seeking quashment of impugned orders dated 29th August 2002 (2 orders of the same date) and dated 25th September 2002 as aforesaid, and further sought for fixation of his correct seniority with his immediate junior in the parent cadre Shri R.C. Randhwa, who had been promoted as Deputy Commandant, with all consequential benefits and arrears of pay enjoyed by his said junior.

12. Before the Tribunal, the grievance of the petitioner was that while Shri Randhawa was simultaneously promoted in 1986 as

Inspector, later on, on his turn he underwent training in C.C. Course, whereas such an offer was not communicated to the petitioner. In fact, Shri Randhawa had been promoted as Assistant Commandant w.e.f. 15.3.1993 against the then existing 10% quota reserved for combatized Ministerial Cadre. Had the petitioner been repatriated to BSF Combatized Ministerial Cadre in time, he could have undergone the prescribed courses of training. The petitioner was thus denied the chance of promotion in the BSF Combatized cadre under 10% quota to the post of Asstt. Commandant, and thereafter to the post of Dy. Commandant, at par with his junior Shri Randhawa. Conversely, if the petitioner had been assigned correct seniority in the PAD where he had been permanently absorbed, he would have become entitled to further promotion as JAO/AO/Sr.AO and continued in service till the age of 60 years i.e. for additional three years. Thus, the petitioner claims that a double edged weapon had been used against him.

13. Before the Tribunal the stand of the respondent was that the retrospective absorption of the petitioner was incorrect and, therefore, he could not be given seniority over others with effect from 28.10.1984. So far as the case of Shri R.C. Randhawa was concerned the stand of the respondent was that Shri R.C. Randhawa was earlier serving in the combatised ministerial cadre. He had opted for promotion in the Executive Cadre i.e. General Duties stream and had undergone all mandatory/pre-requisite courses in various BSF training institutions located in various parts of the country to earn promotion in

the executive cadre against the 10% of vacancies meant for promotion of Subedar (Ministerial) as provided in the then notified recruitment rules for the post of Assistant Commandant (General Duties). Once he was promoted as Assistant Commandant (General Duties), upon his turn, he was further promoted to the rank of Deputy Commandant. The respondent further stated that the petitioner's case was considered in the light of the career graph of one, Shri Mohan Lal Sharma, the immediate junior to Shri R.C. Randhawa who was holding the post of SI (Clk) and was promoted to the rank of Inspector (Auditor) with effect from 3.11.1986 along with other SIs/Clerks including the petitioner. Due to the change in the cadre of Shri R.C. Randhawa on his promotion as Assistant Commandant (G.D.), Shri Mohan Lal Sharma was the next immediate junior to the petitioner in the combatised ministerial cadre. Therefore, the review DCP considered the case of the petitioner keeping in view the rank held by his immediate junior Shri Mohan Lal. Respondent submitted that the petitioner could not seek parity with Shri R.C. Randhawa as he had not opted to earn his promotion in the executive/combatised (GD) stream and had also not undergone any mandatory/pre-requisite courses as prescribed for the rank of Assistant Commandant (GD).

14. The respondents submitted that the Executive (General Duty) cadre is separate and governed by a different set of recruitment rules. There are large number of other persons similarly situated as the petitioner who did not earn promotion to the rank of Assistant

Commandant, (GD) in the Executive Cadre - General Duty stream and a large number of Subedars in combatised ministerial stream had either not opted for promotion in the Executive Cadre-General Duty stream, or had failed to qualify the mandatory course for earning promotion to the rank of Assistant Commandant in the Executive Cadre - General Duty stream against the 10% vacancies reserved for Ministerial Cadre personnel. As per the revised notified recruitment rules, the said reservation had been abolished.

15. When the matter was taken by a two member bench of the Tribunal on 21.7.2003 consisting of Shri Shankar Raju, Member (Judicial) and Shri S.K. Naik, Member (Administrative), a difference of opinion cropped up between the two members of the bench. While Shri Shankar Raju, Member (Judicial) took a view in favour of the petitioner, thereby quashing and set aside the impugned orders and issuing further directions to the respondent to review their decisions strictly in accordance with the directions issued in OA No.2459/2000, and further directing that in case the respondents maintained the earlier orders they would consider putting back the petitioner in service in PAD and also consider his seniority and further promotion in the light of his observations made in his order, Shri S.K. Naik, Member (A) concluded that the OA deserves to be dismissed. Due to the said difference in opinion of the two members of the Bench, the matter was listed before a third member Shri Kuldeep Singh, Member (Judicial) for his opinion under Section 26 of the Administrative Tribunal's Act. Shri

Kuldeep Singh, Member (Judicial) gave his opinion vide order dated 5.3.2004 against the petitioner, and in consonance with the decision of Shri S.K. Naik, Member (A). Accordingly, by the impugned order dated 1.11.2004 the Tribunal dismissed the original application filed by the petitioner. The present petition has been filed in this factual background.

16. Before us as well the submissions of the petitioner are that the petitioner has been left in the lurch on account of his repatriation to his parent department not being effected in time despite his request made in 1986 to be repatriated to the parent department; despite the ruling of the Ministry of Home Affairs/DOPT of the year 1998; and, despite the earlier decision of the Tribunal in OA No.2459/2000 dated 6.2.2002. The result of the immense delay in the repatriation of the petitioner just before his superannuation at the age of 57 years (which is the age of superannuation in the combatised ministerial cadre), has been that he has been presented with a *fait accompli* and deprived of the opportunity of earning higher promotion to post of Assistant Commandant (GD) and Deputy Commandant (GD) in the Executive Cadre General Duty stream after undertaking requisite training therefor. The result of the said deprivation has been that the petitioner had been granted only the routine promotions in his parent ministerial cadre by the impugned order dated 25.9.2002.

17. On the other hand, the respondents submit that the petitioner has been granted his due inasmuch as, he has been given

all his promotions in the parent combatised ministerial cadre from the dates from which his junior Shri Mohan Lal was granted these promotions. The petitioner cannot seek parity with Shri Randhawa, since Shri Randhawa had successfully undergone various courses and then got selected in the Executive Cadre General Duty Stream in the rank of Assistant Commandant in the 10% reserved vacancies for the combatised ministerial cadre personnel.

18. We have given our thoughtful consideration to the rival submissions and have also gone through the three opinions of the Members of the Tribunal as also the record placed before us. It appears to us that the petitioner has been a victim of the various acts and omissions on the part of the respondents. Firstly, the petitioner was not reverted back to his parent cadre i.e. the combatised ministerial cadre in 1986, when his promotion to the post of Inspector became due, and he was continued to be retained in the PAD. He was thereafter absorbed on 11.8.1987, with effect from 28.10.1984. The respondents subsequently term the said retrospective absorption as being against the rules, and without a show cause notice to the petitioner sought to adversely affect his rights by changing the date of his absorption in the PAD to 11.8.1987 vide order dated 16.4.2000. This was in response to his agitation against his being superseded by a large number of SAs who were junior to him, having been appointed as SAs in December, 1984, as opposed to the petitioner's date of absorption i.e. 28.10.1984. The respondents also

disregarded the ruling of the MHA/DOPT which gave two options to the respondents to remedy the legitimate grievance of the petitioner. The first was to grant him seniority w.e.f. 28.10.1984 in the PAD, and the other was to repatriate him to his parent cadre i.e. combatised ministerial cadre and to grant him the same position as being held by his immediate junior in the parent cadre viz. Shri Randhawa. The MHA/DOPT was conscious of the fact that in the meantime Shri Randhawa had changed his cadre from combatised ministerial to Executive-General Duty stream and for that purpose he had undergone various courses successfully. The MHA/DOPT therefore suggested that the respondents grant a reasonable opportunity to the petitioner to undertake the requisite courses. Though this ruling came in the year 1998, the respondents did not act on it, and instead sought to unilaterally, and without notice or hearing to the petitioner, revise his seniority/date of absorption from 28.10.1984 to 11.8.1987. This conduct of the respondents was clearly illegal and in gross violation of the principles of natural justice. We fail to understand how the petitioner's civil rights could be adversely affected without even giving him a notice and affording him a hearing. Not only that, even after the Tribunal passed the order dated 6.2.2002 directing the respondents to take a decision in two months time with regard to the repatriation of the petitioner and his placement at par with Shri Randhawa, who was then serving as Deputy Commandant in the Executive Cadre-General Duty Stream, the respondents did not pass any order till the far end of the petitioner's career, and repatriated him to his parent cadre vide

order dated 29.8.2002, when he was attaining the age of superannuation i.e. 57 years on 31.8.2002, which was the age of superannuation for the combatised ministerial cadre. These acts and omissions of the respondents repeatedly deprived the petitioner of the opportunity to undergo the necessary courses to be able to go over to the Executive Cadre-General Duty Stream like his immediate junior Shri Randhawa by competing for the 10% reserved quota for the personnel of the combatised ministerial cadre.

19. The majority view of the Tribunal that in his O.A. NO.263/2002, the petitioner did not question his repatriation in the parent cadre from the PAD, and therefore he could not be granted any relief qua his continuation in the PAD and refixation of his seniority in that Department appears to be correct since the petitioner had elected the remedy to get repatriated to his parent cadre and to seek parity with Shri Randhawa. The majority view of the Tribunal that the petitioner not having undergone the requisite courses, necessary for change of cadre from combatised ministerial cadre to the Executive Cadre-General Duty stream for selection to the post of Assistant Commandant (GD), he could not be treated at par with Shri Randhawa also appears to be correct. It is not that any Inspector of the combatised ministerial cadre could, at will, choose to change his tracks and go on to become an Assistant Commandant, in the General Duty Stream of the Executive cadre. For that the officer had to undergo the courses and clear the same. Only 10% of the posts of Assistant

Commandant (GD) were reserved for the personnel of the combatised ministerial cadre. There was, therefore, an element of uncertainty, as to whether the petitioner would have got selected as an Assistant Commandant (GD) or not. Moreover, the fact remains that he neither underwent that course, nor served in the capacity of an Assistant Commandant (GD) or as Deputy Commandant. Therefore, the claim of the petitioner for parity with Shri Randhawa may not be entirely justified.

20. Having said that, there is no denying the fact that the respondents are responsible for marring the career prospects of the petitioner. Had he been reverted to his parent cadre in the year 1986, or at least in 1998, when the MHA/DOPT gave its ruling, the petitioner could have undertaken the courses to become eligible to get selected for the post of Assistant Commandant (GD) and to earn further promotions in the said Executive Cadre.

21. The petitioner is, in our view, entitled to be compensated for the lost opportunities for which the respondents are responsible. After all, the petitioner had shown his relative merit amongst his contemporaries by getting selected for serving in the PAD on deputation as a Senior Accountant. There is no reason to assume that the petitioner would not have fared well in competition with his other contemporaries to be able to make it to the rank of Assistant Commandant and thereafter to the rank of Deputy Commandant. Considering the fact that the petitioner has been ventilating his

grievance since the year 2000 before the Tribunal by filing successive original applications and is now before this Court, which is effectively the third round of litigation, we are of the view that the interest of justice would be served if the respondents are directed to compensate the petitioner for the lost opportunities in the advancement of the petitioner's career growth, by paying to the petitioner a sum of Rs.1 lakh as lump sum damages/costs. The petitioner would, however, continue to receive his pensionary benefits on the basis of his pay fixation arrived at in terms of the order dated 25.9.2002. The damages/cost as quantified aforesaid should be paid to the petitioner by the respondents within four weeks from the date of this judgment. With these observations petition stands disposed of.

**VIPIN SANGHI,
JUDGE**

**A.K. SIKRI,
JUDGE**

July 04, 2008
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