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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 6802/2013**

Date of decision: 31st March, 2016

J R CHOBDAR ..... Petitioner

Through: Petitioner in person.

versus

UNION OF INDIA & ORS. ..... Respondent

Through: Mr. Ajay Digpaul, Adv. for UOI/Respondent No. 1 to 3.
Mr. Chandra Shekhar, Adv. for respondent No.4 with respondent No.4 in person.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

1. Cost of Rs.5,000/- has been paid to the petitioner by a cheque.

2. Mr. J.R. Chobdar, the petitioner, who is present in person, and counsel for the respondents have been heard. Mr. P.B. Mishra, respondent No. 4 has also made submissions in person.

3. Respondent No. 4 on 17.06.1966 had joined Border Security Force (BSF) as a Lower Division Clerk. In August, 1972, the fourth respondent was promoted as a Civil Upper Division Clerk (UDC) and employed in the cash section for preparation of bills, budget etc. In June, 1970 one post each of Assistant Superintendent and Auditor were

created in the Pay and Accounts Division ('PAD' for short) Cadre of the BSF for work in the Electronic Data Processing ('EDP' for short) Cell. On 28.02.1974, the fourth respondent was appointed as the Auditor though he was not an employee in the EDP cadre. Subsequently, on 01.08.1979, the fourth respondent was promoted as the Assistant Superintendent and on 08.07.1993 as the Program Assistant in the EDP cadre.

4. The Government of India, on the recommendation of the 4th Pay Commission, by O.M. dated 11.09.1989, decided to revise the pay scales of employees in the EDP cadre.

5. As there was delay, the employees in the EDP cadre including the fourth respondent, approached the Central Administrative Tribunal vide O.A. No. 2158 of 1993 for re-fixation/revision of pay scales and designation of posts in the EDP cadre. By order dated 16.07.1999, the Tribunal had directed the BSF to review the pay scales, designations and recruitment qualifications for the posts in the EDP cadre on the basis of O.M. dated 11.09.1989.

6. As this order/directions were not implemented, Contempt Petition No. 179 of 2000 was filed. In the meanwhile, the Ministry of Home Affairs order dated 10.09.2006 transferred the fourth respondent to PAD cadre in view of advice dated 23.06.2006 that the post of the Auditor and Assistant Superintendent should be treated as part of PAD cadre and not included in the EDP cadre.

7. The Contempt Petition was disposed of by the Tribunal recording that the fourth respondent had been transferred to the PAD cadre and directions were given to the BSF to decide inter-se seniority of the

fourth respondent in the PAD cadre and consequential benefits arising, if any.

8. By letter/order dated 09.01.2007, the BSF rejected the representation of the respondent No.4. Thereupon, the respondent No. 4 filed O.A. No. 560 of 2007 which was disposed of vide order dated 08.07.2008. The said order exhaustively refers to the earlier orders of the Tribunal in O.A. No.2158/1993 and CP No. 179/2000 and strikes down order dated 09.01.2007. The Tribunal held:

> *"The applicant has been working in the Accounts before moving to EDP Cell. The posts of Auditor and Assistant Superintendent in the EDP Cell were also created by the PAD. He was working as Assistant Superintendent in the EDP Cell. It was only the government in the Ministry of Finance and the MHA, which decided that the posts of Auditor and Assistant Superintendent did not fall in the category of EDP posts. It was entirely the decision of Government conveyed to the DG, BSF by letter dated 23.06.2000 that the posts of Auditor and Assistant Superintendent should be treated as part of the PAD, BSF headquarters. Clear instructions had been given by the DG, BSF (Staff Section) to the Director (Accounts) to fix the inter-se seniority of the applicant in the PAD, BSF. Further, clear instructions were given by order of the date that Assistant Superintendent was to be treated as JAO. A commitment was given to this Tribunal by the compliance affidavit Dated 27.06.2000, adverted to above, that all consequential benefits as a result of the order dated 23.06.2000 are being worked out. It is, therefore, difficult to understand how the*

respondents can renege on their commitment made to the applicant and to his Tribunal the argument that the applicant has not passed various examinations for coming to the post of JAO is not acceptable because he came as JAO before such provision was made in the recruitment rules. The respondents have produced a copy of the recruitment rules notified on 3.12.2001 which has been taken on record. Since, the applicant was directed to be equated with JAO by order dated 10.09.2001, whereas the recruitment rules are dated 3.12.2001, the argument of the respondents falls. The reasoning given in the impugned order that the PAD and EDP Cell are two different Directorates under DG, BSF and governed by the different recruitment rules for the posts in both the Directorates for rejecting the representation of the applicant also cannot be accepted. This has been reiterated in paragraph 2 of the counter affidavit also. At the cost of repetition, it is reiterated that it was not the applicant who by some sleight of hand moved into PAD from the EDP Cell of DG, BSF. This is a result of decision taken by the Ministry of Finance, MHA and NIC. This decision has been accepted by the BSF. There cannot be any going back on a decision already taken and a commitment already made to the applicant and to the Tribunal."

9. As noticed above, the aforesaid order was passed by the Tribunal on 18.07.2008. The respondent No. 4 had retired from service earlier on 31.12.2006. As a consequence, and in terms of the aforesaid directions, the fourth respondent received arrears of pay and his pension was revised. The respondent No. 4 was treated as retired as Assistant

Director (Accounts).

10. This order passed by the Tribunal dated 18.07.2008 has been accepted by the BSF. The said order was specific and personal to the fourth respondent. The said respondent was a party to the O.A. No. 2158/1993 as he was then a part of the EDP cadre and was subsequently transferred to the PAD cadre. As a member of the EDP cadre, the fourth respondent became entitled to benefit of enhanced pay scale etc., on acceptance of the 4th Central Pay Commission recommendations. Orders of the Tribunal on the question of pay scales and designation of the fourth respondent having attained finality had compelled and forced the BSF to grant benefit of higher pay scale etc. even when he was transferred and was treated as an employee in the PAD cadre.

11. The petitioner herein, was an employee in the PAD cadre. He retired on 31.03.2007 from the post of Assistant Director (Accounts).

12. The petitioner became aware of the order dated 18.07.2008 passed by the Tribunal in O.A. No.560 of 2007 and the benefit given to the fourth respondent, and approached the Tribunal by way of O.A. No. 1198/2010. By the impugned order dated 18.07.2008, this O.A. has been dismissed.

13. The petitioner's claim is entirely predicated on the assertion that he being senior to the fourth respondent should be given notional promotions from 1989 onwards. He predicated his claim relying on the pay scale/promotions given to the fourth respondent. Accordingly, arrears of pay have been claimed.

14. The prayer made by the petitioner in the O.A. No. 1198/2010, reads:

"RELIEF SOUGHT:

This Hon'ble Tribunal may be pleased:-

(i) to reconsider the judgment dated 18.07.2008 in O.A. No. 560/2007 in the light of the judgment of Hon'ble Supreme Court in case of K. Ajit Babu Versus Union of India and quash and set aside the orders dated 08.07.2009 and 17.08.2009 together with the order on representation dated 16.03.2010 to the extent it is prejudicial to the applicant.

(ii) to direct the official respondents to consider the case of the applicant for the post of Assistant Director (Accounts) at par with respondent No. 4 treating the applicant senior to respondent No. 4 and award all consequential benefit like pay fixation and revision of pension etc. and award arrears at the rate of 12% per annum.

(iii) to ward the cost of petition;

(iv) to pass such other and further order as deemed fit and proper."

The contradiction in the prayer clauses is apparent. Prayer clause (i) refers to the order dated 18.07.2008 passed in O.A. 560 of 2007, filed by the fourth respondent and pleads that this order should be quashed and set aside. Accordingly the consequential promotions granted to the fourth respondent should be recalled to the extent that they were prejudicial to the petitioner. At the same time, the petitioner had prayed that he should be treated at par with the fourth respondent, being his senior, and should be awarded all consequential benefits of fixation of pay scale and paid arrears of pay etc. along with interest. If the order dated 18.07.2008 is quashed/set aside, obviously, prayer No. (ii) cannot be granted. Pertinently, order dated 18.07.2008 is not adverse to the petitioner. It is not the case of the petitioner that he was denied promotion or was entitled to a higher pay scale under the Recruitment Rules etc. The relief granted to the fourth respondent has not adversely affected the petitioner. The petitioner, it is apparent, claims right to similar and equal treatment, at par and in parity with the fourth respondent.

15. We have noted in detail the peculiar facts pursuant to which order dated 18.07.2008 was passed by the Tribunal in the case of the fourth respondent. The said respondent was posted as the Auditor and then as the Assistant Superintendent and the Program Assistant in the EDP cadre. The fourth Pay Commission had made specific recommendations for the EDP cadre. As the fourth respondent was a party to O.A. No.2158/1993, decided by the Tribunal on 16.07.1993, the fourth respondent became entitled to enhanced pay scale etc. applicable to posts in the EDP cadre. Subsequently, the fourth respondent was transferred to the PAD cadre on 10.09.2006, but this transfer did not affect or nullify the directions given in the order dated 16.07.1999 passed in the O.A. No.2158/1993. The Tribunal had given directions to the BSF to grant consequential benefits to the fourth respondent in the Contempt Petition (C.P. No. 179/2000).

16. The question of seniority and Recruitment Rules had lost importance for the simple reason that the order dated 18.07.2008 of the Tribunal passed in O.A. 560 of 2007 was pronounced after both of

them, i.e., the fourth respondent and petitioner, had retired from service on 31.12.2006 and 31.03.2007, respectively. The petitioner had himself retired from the post of Assistant Director (Accounts), the post from which the respondent No. 4 had retired. The petitioner does not claim or profess that he was entitled to further promotion to a higher post in the hierarchy, above the post of Assistant Director (Accounts). The claim of the petitioner is that he should be paid back wages from the dates from which the fourth respondent was promoted pursuant to order dated 18.07.2008. The said order is specific to the respondent No. 4 and was passed as a result of an earlier order dated 16.07.1999 passed in O.A. No. 2158 of 1993 and thereafter the order passed in Contempt Petition No. 179 of 2000 decided on 18.09.2001. The BSF was bound to comply with the directions given in the two orders and satisfy the consequences. The petitioner cannot claim and ask for notional promotion, back wages etc. on the ground that the fourth respondent has been granted and paid higher salary etc.

17. In view of the aforesaid, we do not find any merit in the present writ petition and the same is dismissed. In the facts of the case, there will be no orders as to costs.

SANJIV KHANNA, J

NAJMI WAZIRI, J

MARCH 31, 2016/acm