

(2021) 12 DEL CK 0137

In the Delhi High Court

Case No : Civil Writ Petition No. 6686, 11103 Of 2021

Jasveer Singh

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 21-12-2021

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21

Citation : (2021) 12 DEL CK 0137

Hon'ble Judges : Rajiv Shakdher, J; Talwant Singh, J

Bench : Division Bench

Final Decision : Allowed/Dismissed

Judgement

Rajiv Shakdher, J

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Preface:-

1. These are writ petitions directed against the order dated 07.01.2021, passed by the Central Administrative Tribunal [in short "the Tribunal"] in O.A. No. 2273/2017.

2. For the sake of convenience, Jasveer Singh [i.e., the original applicant], who is the petitioner in W.P.(C.) 6686/2021, will be hereafter referred to as the

petitioner. Likewise, the Union of India (UOI) and others i.e., the Director General, National Investigation Agency (NIA), in effect, NIA and the Secretary, Ministry of Personnel, Public Grievances and Pension, Department of Personnel & Training (DoPT), in effect, DoPT, will be collectively described as the respondents, unless the context requires otherwise.

3. The principal grievance of the petitioner is that the respondents have not given him the benefit of the service rendered by him in his parent department i.e., the Border Security Force (BSF), prior to his absorption in NIA.

3.1. According to the petitioner, the failure to recognise the service rendered by the petitioner in BSF in a post which was the equivalent to the post of Deputy Superintendent of Police (in short "DSP") in NIA, marred his opportunity for being considered for promotion to the post of Additional Superintendent of Police [in short "ASP"] in the vacancy year 2017-2018.

4. The position of the NIA is rooted in Ministry of Home Affairs [in short 'MHA'] communication, dated 13.02.2017 which, in turn, is based on the opinion of the DoPT in the communication dated 08.02.2017; which was rendered in the context of promotion to the post of Head Constable, the feeder post for which was, Constable.

4.1. The DoPT, via its communication dated 08.02.2017 addressed to respondent no.1/UOI, in effect, MHA, had taken the position qua the eligibility criterion in the Recruitment Rules [in short "RRs"] which provided that for promotion to the post of Head Constable, the concerned person should have rendered five years of regular service in the feeder post [i.e., the post of Constable], and that the period of five years would commence from the date of absorption. As indicated above, this opinion was rendered qua NIA to MHA in the context of promotion from the post of Constable to Head Constable.

4.2. Given this position, the respondents took the same stand in respect of the petitioner, and thus, via communication dated 20.04.2017 informed the petitioner that, he would attain the eligibility criteria for being considered for the post of ASP only on 04.05.2020 for the year 2021-2022.

4.3. In other words, according to the respondents, the eligibility criteria given in the Recruitment Rules i.e., five years of regular service in NIA would be counted from the date of absorption in the NIA, and therefore, the petitioner would become eligible only on 04.05.2020, having been absorbed in NIA on 05.05.2015.

4.4. Therefore, as indicated above, as per the stand of the respondents, the petitioner could be considered for promotion to the post of ASP only in 2021-2022.

5. It is in this backdrop that the petitioner approached the Tribunal by way of an original application i.e., O.A. No.2273/2017. The petitioner, thus, assailed the order of the DoPT dated 08.02.2017, the communication of MHA dated 13.02.2017 and the communication dated 20.04.2017, addressed by the NIA to

the petitioner.

5.1. Besides this, the petitioner also sought the following directions:

(i) That the services rendered by him in BSF in the rank of Assistant Commandant [which according to him was equivalent to the post of DSP in NIA] should be considered for promotion to the post of ASP in NIA.

(ii) The petitioner should be considered for promotion to the rank of ASP in NIA qua the vacancy year 2017-2018, and therefore, a consequential direction was sought for convening a Departmental Promotion Committee [in short 'DPC'] for the said purpose, and if found fit, to be granted promotion to the post of ASP with all attendant benefits.

5.2. The Tribunal, via the impugned order, partially allowed the petitioner's O.A., and thus, held that the services rendered by the petitioner as DSP in NIA with effect from 03.01.2014 would be taken into account in determining his eligibility to the post of ASP.

5.3. The Tribunal came to this conclusion, having regard to the contents of the Office Order No.14/2014 dated 03.01.2014 issued by the NIA, wherein, inter alia, it was indicated that the petitioner, along with other deputationists from other organisations [including Central Reserve Police Force (CRPF) and Railway Protection Force (RPF)], were inducted as DSPs in NIA albeit on deputation basis, having been found eligible and suitable by the concerned committee.

5.4. The impugned order of the Tribunal ended up dissatisfying both the petitioner as well as the respondents. Consequently, a writ petition was filed not only by the petitioner but also by the respondents, as is evident from a perusal of the cause title(s) of the instant judgment.

6. According to the petitioner, his service with effect from 07.09.2011 should be counted to determine his eligibility for promotion to the post of ASP, whereas respondents, as indicated above, have taken the position that the petitioner's eligibility can only be counted from the date he was permanently absorbed in NIA i.e., 05.05.2015.

6.1. Therefore, there are three dates before us for ascertaining the starting point of the eligibility period for considering the petitioner for promotion to the post of ASP.

6.2. As alluded to above, the petitioner says, that the eligibility period should commence from 07.09.2011. On the other hand, the respondents claim that the eligibility should commence from 05.05.2015. The Tribunal has pegged the commencement date of the eligibility period to 03.01.2014.

6.3. Both sides agreed that the answer to this vexed issue would lie in the interpretation of the relevant recruitment rule.

6.4. For the sake of convenience, the relevant recruitment rule is set forth

hereafter:

"Deputy Superintendent of Police in National Investigation Agency with five years regular service in the pay band-3 (Rs. 15600-39100) with Grade Pay of Rs. 5400 and such officer should have successfully completed the four weeks training on Investigation and Intelligence conducted by the National Investigation Agency."

7. However, before we proceed further, it would help if we were to set down the facts and circumstances in the backdrop of which the instant writ petitions came to be instituted in this Court.

Background

8. The petitioner obtained employment in BSF, in the rank of Sub-Inspector (SI), on 01.08.1991. On 14.08.2000, the petitioner was promoted to the rank of Inspector while he was in BSF.

8.1. In and about 2009, NIA was constituted with administrative control vested in the MHA. Since the NIA was a new organization, it needed to induct experienced officers from other government organizations.

8.2. It is in this context that the NIA, upon its constitution, invited applications from officers working in other organizations under the Central Government, State Governments and Union Territories for induction in NIA, albeit, on deputation.

8.3. The petitioner was one of those who applied for being inducted in the NIA, albeit, on deputation. Resultantly, on 01.12.2010 the petitioner was selected for being inducted in the NIA as a deputationist, initially for three years. An order to that effect was passed on 07.12.2010.

8.4. While the petitioner was working as a deputationist in NIA, his name came up for consideration for promotion to the post of Assistant Commandant in BSF. The petitioner was, thus, promoted as Assistant Commandant in BSF, w.e.f. 25.05.2011.

8.5. On 26.05.2011, the MHA wrote to NIA concerning persons who were appointed as Inspectors with BSF and were presently working with NIA to seek the consent of the deputationist as to, whether or not they would want to continue on deputation in NIA, even after being promoted to the rank of Assistant Commandant in BSF. Besides this, via this communication, MHA also conveyed that if the concerned deputationist(s) were willing to continue and if they would be accommodated/adjusted in NIA, they should be granted the pay band and grade pay of the rank attained by the deputationist in the parent cadre, if it was higher than the post in which the deputationists were working in the borrowing department i.e., NIA-in line with the DoPT's OM dated 17.06.2010. Thus, in effect, the suggestion was that the deputationist should be given proforma promotion and be placed in the pay band and granted the grade pay which would have enured to the deputationist had he remained in the parent department [in this case, the BSF].

8.6. Having received the aforesaid communication, on 07.09.2011, NIA wrote to BSF and conveyed that since the petitioner along with four other officers had given their option to continue on deputation with NIA, they would be accommodated in NIA by way of proforma promotion under the Next Below Rule [in short "NBR"] in higher pay band/grade pay, till completion of their normal deputation period. The impact of this communication was that the petitioner was placed in pay band-3 (15600-39100) and was granted grade pay of Rs.5,400, via office order dated 24.10.2011.

8.7. In the interregnum, on 08.10.2011, BSF had communicated to the NIA concerning pay fixation of the petitioner under NBR, upon the option being exercised by him to continue with NIA.

8.8. The record shows that, on 03.01.2014, the NIA inducted the petitioner along with other officers as DSPs, albeit, on deputation, after the concerned committee had found them both eligible and suitable. Pertinently, this office order, inter alia, provided that the period of deputation of the concerned officers would be counted from the actual date they joined NIA and that they will be governed by standard terms and conditions concerning deputation as laid down by the GOI/ DoPT, vide OM dated 17.06.2010, as amended from time to time.

8.9. The petitioner was ultimately absorbed, permanently, in NIA, via office order dated 05.05.2015, in the rank of DSP. The prelude to the issuance of this office order was a [personal] conversation that the petitioner had with the concerned officials of the Union Public Service Commission (UPSC), whereby his willingness was sought for absorption in NIA, on 16.02.2015. The Petitioner was thus placed in pay band-3 (15600-39100) and granted grade pay of Rs.5,400.

8.9(a).The office order dated 05.05.2015 also alluded to the fact that absorption of the officers referred to in the said order was against vacancies circulated against the quota for deputation/absorption and that their pay and seniority would align with the provisions contained in the fundamental rules/ supplementary rules and instructions issued by the DoPT, as amended from time to time.

9. The record also shows that, in between i.e., on 29.03.2014, the NIA took out an advertisement inviting applications to fill up vacancies in Group 'A' post, which included Executive-Superintendent of Police (SP), Additional Superintendent of Police (ASP) and Deputy Superintendent of Police (DSP) on deputation/ absorption basis from eligible and willing officers working with the Central Government, State Governments and Union Territories.

9.1. The petitioner applied against the advertisement issued on 29.03.2014 by NIA.

9.2. It is at this juncture that two significant events occurred:

(i) On 06.06.2016, the NIA forwarded to the MHA an inter se seniority list concerning ASPs and DSPs in NIA. Insofar as the seniority list concerning DSPs

was concerned, the petitioner was shown as being the senior-most in that list. It is the petitioner's stand that he was shown as the senior-most DSP in the said list as his seniority was considered having regard to the date on which he was promoted to the rank of Assistant Commandant in BSF which was equivalent to the post of DSP in NIA.

(ii) NIA on its part, on 30.12.2016, wrote to MHA to nominate an officer in the rank of Addl. Secretary/ Joint Secretary (preferably belonging to the SC/ST category) for constitution of the DPC for promoting eligible officers in the rank of DSP to the post of ASP in NIA.

9.3. It is in this background that the impugned communication dated 08.02.2017, which was addressed by DoPT to MHA, and the consequent communication dated 13.02.2017 addressed by MHA to NIA, came to fore. As noticed above, these communications formed the basis of NIA taking the position that the petitioner would not be eligible for being considered for promotion to the post of ASP till the vacancy year 2021-2022.

10. It is in this backdrop that submissions on behalf of Jasveer Singh i.e., petitioner in W.P.(C) 6686/2021 were addressed by Mr Aditya Hooda, while on behalf of UOI and NIA, arguments were advanced by Mr Anil Kaushik.

Submissions on behalf of Jasveer Singh [i.e., the original applicant]

11. Mr Hooda submitted that the impugned order passed by the Tribunal was flawed, for the reason that the petitioner was promoted to the rank of Assistant Commandant in BSF w.e.f. 25.05.2011, which was equivalent to the rank and pay (including grade pay) of DSP in NIA, and therefore, the petitioner's period of eligibility for promotion to the rank of ASP should get triggered from 07.09.2011 and not from 03.01.2014 as held by the Tribunal.

11.1. Furthermore, according to Mr Hooda, the respondents' stand that the eligibility period for promotion to the post of ASP qua the petitioner would commence only 05.05.2015, when he was permanently absorbed as DSP in NIA, was contrary to the relevant recruitment rules.

11.2. In sum, Mr Hooda's submission was that he fulfilled the criteria given in the relevant recruitment rules which, inter alia, required him to have, served as DSP in NIA, have had 5 years of regular service in pay band-3 (15600-39100) and grade pay of Rs.5,400/- and lastly, should have successfully completed the 4 weeks training on investigation and intelligence, conducted by the NIA.

11.3. The aforementioned criteria was fulfilled by the petitioner in December 2016, and therefore, he was eligible for consideration for promotion to the post of ASP in the vacancy year 2017-2018. In support of his submission that the period spent by the petitioner as deputationist should be counted as an eligible period, reliance was placed by Mr Hooda on the judgment of the Supreme Court in K. Madhavan and another v. Union of India and others (1987) 4 SCC 566.

Submissions on behalf of UOI and NIA

12. On the other hand, Mr Kaushik, expectedly, rebutted the contentions advanced by Mr Hooda.

12.1. It was Mr Kaushik's submission that the eligibility criteria for promotion to the post of ASP required the petitioner to have rendered 5 years regular service as DSP in NIA, in pay band-3 (15600-39100) with grade pay of Rs.5,400/-.

12.2. It was, thus, Mr Kaushik's contention that in the petitioner's case, the period of 5 years of regular service was triggered only on 05.05.2015 when he was permanently absorbed in the NIA.

12.3. According to Mr Kaushik, the period served by the petitioner as deputationist could not be categorized as 'regular service', and therefore, that period of service could not be considered for ascertaining the eligibility of the petitioner for promotion to the post of ASP. In support of his contention, Mr Kaushik relied upon the judgment of the Supreme Court rendered in *Mrigank Johri and others v. Union of India and others* (2017) 8 SCC 256.

Analysis and Reasons

13. Having examined the record of this case, the following facts have emerged qua which there is no dispute:

(i) The petitioner joined BSF as Sub-Inspector on 01.08.1991.

(ii) He was promoted to the rank of Inspector in BSF on 14.08.2000.

(iii) He was inducted as deputationist in NIA, initially for three years, via order dated 07.12.2010, w.e.f. 01.12.2010.

(iv) While the petitioner was working as a deputationist in NIA, he came up for promotion in his parent cadre i.e., BSF for the rank of Assistant Commandant. The petitioner secured this promotion on 25.05.2011 and was, accordingly, placed in pay band-3 (15600-39100) and accorded a grade pay of Rs.5,400.

(v) Given the fact that the petitioner had been promoted in his parent cadre i.e., BSF and he had expressed his inclination to continue on deputation with NIA, he was granted proforma promotion under the NBR on 07.09.2011. Consequently, the petitioner was placed in pay band-3 (15600-39100) with grade pay of Rs.5,400, till the completion of his deputation in the normal course.

(vi) A formal order inducting the petitioner in the rank of DSP in NIA, albeit, on deputation, after the petitioner's case along with other officers was considered by a competent committee, was passed on 03.01.2014.

(vii) The petitioner's permanent absorption in NIA as DSP in pay band-3 (15600-39100) with grade pay of Rs.5,400 took place only on 05.05.2015.

(viii) The petitioner applied against the advertisement dated 29.03.2014, seeking

applications, inter alia, to fill up the vacant post of ASP on a deputation/absorption basis.

14. There is no dispute raised before us that Assistant Commandant in BSF is equivalent in rank to the DSP in NIA.

14.1. There is also no dispute [as is also demonstrable from the narration of facts set forth hereinabove] that both the Assistant Commandant in BSF and DSP in NIA, are placed in the same pay band i.e., pay band-3 (15600 - 39100) which carry the same grade pay i.e., grade pay of Rs.5,400.

14.2. Given this position, once the petitioner was put in pay band-3 (15600-39100) with grade pay of Rs.5,400 by NIA, vide order dated 07.09.2011, he fulfilled the eligibility criteria insofar as rank and pay, was concerned as he already stood promoted to the post of Assistant Commandant in his parent department i.e., BSF.

14.3. The fact that a formal order of induction as DSP in NIA was passed on 03.01.2014 would not efface the event of his promotion in an equivalent rank, albeit, in the parent department i.e., BSF having taken place, on 25.05.2011.

14.4. Because the petitioner was put in pay band-3 (15600-39100) with grade pay of Rs.5,400/- by NIA on 07.09.2011, the date when the petitioner became eligible for consideration for promotion to ASP, would get shifted to 07.09.2011.

15. Thus, if we take these aspects into account, in our opinion, the petitioner fulfils the eligibility criteria for being considered for promotion to the post of ASP in September 2016.

15.1. Therefore, in our view, the petitioner is right in contending that the DPC should have considered his case for promotion for the vacancy year 2017-2018; which was also what the NIA proposed, vide its communication dated 30.12.2016 addressed to MHA.

16. In our opinion, the relevant recruitment rule [which has been extracted hereinabove] required fulfilment of the following prerequisites for the petitioner to be considered for the post of ASP:

(i) At the time of consideration, he should have been working as DSP in NIA.

(ii) He should have put in 5 years of regular service in the post of DSP.

(iii) He should have been placed in pay band-3 (15600-39100) and grade pay of Rs.5,400.

(iv) He should have successfully completed 4 weeks of training on aspects concerning investigation and intelligence conducted by NIA.

16.1. As far as conditions nos. (iii) and (iv) are concerned, there appears to be no dispute qua the same. The respondents have raised a cavil only with regard to the period of "regular service" rendered by the petitioner.

17. In this context Mr Kaushik had contended that the period served by the petitioner between 07.09.2011 and 04.05.2015 could not be considered as a period spent in regular service, since the petitioner had not been permanently absorbed as DSP in NIA.

17.1. In our view, this submission advanced by Mr Kaushik is misconceived. The period spent by the petitioner in an equivalent rank i.e., in the rank of Assistant Commandant in BSF between 07.09.2011 and 03.01.2014, and thereafter, as DSP, upon being inducted in NIA, albeit, on deputation, till 04.05.2015, would have to be factored in, as this would be any which way a period spent in regular service.

17.2. In this context it would be useful to refer to the observations made by the Supreme Court in the K. Madhavan case. This was a matter in which the Supreme Court was considering two sets of writ petitions. In one set of writ petitions i.e., W.P. Nos.9847-48/1983, the issue which Supreme Court was called upon to consider was whether one of the parties involved in the case [i.e., respondent no. 5], who was a deputationist was eligible for appointment to the post of Superintendent of Police in Central Bureau of Investigation (CBI) as the recruitment rules required him to complete, inter alia, "8 years' service" "in the grade". It was contended that, since the concerned person [i.e., respondent no. 5, in that case] was a deputationist, he was not eligible for promotion to the post of SP as he had spent less than 8 years in the concerned feeder grade i.e., that of DSP. The Supreme Court rejected this contention, and while doing so, made the following apposite observations:

"6. The petitioners have, in the first instance, challenged that respondent 5 was not even eligible for appointment to the post of SP, CBI. Respondent 5 was a deputationist and under the 1963 Rules that were prevailing at the material time, he was to complete eight years' service in the grade. There has been much controversy over the expression "in the grade". According to the petitioners, the expression should be understood as meaning in the grade of SP in the CBI. In other words, the contention of the petitioners is that respondent 5 should have been for eight years in the CBI as DSP before he would be eligible for appointment to the post of SP in the CBI. As respondent 5 joined the post of DSP in the CBI on deputation on July 1, 1967, he could not be appointed to the post of SP even on October 28, 1972, far less on July 21, 1971 (FN), for on either date, he did not complete eight years of service in the CBI. We are, however, unable to accept the contention. "Eight years' service in the grade" would mean "eight years' service in the grade of DSP". The 1963 Rules do not provide that the period of eight years should be computed from the date of deputation to the CBI as DSP. In the absence of any such expression, it must be held that the period during when one held the post of DSP in the State Police Service should also be taken into account for computing the period of eight years. The 1963 Rules provide that two years must be spent on probation as DSP in the CBI. The position, therefore, comes to this that of the total period of eight years, two

years must be on probation basis in the CBI. An officer may have been in the State Police as DSP for a period of six years and, thereafter, if he joins the CBI on deputation and spends two years on probation, he would be eligible for consideration for appointment to the post of SP. If this view is not taken, no officer would be available to join the CBI on deputation. It has already been noticed that the CBI requires efficient and experienced police officers and if the period spent by police officers in the State Police Service is not taken into account for the purpose of computing the period of eight years, it would be doing injustice to such police officers who join the CBI on deputation. In our view, therefore, there is no substance in the contention of the petitioners that in order to be eligible for appointment to the post of SP in the CBI, one should be in the rank of DSP in the CBI for a period of eight years including a period of two years on probation. Respondent 5 having held the post of DSP for five years in the Rajasthan State Police and more than three years in the CBI, that is to say, over eight years, he was quite eligible for appointment to the post of SP."

17.3. Furthermore, as indicated above, in the other writ petition in the K. Madhavan case i.e., W.P. No.1021/1986, one of the issues which came up for consideration was whether the petitioner concerned, who was a deputationist and whose parent department was the BSF, was not suitable for appointment to the post of SP in CBI. The reason proffered for this objection was that the relevant recruitment rule which adverted to the appointment via deputation alluded to the fact that such appointment would be made from a pool of suitable officers working for the State Police Force, or officers of the IPS, IRS and other analogous posts in the Central Government departments such as Directorate of Enforcement, Department of Customs, etcetera. The Supreme Court, while rejecting this argument, made some observations which lend in our opinion greater clarity, as to why the service rendered by a deputationist in an equivalent post requires to be reckoned for promotion in the borrowing department. For the sake of convenience, the said observations are extracted hereafter:

"27. We are unable to accept the contention. It is true that in the rule two Government Departments have been mentioned, but that does not mean that only those Government Departments in which inquiries and investigations are made are contemplated by the rule. Nor does the rule contemplate that only those officers, who had [the] experience of investigation would be appointed to the post in the CBI. Under the rule, such an officer should be a suitable officer and should be holding analogous post in the Central Government Department concerned. The petitioner was found to be a suitable officer and at the time of his deputation he was holding the post of Deputy Commandant which, according to the petitioner, is equivalent to the post of SP in the CBI. We are unable to accept the contention of respondent Nos. 3 and 5 that the post of Deputy Commandant in the BSF is not equivalent to the post of SP in the CBI. The letter of the Under Secretary to the Government of India dated November 25, 1983 shows on the face of it that the post of Deputy Commandant in the BSF is equivalent to that of SP in the CBI. It has been expressly conceded by the learned Additional Solicitor

General that the Government accepts the post of the Deputy Commandant in the BSF as equivalent to the post of SP in the CBI. At this stage, we may refer to the letter dated January 24, 1984, of the CBI to the Government of India wherein it has been categorically stated inter alia that the petitioner was holding an analogous post in the BSF and was, therefore, eligible to be taken on deputation. Further, it has been stated that he had considerable experience of investigation of criminal cases, and that the Government and the UPSC had duly approved the substantive absorption of the petitioner on merit in accordance with the recruitment rules, as in force, in larger public interest. The said letter of the CBI resolves all controversy as to whether the petitioner was holding equivalent post in the CBI or whether he had experience of investigation or whether he was absorbed in the CBI in public interest. There is, therefore, no substance in the contention made on behalf of the respondents Nos. 3 and 5 that the petitioner's appointment in the CBI was illegal. In view of our decision that the petitioner's seniority should be counted from 14-6-1976 on which date he was regularly promoted to the post of Deputy Commandant in the BSF, the petitioner should be held to be senior to the respondents Nos. 5 to 7."

18. Thus, having regard to the principles enunciated by Supreme Court in K. Madhavan case, to our minds, there is no doubt that given the fact that the petitioner was promoted in 2011 to the rank of Assistant Commandant in BSF, which was equivalent to the feeder post i.e., DSP in NIA and that in the same year i.e., 2011, he was placed in pay band-3 (15600-39100) with grade pay of Rs.5,400, he had become eligible in September 2016 for being considered for promotion to the post of ASP in the vacancy year 2017-2018.

19. The judgment rendered by the Supreme Court in the Mrigank Johri case, which was relied upon by Mr Kaushik to contend that the period before the petitioner's permanent absorption as DSP in NIA could not be considered, is distinguishable on facts.

19.1. This was a case where the appellants before the Supreme Court were appointed as junior engineers in All India Radio. On an option being given, they were sent on deputation as junior engineers to the electrical wing of the postal department.

19.2. Since the appellants were desirous of being permanently absorbed in the department of posts, their request was acceded to based on specific terms and conditions.

19.3. The terms and conditions, to which the appellants in that case, had given their consent, was that they would be treated as "new recruits" and that their service in the earlier cadre would be counted for all purposes except 'for seniority in the cadre'.

19.4. The appellants raised no protest at the relevant time; however, after a couple of years, representations were made by the appellants for considering the period spent by them on deputation for fixing seniority. The appellants

approached the Tribunal with this plea and also went on to contend before the very same forum that if the concerned person i.e., the applicant was holding the same or equivalent grade on regular basis in the parent department, such period should also be counted as regular service.

19.5. It is in this context that the Supreme Court rejected the plea of the appellants, even while observing that the normal service jurisprudence would mandate that service rendered by an employee in the previous cadre should be recognized. The reason the Supreme Court veered away from this proposition was that the appellants in that case, at the time of being absorbed, had accepted the condition that this principle would not apply for the determination of seniority.

19.6. In other words, at the time of absorption in the borrowing department, the appellants had indicated their willingness to sacrifice seniority while preserving other benefits that would become available to the appellants i.e., those who were absorbed. The relevant observations are made in paragraph 31 of the judgment rendered in the Mrigank Johri case. For the sake of convenience, the same are extracted hereafter:

"31. It is no doubt true that the OM dated 29.5.1986 as modified by OM dated 27.3.2001 did provide for the benefit of the previous service rendered in the cadre. This is in effect also the ratio of the judgment in SI Rooplal case (supra). This would also be in conformity with the normal service jurisprudential view. However, it would be a different position if the absorbing department clearly stipulates a condition of giving willingness to sacrifice the seniority while preserving all other benefits for the absorbee (which are accepted) failing which the option was available to the absorbee to get himself repatriated to the parent department. The terms and conditions are categorical in their wording that the absorbees would be "deemed to be new recruits" and the previous service would be counted for all purposes "except his/her seniority in the cadre". The appellant accepted this with open eyes and never even challenged the same. Their representations to give them the benefit of their past seniority was also turned down and thereafter also they did not agitate the matter in any judicial forum. The controversy was thus not alive and it was not open for them to challenge the same after a long lapse of period of time. In fact on the day of filing of the OM, any prayer to set aside the terms and conditions of absorption would have been clearly barred by time under Section 21 of the Administrative Tribunals Act, 1985."

Conclusion

20. For the foregoing reasons, we are inclined to set aside the impugned order dated 07.01.2021, passed by the Tribunal. It is ordered accordingly.

20.1. The period of service between 07.09.2011 and 04.05.2015 will be taken into account for determining the eligibility of the petitioner for being considered for promotion to the post of ASP for the vacancy year 2017-2018. Resultantly, a review DPC will be convened to consider the case of the petitioner for promotion

to the post of ASP for the vacancy year 2017-18, with all consequential benefits

20.2. Since the impugned communications dated 08.02.2017, 13.02.2017 and 20.04.2017 are contrary to the ratio of the decision rendered by the Supreme Court in the K. Madhavan case, the same, are accordingly set aside.

21. The net result is, W.P.(C.) No.6686/2021 stands allowed, while W.P.(C.) No.11103/2021 is dismissed.

21.1. Consequently, pending applications shall also stand closed.

22. There shall, however, be no order as to costs.