
(2018) 07 CAT CK 0025
In the Central Administrative Tribunal
Case No : Original Application No. 558 Of 2016

Vimla Mehra

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 25-07-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2018) 07 CAT CK 0025

Hon'ble Judges : Dinesh Gupta, J;K.N. Shrivastava, Member (A)

Bench : Division Bench

Advocate : Yogesh Sharma, Hanu Bhasker

Final Decision : Allowed

Judgement

K.N. Shrivastava, Member (A)

1. Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main reliefs:-

"8.1 To allow the O.A. and quash the impugned Order vide letter no. F.NO 14046/50/2000-UTS.I dated 08.10.2015 passed by respondent (Annexure A-1).

8.2 To direct the respondent to grant the applicant the Apex Pay Scale of Rs.80,000/- w.e.f. 30.09.2013 with all other consequential benefits."

2. Factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant is an IPS officer of 1978 batch of Union Territory cadre. She was promoted to the grade of Director General of Police in HAG + Scale - ` 75000-80000 vide Ministry of Home Affairs (MHA) order dated 28.06.2012.

2.2 With the approval of Appointments Committee of the Cabinet (ACC), vide its Annexure A-2 O.M. dated 31.12.2012, the MHA published a list of officers of 1979 batch of IPS, who were empanelled to the post of Director General of Police / equivalent cadre in the Centre.

2.3 Two of the 1979 batch IPS officers, who were empanelled as per Annexure A-2, namely, Mr. Devendra Kumar Pathak (AM - 1979) and Mr. Sharad Kumar (HY - 1979), were appointed as Director General of BSF and Director General of NIA respectively. The MHA, vide its Annexure A-3 O.M. dated 07.05.2015, with the approval of ACC, granted Apex Pay Scale of `80000 (fixed) to them.

2.4 The applicant felt aggrieved that she belonging to 1978 batch of IPS had not been empanelled as Director General of Police, whereas her juniors belonging to 1979 batch have been empanelled. Accordingly, she represented the matter to the authorities concerned. Finally, the ACC approved her empanelment to the post of Director General of Police / equivalent at the Centre, and Annexure A-6 order dated 09.10.2015 to this effect was issued by the Department of Personnel & Training (DoPT). A consequential Annexure A-9 order dated 15.10.2015 to this effect was issued by the MHA as well empanelling her to hold the post of Director General of Police / equivalent cadre in the Centre.

2.5 The Govt. of NCT of Delhi, Home Police-I/Establishment Department also issued Annexure A-10 consequential order dated 29.10.2015, designating her as Special C.P. (DG Scale)/Administration Coordinator.

2.6 The applicant did not hold any post of Director General of Police in the Central Government after her empanelment. She retired from the post of Special Commissioner of Police (DG Scale)/Administration Coordinator in Delhi Police on attaining the age of superannuation on 29.02.2016.

The grievance of the applicant is that despite her empanelment to the post of Director General of Police / equivalent cadre in the Central Government, she has not been granted the Apex Pay Scale of `80000 (fixed) and consequential benefits flowing from it. Accordingly, she has filed the instant O.A. praying for the reliefs as indicated in paragraph (1) above.

3. Pursuant to the notice issued, the respondent entered appearance and filed reply, to which the applicant filed rejoinder.

4. Arguments of Mr. Yogesh Sharma, learned counsel for the applicant and that of Mr. Hanu Bhasker, learned counsel for respondents were heard on 13.07.2018.

5. Mr. Yogesh Sharma, learned counsel for applicant submitted that the case of the applicant is squarely covered by the judgments of this Tribunal in O.A. No.823/2012 decided vide order dated 10.05.2012 (R. N. Ravi v. Union of India & another) and in O.A. No.1722/2012 decided vide order dated 29.05.2012 (Shri OPS Malik v. Union of India). He submitted that the Tribunal, in both these cases, has granted identical reliefs to the applicants therein. He further submitted that the Tribunal has further granted similar reliefs to the applicant in O.A. No.3171/2015 decided on 11.12.2017 (Smt. Kanwaljit Deol v. Union of India & another).

6. Mr. Sharma vehemently argued that the case of the applicant is squarely covered by these orders of this Tribunal and as such, the applicant is entitled for

getting the reliefs claimed for.

7. Mr. Hanu Bhasker, learned counsel for respondent, on the other hand, submitted that the applicant although empanelled to the post of Director General of Police / equivalent cadre in the Central Government, but, in fact, she never held any such post in the Central Government. In other words, she was never posted against a post carrying the Apex Pay Scale of `80000/-. Therefore, her case is completely distinguishable from the applicants in O.A. Nos.823/2012, 1722/2012 and 3171/2015. Hence, she cannot be granted the reliefs in terms of the orders of the Tribunal in these three cases.

7.1 The orders of the Tribunal in R N Ravi and OPS Malik (supra) were challenged by the Union of India in Hon'ble Delhi High Court, who dismissed the Writ Petition and affirmed the orders of the Tribunal, against which the Union of India has approached the Hon'ble Apex Court by filing Civil Appeal No.4648/2014, which is still pending.

7.2 The Tribunal while deciding the case of Smt. Kanwaljit Deol (supra) has taken cognizance of the pendency of Civil Appeal No.4648/2014. In the operative part of its order dated 11.12.2017 in the ibid O.A., besides granting the reliefs to the applicant therein, the Tribunal has also ensured that in case the ibid Civil Appeal getting decided in favour of the Union of India, the concerned beneficiary would be liable to refund the benefits to the Government. The operative part of the order dated 11.12.2017 in O.A. No.3171/2015 is reproduced below:-

"11. In view of the above circumstances, this OA is allowed. The respondents are directed to grant apex scale to the applicant w.e.f. the date Shri P. K. Mehta was granted the said scale, i.e., 19.05.2011. The respondents are further directed to re-determine the retiral benefits of the applicant in view of the grant of apex scale to her and work out the arrears to be paid to her from 19.05.2011 till the date of superannuation of the applicant, i.e., 31.10.2014 within a period of two months from the date of receipt of certified copy of this order. Suffice it to say that in the event judgments passed in Shri R. N. Ravi and Shri O. P. S. Malik which are affirmed by the Hon'ble Delhi High Court are reversed by the Apex Court, the applicant would be liable to refund the benefit which she may receive by virtue of the present judgment and thus for this purpose this judgment shall remain subject to the outcome of Civil Appeal No.4648/2014 pending before the Apex Court. No order as to costs."

8. We have considered the arguments of learned counsel for the parties and have also perused the pleadings and the documents annexed thereto. It is not in dispute that the applicant was empanelled as Director General of Police / equivalent cadre in the Centre albeit belatedly. The Central Government accords posting to the empanelled officers as per the seniority. It is on record that two IPS officers of 1979 batch, obviously juniors to the applicant, were posted as Director General of BSF and Director General of NIA on the basis of their empanelment and they were granted Apex Scale of `80,000/-. They have been

given pensionary benefits commensurate to the Apex Scale. The applicant has been unfortunate that despite her empanelment as Director General of Police / equivalent cadre in the Centre, she could not get a posting in the Central Government for no fault of her's. It's a normal practice in the Central Government that if an officer, who is junior in the panel or who belongs to junior batch of the service, if gets posted in the Central Government on the basis of his/her empanelment, his/her seniors in the same batch or in senior batches and who have also been empanelled, are given the pay scale of the post, for which such empanelment has been done even though they may not have been posted to such post. Such a dispensation has not been shown in the case of the applicant. The Tribunal has already considered such a case in Smt. Kanwaljit Deol (supra) and granted identical reliefs. Hence, we are of the view that the applicant is also entitled to get the same reliefs.

9. We, therefore, allow this O.A. in terms of the order passed in Smt. Kanwaljit Deol (supra). The respondent is directed to grant Apex Scale of `80000 (fixed) (pre-revised) to the applicant w.e.f. 07.05.2015 when the Apex Scale was granted to Mr. Devendra Kumar Pathak (AM - 1979) and Mr. Sharad Kumar (HY - 1979) (Annexure A-3). We further direct the respondent to re-determine the retiral benefits of the applicant accordingly and workout the arrears to be paid from 07.05.2015 till the date of her superannuation, i.e., 29.02.2016. The arrears shall be paid to her within a period of three months from the date of receipt of a copy of this order. The applicant shall be entitled to pension in commensurate with the Apex Scale. Needless to say that in the event of orders passed by this Tribunal in R N Ravi and OPS Malik (supra) getting reversed in the Apex Court in Civil Appeal No.4648/2014, the applicant shall be liable to refund the benefits, which she may receive by virtue of this order. In other words, this judgment shall remain subject to the outcome of ibid Civil Appeal pending before the Hon'ble Apex Court.

No order as to costs.