

(9) 1009

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 2523/2003

MA 966/2005

With

OA 244/2002

with

RA 98/2002,

MA 853/2002,

MA 854/2002 in

OA 2299/1997

with

OA 1848/2004

New Delhi, this the 24th day of May, 2006

**HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)**

OA 244/2002

1. Inspector Pratap Singh Saini
No.D-1/592
S/o Shri Pat Ram Saini,
R/o H. No.507, Village Jharsa,
Tehsil & District Gurgaon (Haryana).
2. Inspector Mahabir Singh Tyagi
No.D-I/77
S/o Late Shri K.S. Tyagi
R/o H-I/106-107, 1st Floor,
Sector-16, Rohini.
3. Inspector Satya Narain Gaur
No.D-I/144,
S/o Late Pt. Puran Chand,
R/o 1369, Sector-19, Faridabad,
(Haryana).
4. Inspector Ram Avtar Gaur
No.D-I/247,
S/o Late Shri Munshi Lal,
R/o 1288, Timarpur,
Delhi-110054.
5. Inspector Joginder Singh Dogra,
S/o Shri Pratap Singh Dogra,
R/o 684, Sector-I, R.K. Puram,
New Delhi.
6. Sub Inspector Pawan Kumar
No.D/66
S/o Late Shri Amar Nath Kapoor,
R/o H.No. GH-14, Paschim Vihar,



New Delhi.

7. Sub Inspector Brij Mohan
No.D/416
S/o Late Shri B.R. Gulathi,
R/o A-1, New Police Lines,
Kingsway Camp, New Delhi.
8. Sub Inspector Kamaljeet Singh
No.D/417
S/o S. Bishan Singh,
R/o C-8/255, Yamuna Vihar,
Delhi-110 043.
9. Sub Inspector Raj Singh
No.D/170
S/o Late Shri Laxman Singh
R/o h.No. 218, Vill & P.O. Siraspur,
Delhi – 110 042.
10. Sub Inspector Ashok Kumar Kalra,
No.D/189,
S/o Late Sri K.C. Kalra,
R/o. I/48, Punjabi Bagh,
New Delhi.
11. Sub Inspector Subhash Chander Ahuja,
S/o Late Sri N.R. Ahuja,
R/o D-307, Sector-12,
Faridabad (Haryana).

..... Applicants:

VERSUS

1. Union of India
Through it's Secretary,
Ministry of Home Affairs,
North Block, New Delhi-110001.
2. Govt. of N.C.T. of Delhi,
through its Chief Secretary,
5, Sham Nath Marg,
Delhi-110054.
3. The Commissioner of Police,
Delhi, Police Headquarters,
New Delhi-110 001.
4. Mr. Raj Kumar,
No.D-1-333,
S/o Shri Raghunath,
R/o Q.No.4-C, Police Colony,
Model Town-II, New Delhi-110009.
5. Mr. Raj Singh Dabas
No.D-1/35,

S/o Sri Dhir Singh,
R/o RZ-108, Lokesh Park,
Nazafgarh, New Delhi-110 043.

6. K.N. Haridas,
D-1-381
S/o Shri K.P. Narayanan,
R/o Qr. No.1225, Sector-4,
R.K. Puram, New Delhi-110065.
7. Baljeet Singh Bamel,
No.D-1-500
S/o Q.No.37, Police Station,
New Friends Colony, Delhi-110 065.
8. N. Vikram Nair
No.D-1-331
R/o Q. No.816, Sector-3,
R.K. Puram, New Delhi-110022.

.... Respondents.

RA 99/2002 IN OA 2099/1997

1. Shri Satya Narain Bhardwaj,
SI No.D/43,
S/o Shri Mauzi Ram Bhardwaj,
R/o Vill. & P.O. Khera Khurd,
Delhi – 110 082
2. Shri Raj Singh,
S.I. No. D/31,
S/o Late Shri Mam Chand,
R/o Qr. No.220, Police Colony,
Vikaspuri, Delhi
3. Shri Shankar Bhambani,
S.I. No. D/1525,
S/o Shri R.B. Bhambani,
R/o B.7/7, Ashok Vihar, Phase-III,
Delhi-110 052
4. i Qasim Ali Zaidi,
S.I. No.D/4,
S/o Shri H.A. Zaidi,
R/o C-3, Type-III,
P.S. R.K. Puram,
New Delhi
5. Shri Sukhbir Singh,
S.I. No.2180/D,
S/o Late Shri Braham Dutt,
R/o B-57, Police Colony,
P.S. Saraswati Vihar,
Delhi – 110 034

Review Petitioners

VERSUS

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1. Govt. of N.C.T. of Delhi through its Chief Secretary,]
5, Sham Nath Marg,
Delhi – 110 054
2. Commissioner of Police, Delhi
Police Headquarters,
New Delhi – 110 001
3. Shri J.K. Jain [D/3499],
S/o Late Shri M.R. Jain,
R/o 1/10401, Mohan Park,
Navin Shahadra,
Delhi – 110032
4. Shri Harish Chander [D/3507], D-3977,
S/o Shri Atam Chand,
R/o Qr. No.218, Police Colony,
Ashok Vihar, North West Distt.,
New Delhi
5. Shri Hukam Chand [932/D],
S/o Shri Gopal Dass,
R/o A-18, Prashant Vihar,
Delhi
6. Shri Harbans Lal [D-1/161]
S/o Shri Desh Raj Arora,
R/o H. No.345, Rani Bagh,
Shakur Basti, Delhi
7. Shri Bimal Prasad Jain (770-D), [D-3978],
S/o Shri Ghensi Ram Jain,
R/o H.No. WZ-596,
Palam Colony, Delhi
8. Shri Kailash Chander [909-D],[D-3979],
S/o Shri Khusi Ram,
R/o H.No.A-4, Krishna Nagar Extn.,
Patparganj Road, Gandhi Nagar,
Delhi – 110085
9. Shri A.U. Siddiqui [D-1/160],
S/o Late Shri S.V. Siddiqui,
R/o Qr. No.808, Sector III,
R.K. Puram, New Delhi
10. Shri P.D. Sharma [D/103].
S/o Late Shri Mohan Lal,
R/o Qr. No.703, Type-Z,
Timarpur, Delhi
11. Shri Virinder Singh [D-299],
S/o Late Shri R.S.S. Malik,

R/o 1/80, Subhash Nagar,
New Delhi – 110 027

12. Shri Sardari Lal [D-387],
S/o Late Shri Sant Ram,
R/o 1/80, Subhash Nagar,
New Delhi – 110 027
13. Shri Ashok Mahana [D-389],
S/o Late Shri Jairam Dass,
R/o Qr. No.3, Type-III,
Tilak Lane, Behind P.S. Tilak Marg,
New Delhi
14. Shri Sarwan Kumar [D/83],
S/o Late Shri Nihal Chand,
R/o 456, Jheel Khurenja, Delhi-51
15. Shri Parveen Kumar [D-3299],
S/o Shri Mangal Dass,
R/o Qr. No.6, PP Amar Colony,
Lajpat Nagar, New Delhi
16. Shri Man Mohan [525/D], D-1/133,
S/o Shri Murli Lal,
R/o 39/29, Old Rajinder Nagar, New Delhi
17. Shri Roshan Lal [140/D] D-1/149,
S/o Shri Bhai Ram,
R/o H.No.120, Masjid Moth,
Yusuf Sarai, New Delhi-16
18. Shri Jagdish Kumar [D-2896],
S/o Shri Piyare Lal,
R/o Village Bijwasan,
P.S. Kapasera, Delhi
19. Shri Raghubir Singh [731/D],
S/o Shri S. Sohan Singh Anand,
R/o H.No.WZ-54, Uttam Nagar,
Delhi
20. Shri Ran Singh [D-1/104],
S/o Shri Meer Singh,
R/o Village Bakkarwal,m
P.S. Nangloi, Delhi
21. Shri Uma Kant Tiwari [660-D],
S/o Shri Ram Sabad, R/o H.No.A-19,
Indira Puri, Loni (U.P.)
22. Shri Kuldeep Singh [D-1/3534],
S/o Shri Kartar Singh,
R/o Qr. No.E-4, Type-III,
P.S. Mandir Marg, New Delhi

23. Shri Mohan Singh [1414-D], D-451,
S/o Shri Ram Singh,
R/o Qr. No.B-75, Moti Bagh-I,
New Delhi

24. Shri Surinder Lal [D-1/589].
S/o Shri Salig Ram,
R/o Qr.No.B-4, Old Police Lines,
Rajpur Road, New Delhi-110054

... Respondents

OA 1848/2004

Manoj Kumar Sharma
R/o HC-12,
PS Tilak Marg Complex,
New Delhi-1.

... Applicant

Versus

1. Union of India through
Ministry of Home Affairs,
North Block, New Delhi.

2. Commissioner of Police
Police Head Quarter,
I.P. Estate, New Delhi.

3. Special Commissioner of Police
Administration, PHQ
IP Estate, New Delhi.

4. Deputy Commissioner of Police
HDQRS. (I), PHQ
IP Estate, New Delhi.

..... Respondents.

OA 2523/2003

Jitender Kumar Jain (J.K. Jain)
S/o Late Sh. M.R. Jain,
R/o 1/10401, Mohan Park, Naveen Shahdara
Delhi – 32.
(Presently working as Inspector, No.D-1/159,
Land & Building Cell, PHQ, IP Estate, New Delhi

..... Applicant.

Versus

1. Govt. of India
through Secy, Ministry of Home Affairs,
Central Sectt, New Delhi.

2. Govt. of NCT of Delhi
through its Chief Secretary,
Delhi Sectt. I.T.O., New Delhi.

3. Commissioner of Police,
PHQ, IP Estate, New Delhi.

4. Sh. B.S. Bamel, ACP/HQ (CB),
PHQ IP Estate, New Delhi.

5. Sh. K.N. Haridas, ACP/HQ (G),
PHQ IP Estate, New Delhi.

6. Sh. Vikram Nair,
ACP/Lines, Old Police Lines,
Rajpur Road, Delhi. Respondents.

Advocate for Applicants - Shri Amitesh Kumar, in OA 244/2002, RA NO 98/2002 & Shri Arun Bhardwaj in OAs No 2523/2003 & 1848/2004

Advocate for respondents - Sh. Bishram Singh for private respondents in OA No 244/2002, Sh. Ajesh Luthra and Mrs. Renu George for official respondents in OA No 244/2002, 2523/2003 & 1848/2004.

ORDER

By Mukesh Kumar Gupta:-

1. Since question involved in these cases is overlapping & grounded almost on the same facts, the same will be dealt with by the present common order.
2. In OA 244/2002, eleven Inspectors and Sub-Inspectors (Ministerial) challenge legality & validity of communication dated 20.2.2001 fixing seniority of respondent nos.4 to 8 amongst officiating Sub-Inspectors (Ministerial) with effect from the dates of their regular appointment/promotion as Sub-Inspector (Stenographer) in their parent department. To understand the basic controversy raised, it is necessary to notice some background facts, which are as under:-

BACKGROUND FACTS:

3. Prior to coming into force of the Delhi Police Act, 1978 & the Rules made there-under, Delhi Police was governed under the provisions of the Punjab Police Rules, 1934. The Stenographers were enlisted as civilians under Rule 12(3)(d) of the aforesaid Rules. The Central Government vide

its letter dated 24.10.1969 decided to enroll the Stenographers of Delhi Police under the Police Act, 1861, to retain the existing pay scale of Rs.130-300/- & to confer the rank of Sub-Inspector as & when their scale reaches the stage of Rs.168/- in the said running pay scale. After revision of pay scale to Rs. 330-560, with effect from 01.1.1973, the Government of India vide its letter dated 10.10.1975 decided that those who had completed 7 years as Stenographers whether in the old scale or the revised scale be "given the rank of Sub- Inspectors". However, the better pay- scale proposed to the Stenographers had not been accepted.

4. As on 01.1.1980, on the enforcement of Delhi Police Act, 1978, w.e.f. 1.7.1978, the total sanctioned strength of Stenographers was 47. The appointment in the said Cadre, as per Rules framed there-under, known as Delhi Police (Promotion & Confirmation) Rules, 1980 effective from 29.12.1980, were to take place by way of direct recruitment in the rank of Assistant Sub-Inspector. Three promotional avenues were available to Stenographers i.e. the selection grade in pay scale of Rs.425-15-560-EB-20-600/-, the Senior selection grade in pay scale of Rs.425-15-500-EB-15-560-20-700/- & the rank of Inspector (Stenographer) in pay scale of Rs.550-900/. Out of total sanctioned strength of 47 posts, one was Inspector (Stenographer), six Stenographers were in the Senior selection grade in the pay scale of Rs.425-700/-, eight Stenographers in the pay scale of selection grade of Rs.425-600/. The remaining thirty-two Stenographers were notionally Sub-Inspectors/ Assistant Sub-Inspectors in the pay scale of Rs.330-560/. Delhi Police Act, 1978 came into force with effect from 01.7.1978. Further, in purported exercise of its power conferred under Section 147 (1) & (2) of the Act, the Administrator framed the Delhi Police (Appointment & Recruitment) Rules, 1980, which came into force with effect from 01.12.1980. Delhi Police (Promotion &

Confirmation) Rules, 1980, were also framed and brought into force with effect from 29.12.1980. There are two categories of posts namely Ministerial and Executive. As far as Ministerial cadre is concerned, direct recruitment is made only in the rank of Head Constable (Ministerial) and of Stenographer in the rank of Assistant Sub-Inspector in terms of Rule 10 of the said Rules. As far as Executive stream & promotion in different cadres is concerned, the first promotion takes place at the level of Head Constable in the pay scale of Rs.100-130/- . Further promotion is to the rank of Assistant Sub-Inspector in pay scale of Rs.330-480/- . Further, A.S.I. is promoted to Sub-Inspector in pay scale of Rs.425-600/- . As far as Stenographer cadre is concerned, their first appointment was at the level of Stenographer Grade-III in the rank of Assistant Sub-Inspector in pay scale of Rs.330-560/- . Rule 16 of the aforesaid Rules, 1980 deals with promotion and confirmation of Assistant Sub-Inspector (Ministerial) and Stenographers, relevant portion of which reads as under:-

"16. (iii) List 'E' (Ministerial) confirmed Assistant Sub-Inspector (Ministerial) and Stenographers who have put in a minimum of 6 years service in these ranks shall be eligible. The selection shall be done by the Department, Promotion Committee on the basis of recommendations of Departmental Promotion Committee on the basis of evaluation ...on (i) service record (ii) annual confidential reports (iii) professional tests comprising:

- (a) (i) Fundamental & Supplementary Rules, Leave, Pension and other rules applicable to Delhi Police.*
- (b) Precis writing, noting, drafting.*
- (c) Financial Rules, Treasury Rules, Accounts, budget & audit.*

Assistant Sub-Inspectors / Stenographers who obtain 60 percent and above marks in the written test shall only be eligible for interview. The names of selected candidates shall be brought on list "E"-(Ministerial) in order of their seniority keeping in view the number of vacancies likely to occur in the rank of Sub-Inspector (Ministerial) in the following one year and they shall be promoted in the rank of Sub-Inspector (Ministerial) as and when vacancies occur. Stenographers,

the promoted shall cease to have their lien as Stenographers on confirmation in the rank of Sub-Inspector (Ministerial)."

5. The aforesaid Rules were amended vide notification dated 07.4.1984, which reads thus:-

"List 'E' (Ministerial) - confirmed Assistant Sub-Inspector (Ministerial) and Stenographers who have put in a minimum of 6 years service in this rank, shall be eligible. The selection shall be made on the recommendations of the Department Promotion Committee. The names of selected candidates shall be brought on list 'E' (Ministerial) in order of their respective seniority, keeping in view the number of vacancies likely to occur in the rank of Sub-Inspector (Ministerial) in the following one year, and they shall be promoted to the rank of Sub-Inspector (Ministerial) as and when vacancies occur. Stenographers, thus, promoted shall cease to have their lien as Stenographers on confirmation in the rank of Sub-Inspector (Ministerial)."

6. In the year 1982, the Government raised five new Battalions of Delhi Armed Police, as a result of which fifteen new vacancies of ASI (Stenographer) occurred in Delhi Police in addition to existing nine posts of ASI (Stenographer), which were lying vacant. In order to fill up the existing vacancies, Delhi Police vide its letter dated 13.6.1983 informed Delhi Administration its decision to take a few suitable English Stenographers, on deputation basis, for a period of one year in the first instance, on usual terms and conditions from Delhi Administration and other Central Police Organization. Accordingly, one Baljit Singh Bamel was taken on deputation vide notification dated 15.4.1985 with effect from 05.2.1985 on existing terms and conditions. It was clarified that his designation in Delhi Police would be ASI (Steno) if his pay was below Rs.416/- & SI (Steno), if it was above Rs.416/-.

7. Vide order dated 07.9.1990, Police Headquarters called for particulars of Sub-Inspector (Ministerial / Steno) for bringing their names on promotion list "E" (Ministerial) from the candidates whose names were mentioned in the enclosed list. Being aggrieved by inclusion of his name

in the category of ASI (Steno), Baljit Singh Bamel filed OA No.2089/1990 seeking quashment of afore-said circular & also fixing his inter-se seniority as SI (Ministerial) taking into account his substantive service in his parent Department, i.e., B.S.F in the rank of SI (Steno) w.e.f. 05.1.1976. He was promoted in B.S.F to the rank of Sub-Inspector (Stenographer) with effect from 05.1.1976 in pay scale of Rs.330-560/- The said scale in Delhi Police had been allowed to Assistant Sub Inspector (Steno).

8. We may note certain admitted facts namely: Raj Kumar, Raj Singh Dabas and N. Vikram Nair were initially enlisted as Constables in BSF on 11.2.1968, 19.1.1970 & 31.1.1970 respectively. Later they were promoted as Naik, Head Constables or LDC and after undergoing one year Stenographer's training, were promoted as Steno Grade-III, in pay scale of Rs. 330-10-380-EB-12-500-EB-15-560, on 30.1.1970, 18.8.1971 and 11.9.72 respectively. K.N. Haridas was enlisted as Cook from 26.5.1972 and after one-year-stenography-training, promoted as Stenographer Grade-III w.e.f. 30.11.1974. Similarly Baljeet Singh Bamel and one sh. Praveen Kumar were initially enlisted as ASI (LDC) in pay scale of Rs. 260-400 w.e.f. 15.9.1973 & 24.1.1973 respectively, and after one year stenography training, promoted to Stenographer Grade-III w.e.f. 5.1.1976 & 24.5.1978 respectively. Baljeet Singh Bamel had opted combatization and therefore was given the rank of SI (Steno). Baljeet Singh Bamel was allowed to cross EB in pay scale of Rs. 330-560 raising his pay to Rs 392/- p.m. w.e.f. 15.1.1982 (Annexure A-6), which scale was revised by 4th CPC to Rs. 1200-2040, and later modified to Rs. 1400-40-1800-EB-50-2300 w.e.f. 1.1.1986. Accordingly his pay was fixed at Rs. 1440/- vide Order of Commander Artillery dated 7.10.87 with the next date of increment 1.1.1988. He was absorbed in Delhi Police as SI (Steno) in the said scale w.e.f. 9.3.1988 vide PHQ Order dated 17.3.1988.

9. The said OA was allowed vide order dated 27.11.1992 and the aforesaid circular dated 07.9.1990 was quashed to the extent which included his name as "ASI (Steno)". It further directed the respondents to fix his inter-se seniority as Sub-Inspector (Ministerial) taking into account his substantive service in the rank of Sub-Inspector (Stenographer) with effect from 05.1.1976 in his parent department, i.e. B.S.F with consequential benefits of promotion to next higher post. As the aforesaid judgment adversely affected the persons belonging to Ministerial cadre, who had not been made party to the said OA, two Review Applications bearing Nos. 104/1993 and 195/1993 were preferred. Besides OA Nos. 856/1990 and 591/1993 were also filed seeking similar relief as granted in aforesaid OA No.2089/1990.

10. Vide common order & judgment dated 04.11.1993, RAs were allowed and the circular dated 07.9.1990 was quashed holding that Baljeet Singh Bamel and other similarly situated S.I. (Steno) who came from B.S.F. on deputation & were permanently absorbed in service as Sub-Inspector (Steno) in Delhi Police shall be deemed to have been permanently absorbed in Delhi Police as SI (Ministerial) with effect from the respective dates of their absorption. The respondents were also directed to determine their seniority counting service of petitioners & other similarly situated in the parent department as equivalent to that of S.I. (Ministerial) in Delhi Police with effect from their respective dates on which they started drawing the basic pay of Rs.416/- in the parent department as regular Sub-Inspector (Steno) with consequential benefits of promotions to next higher grade.

11. Being aggrieved with the aforesaid judgment dated 04.11.1993, Union of India filed SLP (C) No.8705-10/1994, which came to be dismissed vide order dated 30.8.1994 with the following observations:-

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Court in aforesaid judgment of S.I. Roop Lal (supra). Sh. Amitesh Kumar, Ld. Counsel appearing for them raised following contentions:-

A) Respondents Nos. 4 – 8 were holding the substantive rank of Stenographer in BSF in the pay scale of Rs.330-560. The post of SI (Ministerial) in Delhi Police was carrying not only a higher pay scale, but was also in a different cadre of Rs.425-600. In terms of Delhi Police (Promotion & Confirmation) Rules, 1980, no one is eligible for being promoted to the rank of ASI and SI without confirmation in the posts held by them and on completion of minimum six years of service. The said Respondents could not have been promoted from Stenographer grade-II to Ministerial Cadre de hors the aforesaid Rules. Respondents' action in treating them as absorbed in the said pay scale of Rs.425-600/- not only amounted to a promotion in higher pay scale but to a different cadre, which is also impermissible. The post of SI (Ministerial) is to be filled by promotion. Rule 16 (iii) of the aforesaid Rules nowhere prescribes or stipulates grant of promotion from ASI (Steno) to the rank of SI (Ministerial) on reaching the pay at the stage of Rs.416/- in their respective pay scale.

B) In view of SLP/Civil Appeal orders dated 30.8.1994 and 11.1.2000 in SLP(C) No.8705-10/1994 and Civil Appeal No.5302 of 1997 respectively, the doctrine of merger mandates that the principle enunciated under S.I. Roop Lal, particularly para 17, has to be looked into and operated. Alternative submission made was that keeping in view the doctrine of merger, the principle laid down S.I. Roop Lal to the



extent it over-rules the effect of this Tribunal's judgment dated 4.11.1993, has to be given effect in its entirety.

C) Further contention made was that while considering orders passed by this Tribunal as well as the Hon'ble Supreme Court in totality, earlier orders passed in SLPs have to be given harmonious effect and consideration. It was further pointed out that in **S.I. Roop Lal(supra)**, the decision was in the context of Executive Cadre and not the Ministerial Cadre with which we are concerned in the present proceedings.

15. On the doctrine of merger, it was contended that once an order is impugned before the higher court and appeal is allowed, consequence would be that the order in appeal would lose its own identity and would stand merged with the order of higher court. No clarification had been sought from the Hon'ble Court till date by the Respondents and the deeming fiction applied to Ministerial Cadre could not have been implemented by the Respondents.

16. On the doctrine of merger, reliance was placed on 2000 (6) SCC 359 **Kunhayammed & Others vs. State of Kerala & Anr.**, particularly paras 41-43, which read as follows:-

"41. Once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. The order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate order and would attract the applicability of doctrine of merger. It would not make a difference whether the order is one of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking or non-speaking one. Whenever this Court has felt inclined to apply its mind to the merits of the order put in issue before it though it may be inclined to affirm the same, it is customary with this Court to grant leave to appeal and thereafter dismiss the appeal itself (and not merely the petition for special leave) though at times the orders granting leave to appeal and dismissing the appeal

are contained in the same order and at times the orders are quite brief. Nevertheless, the order shows the exercise of appellate jurisdiction and therein the merits of the order impugned having been subjected to judicial scrutiny of this Court.

42. "To merge" means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve a loss of identify and individuality.

43. We may look at the issue from another angle. The Supreme Court cannot and does not reverse or modify the decree or order appealed against while deciding a petition for special leave to appeal. What is impugned before the Supreme Court can be reversed or modified only after granting leave to appeal and then assuming appellate jurisdiction over it. If the order impugned before the Supreme Court cannot be reversed or modified at the SLP stage obviously that order cannot also be affirmed at the SLP stage."

17. For the contention raised on dismissal of SLP in limine and doctrine of merger, reliance was placed on (2000) 5 SCC 373, **V.M. Salgaocar & Bros. Pvt. Ltd. vs. Commissioner of Income Tax with Commissioner of Income Tax, Karnataka at Bangalore vs. Shivanand V. Salgaocar** particularly para 8, which reads as under:

"8. Different considerations apply when a special leave petition under Article 136 of the Constitution is simply dismissed by saying "dismissed" and an appeal provided under Article 133 is dismissed also with the words "the appeal is dismissed". In the former case it has been laid by this Court that when a special leave petition is dismissed this Court does not comment on the correctness or otherwise of the order from which leave to appeal is sought. But what the Court means is that it does not consider it to be a fit case for exercise of its jurisdiction under Article 136 of the Constitution. That certainly could not be so when an appeal is dismissed though by a non-speaking order. Here the doctrine of merger applies. In that case, the Supreme Court upholds the decision of the High Court or of the Tribunal from which the appeal is provided under clause (3) of Article 133. This doctrine of merger does not apply in the case of dismissal of a special leave petition under Article 136. When an appeal is dismissed the order of the High Court is merged with that of the Supreme Court. We quote the following paragraph from the judgment of this Court in the case of **Supreme Court Employees' Welfare Assn. V. Union of India** [(1989) 4 SCC 187].

"22. It has been already noticed that the special leave petitions filed on behalf of the Union of India against the said judgments of the Delhi High Court were summarily dismissed by this Court. It is now a well

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settled principle of law that when a special leave petition is summarily dismissed under Article 136 of the Constitution, by such dismissal this Court does not lay down any law, as envisaged by Article 141 of the Constitution, as contended by the learned Attorney General. In Indian Oil Corpn. Ltd. v. State of Bihar it has been held by this Court that the dismissal of a special leave petition in limine by a non-speaking order does not justify any inference that, by necessary implication, the contentions raised in the special leave petition on the merits of the case have been rejected by the Supreme Court. It has been further held that the effect of a non-speaking order of dismissal of a special leave petition without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that the Supreme Court had decided only that it was not a fit case where special leave petition should be granted. In Union of India v. All India Services Pensioners' Assn. this court has given reasons for dismissing the special leave petition. When such reasons are given, the decision becomes one, which attracts Article 141 of the Constitution, which provides that the law declared by the Supreme Court shall be binding on all the courts within the territory of India. It, therefore, follows that when no reason is given, but a special leave petition is dismissed simpliciter, it cannot be said that there has been a declaration of law by this Court under Article 141 of the Constitution."

18. Reliance was placed on JT 1997 (1) SC 353, *Mahmood Hasan & Ors. etc. etc. vs. State of U.P. etc., etc.*, wherein a number of officials sought promotions on the ground that the juniors had been promoted almost as large as the total strength of the promotional cadre and it became apparent from the conflicting claims that unless the Court overcomes the inhibition of its earlier order complete justice cannot be done and the undeserved benefit reaped by some in preference to their seniors would be enjoyed by them at the cost of their seniors. It was contended therein that unless the situation arising under the earlier order is repaired, the imbalance in the cadre will continue and the grievance of the seniors who were denied promotion because of promotional slots occupied by their juniors, will remain and so will the brooding sense of injustice continue to adversely affect the functioning of the department. The said

contentions were accepted holding that the Court finds considerable substance. Keeping the ratio laid down in the aforementioned judgment, it was contended that Respondents 4 – 8 have reaped undeserved benefit at the cost of applicants, members of Delhi Police and the Ministerial Cadre, while the said Respondents did neither belong to Ministerial Cadre nor were eligible for promotion to the said stream under the rules in vogue and therefore, the earlier order should be repaired and imbalance created should be checked.

19. Strong reliance was placed on JT 1997 (1) SC 353 **Mahmood Hasan & Ors etc vs State of U.P. & Ors**, 2005 (5) SCC 373, **V.M.Salagaocar & Bros Pvt. Ltd. vs Commissioner of Income Tax & 2000 (6) SCC 359 Kunhayammed and Others vs State of Kerala & Anr.**

20. Further reliance was placed on JT 1999 (9) SC 597 **SI Rooplal & Anr. vs Lt. Governor, through Chief Secretary, Delhi & Ors.**, particularly paras 16 & 17 to contend that while determining the equation of two posts many other factors other than 'pay' will have to be taken into consideration, like the nature of duties, responsibilities, minimum qualification etc. Making reference to **R.S. Makashi & Ors vs I.M.Menon & ors**, 1982 (1) SCC 379 & **Union of India & Anr vs P.K.Roy & Ors** 1968 (2) SCR 186, it was observed therein that for settling the disputes regarding equation of posts, the Court has approved four such criteria/factor. Para 17 of SI Rooplal read thus:

*"Equivalency of two posts is not judged by the sole fact of equal pay. While determining the equation of two posts many factors other than 'Pay' will have to be taken into consideration, like the nature of duties, responsibilities, minimum qualification etc It is so held by this Court as far back as in the year 1998 in the case of **Union of India & Anr. P.K.Roy & Ors.** 1968 (2) SCR 186. In the said judgment, this Court accepted the factors laid down by the Committee of Chief Secretaries which was constituted for settling the disputes regarding equation of posts arising out of the States Reorganisation Act, 1956. These four factors are: (i) the nature of duties of a post; (ii) the*

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responsibilities and powers exercised by the officer holding a post ; the extent of territorial or other charge held or responsibilities discharged; (iii) the minimum qualifications, if any, prescribed for recruitment to the post; and (iv) the salary of the post. It is seen that the salary of a post is the last of the criterion. If the earlier three criteria mentioned above are fulfilled then the fact that the salary of the two posts are different, would not in any way make the post 'not equivalent' Therefore, it should be held that the view taken by the tribunal in the impugned order that the two posts of Sub-Inspector in the BSF and the Sub-Inspector (Executive) in Delhi Police are not equivalent merely on the ground that the two posts did not carry the same pay-scale, is necessarily to be rejected. We are further supported in this view of ours by another judgment of this Court in the case of **Vice-Chancellor, L.N.Mithila university v Dayanand Jha 1986 (3) SCC 7** wherein at para 8 of the judgment, this Court held: "Learned Counsel for the respondent is therefore right in contending that equivalence of the pay-scale is not the only factor in judging whether the post of Principal and that of Reader are equivalent posts. We are inclined to agree with him that the real criterion to adopt is whether they could be regarded of equal status and responsibility. xxxx The true criterion for equivalence is the status and the nature and responsibility of the duties attached to the two posts. xxx" (emphasis supplied)

21. Sh. Amitesh Kumar, Ld. Counsel forcefully contended that ratio laid down hereinabove aptly applies in the fact & situation of present case and further contended that at no point of time such an exercise had ever been under-taken by the respondents to determine the equivalence of the posts of SI (Steno), BSF vis a vis SI (Steno) of Delhi Police.

22. The official respondents contested the claim laid in the OA & stated that since the pay scale of the Central Govt. employees including Delhi Police were revised by 3rd Central Pay Commission w.e.f. 01.1.1973, the matter regarding giving the rank/pay to Stenographers was decided by the Government of India, Ministry of Home Affairs. Vide letter dated 10.10.1975 it was decided that Stenographers who had completed seven years as Stenographer whether in old scale or revised scale may be given the rank of Sub-Inspector. However, the Government had not agreed for the pay scale proposed by the Police Hqrs. for such Stenographers. The practice of giving the rank of Sub-Inspector to the Stenographers in the



pay scale of ASI (Steno) continued till January 1993 when the Government agreed for discontinuing such practice of notional promotion to ASI (Steno) to S.I. of Delhi Police. The Delhi Police Act, 1978 came into existence w.e.f. 01.7.1978 and the Rules framed thereunder came into existence on 29.12.1980. The Stenographers were allowed additional avenues of promotions in Ministerial cadre as Sub Inspector (Ministerial) under Rule 16 (iii) of Delhi Police (Promotion & Confirmation) Rules, 1980 "in addition to their own cadre of Stenographer, which consisted of selection grade and senior selection grade in the rank of Sub-Inspector (Steno) and also promotion in the rank of Inspector (Stenographer)." The pay scales of Stenographer (SI) of BSF and the Stenographer (ASI) of Delhi Police were same at the relevant time when Baljeet Singh Bamel and others, respondent nos.4-8, came on deputation as Steno in Delhi Police. The judgment dated 04.11.1993 of this Tribunal created anomalous situation in Delhi Police. The Stenographers of Delhi Police, who had also reached at Rs.416/- in the pay scale of Rs.330-560/- had claimed promotion and seniority in the rank of S.I. (Ministerial) on reaching their pay at Rs.416/-. Prior to 04.11.1993 the Stenographers of Delhi Police never claimed such promotion. The SLP (C) No.8705-10/94, preferred against the aforesaid judgment, was disposed of vide order dated 30.8.1994. Baljeet Singh Bamel and others also challenged the said judgment vide SLP (C) No.373/1995, which was converted into Civil Appeal No. 5362/1997 and ultimately allowed vide order dated 11.1.2000 recording finding that there was no substantial difference between the facts of the said case and those of the case of S.I. Roop Lal (supra). In view of aforesaid order dated 11.1.2000, the seniority of Baljeet Singh Bamel and other similarly situated Stenographers, initially taken on deputation and subsequently absorbed had been fixed by the respondents vide impugned communication dated

20.2.2001. Following implementation of aforesaid judgment of the Hon'ble Supreme Court, some senior officers of Ministerial cadre became junior to Stenographers in the rank of SI and Inspector (Min.) and, therefore, filed the afore-mentioned OA. Since the Hon'ble Supreme Court allowed aforesaid Civil Appeal on 11.1.2000, the position of order dated 27.11.1992 was treated as restored and the private respondents were granted such seniority and promotion. The respondent nos.4-8 were not given seniority in the rank of SI (Ministerial) vide impugned order dated 20.2.2001 on reaching their pay at Rs.416/- . After fixation of their seniority in the rank of Sub-Inspector (Min.), their names were considered for promotion in the promotion list 'F' (Ministerial) at par with their immediate juniors and based on recommendations of DPCs, they were admitted in promotion list 'F' (Ministerial) with effect from 15.1.1986 vide notification dated 21.8.2001. The respondent nos.4, 6, 7 and 8 were promoted to the said rank of Inspector (Ministerial) w.e.f. 17.2.1986 vide notification dated 21.8.2001. They were also confirmed in the said rank vide another notification of the said date.

23. The respondent nos.4, 6, 7 and 8, by filing their joint reply contested the claim laid and raised preliminary objections. It was contended that the OA is the outcome of malafides, with a view to un-settling the decision recorded by the Hon'ble Supreme Court on 11.1.2000 and also that the OA is barred by the principle of res judicata, as the basic issue. The issue raised had been adjudicated earlier, & contested by the department as well as Ministerial cadre employees of Delhi Police in representative capacity in OA No.2089/90. Since RA No.104/93 seeking review of order dated 27.11.1992 initially, dismissing the said OA No.2089/90, was allowed vide order dated 04.11.1993 and the SLP had been dismissed on 30.8.1994, the said decision attained finality and is binding on applicants too. It was



further contended that validity of their absorption as SI (Ministerial) in Delhi Police under Rule 17 of Delhi Police (General conditions of Service) Rules, 1980 read with Rule 5 (h) of Delhi Police (Appointment & Recruitment) Rules, 1980 as well as fixation of their seniority from the date of regular appointment in their parent cadre, stood settled by the Tribunal on 4.11.1993, and affirmed by the Hon'ble Supreme Court on 11th January, 2000. In **S.I. Roopal** case (supra) two issues were involved namely first, whether an S.I. who was appointed as such in B.S.F., transferred on deputation in Delhi Police in the cadre of S.I. on being permanently absorbed in the transfer post is entitled to count his substantive service as S.I. in B.S.F. for purpose of seniority as S.I. in Delhi Police or not. Secondly, whether the post of S.I. in B.S.F. is equivalent to the post of S.I. (Executive) in Delhi Police having different pay scales namely 1400-2300/- respectively. Since vide judgment dated 11.1.2000, Civil Appeal no.5362/97 arising out of SLP (C) No.373/95 against the aforesaid Order & judgment dated 04.11.1993 has been allowed, the issues raised in the present OA are no more res-integra. The respondent No.7, holding the post of S.I. (Steno) in B.S.F. was allowed to count his substantive service rendered in B.S.F. as S.I.(Steno) while fixing his seniority in the Delhi Police and accorded such benefit vide impugned communication dated 20.2.2001. As the said seniority list had been issued in compliance of aforesaid order and judgment, the same cannot be unsettled by the present OA. Respondent No.7 was granted commission as S.I. by the President of India vide Gazette notification dated 05.12.1983. In terms of Rule 11 (A) of B.S.F. Rules, 1969, which envisages that officer, Subedar and Sub-Inspector may be granted commission by the President and it shall be notified in the Official Gazette, the rank or status of a Sub-Inspector cannot be reduced except by way of imposition of penalty for

misconduct under Section 11 of the B.S.F. Act, 1968. This Tribunal vide order dated 04.11.1993 had categorically recorded the finding that with the description of the respondents herein on their permanent absorption as S.I. (Steno), they really stood absorbed in service of Delhi Police as S.I. (Min.), which cannot be disturbed at this stage. It was further brought to our notice that an MA was filed by the S.I. (Min.) seeking impleadment in OA No.2089/90, pursuant to notice issued by this Tribunal, "in the representative capacity" & therefore the applicants herein are also bound by the said review judgment dated 04.11.1993.

24. We have heard learned counsel for the parties at length and perused the pleadings carefully.

25. The first & foremost question which needs consideration is whether the present OA is barred by the principle of res-judicata, as contended by private respondents? Sh. Bishram Singh, Ld. Counsel appearing for private respondents, drawing our attention to observations made by this Tribunal in its Order dated 4th Nov, 1993 in RA 104, 195 of 1993 and other connected matters, to the effect that "**None has come forward with an independent application of their own before the Tribunal challenging those decisions regarding equivalence.** However we examined the decisions regarding equivalence and we find that ..." , forcefully contended that the said observations & finding, have since been affirmed by the Hon'ble Supreme Court, the issues raised in the present OA are barred by the principles of res-judicata & therefore the OA is liable to be dismissed on this short ground alone. Reliance was placed on **Junior Telecom Officers Forum and others v Union of India & others, AIR 1993 Supreme Court 787, Union of India & Ors v Kamla Devi, 2005 AIR SCW 3654** to contend that the issue, directly and substantially involved, decided in earlier matter, cannot be reopened. Further reliance was placed on AIR

1988 SC 1353, **Anil Kumar Neotia & Others v. Union of India & Ors.**, to contend that judgment of the Apex Court is binding on all concerned whether they were parties to the judgment or not. Reliance was also placed on judgment dt. 1.3.2006 in **Sarat Chandra Mishra & Ors. v State of Orissa & ors.**, Civil Appeal No 5087 of 2002, to the same effect.

26. The aforesaid contention as well as the Judgments relied, were seriously disputed by the applicants, stating that the said objection raised has no justification, as the question of equivalence had not been the subject matter before this Tribunal in the said proceedings. None of the judgments relied upon, have any application in the facts and circumstances of present proceedings, contended Shri Amitesh Kumar, learned counsel.

27. We have given anxious and thoughtful consideration to this aspect. A decision, it is trite, should not be read as statute. It is well settled proposition that the *ratio decidendi* of a case is the principle of law that decided the dispute in the facts of the case and, therefore, a decision cannot be relied upon in support of a proposition that it did not decide. An apt observation was made on this principle in **M/s. Amar Nath Om Prakash v State of Punjab & Ors.**, (1985) 1 SCC 345, at page 363, wherein it was observed that:

"It is needless to repeat the oft quoted truism of Lord Halsbury that a case is only an authority for what it actually decides and not for what may seem to follow logically from it."

28. A decision is an authority for the questions of law determined by it. Such a question is determined having regard to the factual situation obtaining therein. As held in **ICICI Bank vs Municipal Corporation of Greater Bombay** 2005 (6) SCC 404, for the case to be binding precedent, fundamental requirement would be, that the law pronounced should result from the issues raised before the Court between the parties and argued on

both sides. In a recent judgment, namely, **State of Gujarat & Ors. vs Akhil Gujrati Pravasi V.S.Mahamandal & Ors**, 2004 (5) SCC 155, at page 157, para 9, it was observed that "it is trite that any observation made during the course of reasoning in a judgment should not be read divorced from the context in which it was used." It is further well settled that a decision is not an authority for a proposition which did not fall for its consideration. It is also a trite law that a point not raised before a court would not be an authority on the said question. In **A-One Granites v State of U.P & Ors.** 2001(3) SCC 537, the Court noticed that following the decision of Court of Appeal in **Lancaster Motor Co. (London) Ltd. v Bremin Ltd.**, (1941) 1 KB 675, in **Municipal Corporation of Delhi v Gurnam Kaur**, (1989) 1 SCC 101, at page 111, it was observed that:

*"12. In Gerard v Worth of Paris Ltd, (1936) 2 ALLER 905 (CA), the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in **Lancaster Motor Co. (London) Ltd v Bremith Ltd.**, the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided 'without argument, without reference to the crucial words of the rule, and without any citation of authority', it was not binding and would not be followed. Precedent sub silentio and without argument are of no moment. This rule has ever since been followed."* (emphasis supplied)

29. The afore-said view had been reiterated in **State of U.P & Ors. v Synthetics and Chemicals Ltd.**, (1991) 4 SCC 139, observing that such a decision cannot be deemed to be a law declared to have binding effect, as is contemplated by Article 141 of the Constitution.

30. We may note that the question of 'equivalence' of posts, which is the basic and crucial question raised in the present OA, had not been the

"matter directly and substantially in issue" in the earlier proceedings, which is condition precedent for invoking the principle of res-judicata. We have carefully perused the judgments relied upon and are of the view that the same do not apply in the facts & circumstances of the present case. Thus, keeping in view that the law noticed hereinabove, as well as the judgment dt. 4th Nov, 1993, we have no difficulty & hesitation to hold that question of equivalence or otherwise having not been agitated by the parties, it cannot be said that the point is concluded by the same and no longer res-integra, as contended. The principle of res-judicata has, therefore, no application in the given facts & circumstances. The objection raised on the maintainability of OA, therefore, is overruled & rejected. Accordingly we now proceed to examine the issue on merits.

31. As far as contention raised by private respondents that they were absorbed in Delhi Police under Rule 17 of Delhi Police (General conditions of Service) Rules, 1980 read with Rule 5 (h) of Delhi Police (Appointment & Recruitment) Rules, 1980, is concerned, we may note that Rule 5 (h) of the aforesaid rule is inapplicable in the facts & circumstances of present case, as it deals only with power of Commissioner of Police to appoint on deputation basis, which is not the issue raised in present proceedings. It is no doubt true that Rule 17 of aforesaid rules confers a power upon the Commissioner of Police to permanently absorb upper and lower subordinates, except Inspectors, in Delhi Police & vice-versa, but the said power was made available by amending the rule vide Notification dated 31.3.1983. It is not in dispute that these respondents were absorbed after the afore-said amendment in the rules. We may clarify at the cost of repetition that in present proceedings we are not concerned with the validity of their absorption. We are concerned with the basic issue of their treatment in the equivalence cadre, i.e. Ministerial cadre and seniority in

the said cadre after their absorption, whether it could be as SI (Steno) or SI (Ministerial). In other words, whether the post of SI(Steno) is equivalent to SI(Ministerial), particularly keeping in view the test laid in **UOI v P.K.Roy & Ors**, as reiterated in **SI Rooplal & Anr.**

32. Shri Amitesh Kumar, Ld. Counsel for applicants pointed out that while appointment of English Stenographers in Delhi Police was made by direct recruitment in the rank of Assistant Sub-Inspector in pay scale of Rs. 330-560, in BSF, willing Cooks, Constables, Naik & LDCs were called to undergo one year Stenographer's training and they were promoted as Steno Grade-III. In BSF, there were two categories, namely, combatised and non-combatised. Combatised staff was given the rank of Sub-inspector and were posted all over country and were eligible to ration money, TA/DA etc, while non-combatised were not given the rank of SI, but treated as Stenographer Grade-III. It was further contended by Ld. Counsel that such officials' seniority was wrongly fixed amongst the rank of Sub-Inspector (Ministerial), which rank was equivalent to that of Inspector(Steno) in BSF ignoring the fact that the nomenclature alone cannot be the criterion. The respondents' action disturbed the seniority & position of those who joined Delhi Police much before such officials were appointed. In **SI Rooplal (supra)**, the Hon'ble Supreme Court did not direct to fix the said respondents seniority in a different grade to which they were not taken on deputation. Not only this, the respondents posted Baljit Singh Bamel to Confidential Branch overlooking the fact that he being in litigation on the said subject, was made to supervise various subjects dealt with by the said Branch, like promotion, posting/transfer, Court cases etc, and, therefore, he connived to plead his case according to his own choice. These factual aspects & contentions remained un-controverted by the respondents.

33. Coming to the next contention that mandate of Rule 16(iii) of the afore-said rule has not been noticed by the respondents, and therefore the impugned action is liable to be interfered with by this Tribunal. We may note that aforesaid rules were framed by the Administrator, Delhi in the exercise of the Statutory power available to it under the Delhi Police Act, 1978. The said rule provides that confirmed Assistant Sub-Inspector (Min.) and Stenographers having 6 years service in the said rank are eligible for promotion to Sub-Inspector (Ministerial), subject to recommendations made by the DPC. There are no provisions under the said rule or any other statutory rule, which confers a power to grant "RANK" to an individual based on attaining certain basic pay. It is well settled law administrative instructions can fill the gap, provided such a gap exists. Administrative instructions can supplement the rule but they cannot supplant. Grant of rank based on basic pay is outside the purview of the said rule. No provision of statutory rule has been brought to our notice conferring such powers on the Commissioner of Police, or any other authority. After the promulgation of aforesaid rule, the administrative instructions, contrary to the said mandate of statutory rule, cannot be operated. It is an undisputed fact that the said rules were notified in Delhi Gazette on 29th December, 1980 & came into existence from the said date. We may also note that private respondents were treated as Sub-Inspectors (Ministerial) merely on attaining certain basic pay & not in the accordance with the rules in vogue. We may note that infraction of statutory rule by the Govt. & its agencies has been viewed seriously in 1990 (1) SCC 544 *A.K.Bhatnagar & Ors vs Union of India & Ors*, wherein the Hon'ble Supreme Court had observed that:

"13. On more than one occasion this Court has indicated to the Union and the State Governments that once they frame rules, their action in respect of matters covered by

rules should be regulated by the rules. The rules framed in exercise of powers conferred under the proviso to Article 309 of the Constitution are solemn rules having binding effect. Acting in a manner contrary to the rules does create problem and dislocation. Very often government themselves get trapped on account of their own mistakes or actions in excess of what is provided in the rules. We take serious view of these lapses and hope and trust that the government both at the Centre and in the States would take note of this position and refrain from acting in a manner not contemplated by their own rules. There shall be no order as to costs. " (emphasis supplied)

Similarly in **Syed Khalid Rizvi vs Union of India**, 1993 Suppl (3)

SCC 575, the failure to discharge mandatory duty of the preparation of the select list of the officers for promotion to the All India Service has been indicated in para 35 of the judgment at p. 605 thus:

" We, therefore, hold that preparation of the select list every year is mandatory. It would subserve the object of the Act and the rules and afford an equal opportunity to the promotee officers to reach higher echelons of the service. The dereliction of the statutory duty must satisfactorily be accounted for by the State Government concerned and this Court takes serious note of wanton infraction." (emphasis supplied)

The ratio laid in the afore-said judgments, in our considered view, squarely applies to the facts of the present case.

34. We would like to stress that the above discussion is necessary in light of our clear view that the Hon'ble Supreme Court and, earlier this Tribunal had had no occasion to deal with the substantive questions of either the equivalence of ranks/posts in the two departments i.e BSF and Delhi Police, or the question of whether there vests a legal power and authority with the Commissioner of Police to confer a rank upon a deputationist merely dependent upon the latter attaining a certain basic pay. This question of grave significance especially in light of the fact that such an administrative instruction automatically conferring a rank based upon the basic pay is not in

consonance with the mandate of the Delhi Police Act and rules framed there-under.

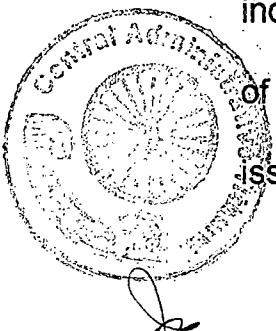
35. The Hon'ble Supreme Court dismissal of SLPs as well as Order dated 11th Jan, 2000 do not, in our respectful view, foreclose a discussion by this Tribunal of the substantive question raised herein-above.

36. In the light of the discussion made herein-above, we have no hesitation in concluding that:

- i) No equivalence between ranks/posts was established by the department while absorbing the respondents.
- ii) Officials absorbed into a cadre cannot be assigned seniority unless the above exercise is completed.
- iii) Following the ratio laid down in Mahmood Hasan's judgment (supra), the respondents No 1-3 should undertake the necessary exercise afresh to re-determine the seniority in the Ministerial cadre & to restore the position in accordance with rules in vogue.

OA 2523/2003

37. Applicant, Shri J.K. Jain, initially appointed as ASI (Steno) in Delhi Police in pay scale of Rs.130-300/-, revised to Rs.330-560/-, vide appointment letter dated 01.11.1969, in this OA, seeks direction to respondents to treat him as SI(Steno) at least w.e.f. 19.11.1976, the day he completed seven years of regular service with all consequential benefits including seniority, promotion etc. Applicant has also preferred MA No 966 of 2005 seeking re-hearing of the case. We may note that notice was issued and the case was re-heard on various dates.



38. The admitted facts are that he joined as ASI (Steno) w.e.f. 19.11.1969, declared quasi-permanent w.e.f. 19.11.1972 and confirmed with effect from 20.1.1973. On completion of seven years of service, he was promoted in the rank of Sub-Inspector (Steno) on terms and conditions prescribed by the Government of India decision dated 10.10.1975. As on 01.4.1980, his pay was fixed at Rs.416/- vide pay order dated 26.8.1980. He was also admitted to promotion list "E" (Ministerial) on 14.10.1982. Vide order dated 01.11.1985, he was promoted as SI (Steno) w.e.f. 31.10.1985, granted selection grade in the rank of SI (Steno) w.e.f. 18.8.1986, promoted as Inspector (Steno) on 16.1.1990 on ad hoc basis and declared regular Inspector (Steno) w.e.f. 25.11.1995.

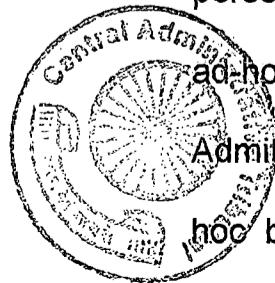
39. It is contended that S/Shri K.N. Haridas, Vikram Nair and Baljeet Singh Bamel, deputationists, were granted the rank of SI (Steno) in Delhi Police when their basic pay reached Rs.416/- though no such sanctioned post existed. In any case with reference to their position in the seniority list it was pointed out that Shri K.N. Haridas and Shri Vikram Nair were appointed as SI (Steno) in the B.S.F. on 30.11.1976 and 28.9.1977 respectively. In other words they joined their parent department after applicant's appointment in the corresponding scale of Rs.330-560/- on 19.11.1969. Similarly, Sh. Baljeet Singh Bamel was promoted to the said scale in B.S.F. on 05.1.1976. Since the said officials had been allowed the benefit of counting their services rendered with their parent department i.e. B.S.F. from the date of their initial appointment, applicant, in any case, being senior to them, cannot be shown as junior and therefore he is entitled to similar treatment as accorded to his juniors. It was further contended that vide Order dated 11.1.2000 the Hon'ble Supreme Court indirectly struck down the grant of rank & seniority as S.I. from the date of

their basic pay reaching Rs.416/- The aforesaid officials became his senior and promoted to next higher post ignoring his claim, which is illegal and arbitrary. He had earlier approached this Tribunal vide OA No.2299/97 seeking quashment of circular dated 07.9.1990 and extending similar treatment as accorded to those SI (Steno) who came on deputation from B.S.F. and later permanently absorbed. The said OA was allowed vide common order dated 23.5.2000 besides OA No.2300/97 [A.U. *Siddiqui & Ors. vs. Govt. of N.C.T. of Delhi & Ors.*].

40. The respondent nos.2-3 contested the claim made stating that the applicant and two others filed OA No.2299/97 had raised the same contention which Shri R.C. Sharma and Others had raised vide OA No.1378/95 decided on 06.12.1997. OA No.2299/1997 was allowed vide order dated 23.5.2000 extending him benefit of judgment dated 06.2.1997. Accordingly, they were given the benefit of seniority and promotion by deeming them as Sub-Inspector (Ministerial) from the dates of their pay reaching stage of Rs.416/-. Thus the claim to treat him as S.I. (Ministerial) from the date of his notional promotion to the rank of SI (Ministerial) is unfounded.

OA 1848/2004

41. In this OA Shri Manoj Kumar Sharma, appointed as ASI (Steno) in pay scale of Rs.330-560/- w.e.f. 11.10.1982, seeks direction to respondents to promote him as SI when he reached at the stage of Rs.416/- in the said pay scale on the analogy that similarly situated persons had been granted such benefits. He also seeks direction to count ad-hoc service towards fixation of his seniority with consequential benefits. Admitted facts are that he was appointed as ASI w.e.f. 11.10.1982 on ad hoc basis and regularized w.e.f. 01.8.1986. It is contended that three similarly placed officials, namely Inspector Sardari Lal No.1218D, Inspector



Ashok Kumar No.1217-D and Inspector Mohan Singh No.1414-D who had worked on ad-hoc basis, were allowed such benefits. Despite that he would have reached the stage of Rs.416/- as on 01.10.1990, he was not accorded the rank of Sub-Inspector though similarly situated persons were accorded such benefit. Representation made did not yield any fruitful result and, therefore, the respondents violated Articles 14, 16 and 21 of the Constitution of India.

42. The respondents contested the claim laid stating that he is not entitled to any relief. His representation was examined, & finding it devoid of any merit and substance, same was rejected vide communication dated 22.3.2004. Pay scale of Rs.330-560/- was revised to Rs.1400-2300/- w.e.f. 01.1.1986. Since he was appointed on regular basis w.e.f. 01.8.1986 in pay scale of Rs.1400-2300/-, question of his reaching at the said stage of Rs.416/-, in the defunct pay scale of Rs.330-560/-, did not arise and, therefore, his case is not comparable with others.

RA 98/2002 in OAs 2299 & 2300 of 1997 along with MA No.853 & 854 /2002

43. 5 Applicants filed this RA & a prayer made is to review and recall common judgment and order dated 23.05.2000 passed in aforesaid OAs, with consequential benefits. MA No 853/2002 was filed seeking condonation of delay in filing this RA. MA No 854/2002 seeks permission of this Tribunal to file joint application with single set of court fee.

44. Contentions are raised that there is an error apparent on face of the record in aforesaid common order inasmuch as revised pay scale of 4th Pay Commission came into operation w.e.f. 1.1.1986 replacing the old pay scale of Rs.330-560 and, therefore, official Respondents' action in granting Stenographers promotion on 1.5.1986 and 1.7.1988 presuming that the said officials would have drawn basic pay of Rs.416/- on the aforesaid

dates, is untenable in law, particularly when revised pay scale had already come into operation. Moreover, as held by the Hon'ble Supreme Court in **State of Bihar & Ors vs. Kameshwar Prasad Singh & Anr.**, JT 2000 (5) SC 389, that when any authority is shown to have committed any illegality or irregularity in favour of individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly, wrong order passed in favour of one individual does not entitle others to claim similar benefits.

45. Apart from filing reply by official Respondents 1 and 2 as well as private Respondents 12, 13, 15 and 23, none appeared for Respondents. On perusal of pleadings, we find that OA No.2299/1997 was filed by 3 officials, namely, S/Shri J.K. Jain, Harish Chander and Hukaum Chand while OA No.2300/1997 was filed by 7 officials, namey, S/Shri A.U. Siddiqui, P.D. Sharma, Virender Singh, Sardarilal, Ashok Mahana, Sarwan Kumar and Praveen Kumar, seeking promotion & grant of rank of SI(Ministerial) from the date they started drawing basic pay of Rs. 416/- by extending the benefit of judgment in R.C.Sharma(supra) . On noticing that **R.C. Sharma & Another (supra)** decided on 6.2.1997 was carried before the Hon'ble Supreme Court by **Ram Kishan & Ors** in Civil Appeal No.8373/1997, which had been dismissed vide order & judgment dated 11.01.2000, and therefore the Tribunal's aforesaid order dated 6.2.1997 had been maintained. Treating the same being "precedent" & binding, the said OAs were allowed holding that applicants therein were entitled to same benefit as accorded to **R.C. Sharma & Anr.** (supra).

46. We may note that Shri Hukam Chand, one of the applicants in OA No.2299/1997 had filed IA No.11/2002 in Civil Appeal No.8373 of 1997, which was dismissed vide order dated 17.4.2003 with liberty "to have recourse to such remedy as may be available" under the law for vindicating

his grievance. He had two fold grievances, firstly, order dated 23.5.2000 passed by this Tribunal in OA No.2299 and 2300 of 1997 had not been fully implemented and the Department had not allowed full benefits which ought to have been allowed under the aforesaid order. Secondly, order dated 22.2.1999 passed by Additional Commissioner of Police (Estt) was contrary to law, against the order passed by the Lt. Governor and prejudicial to him. While dismissing the said IA, the Hon'ble Supreme Court observed that he had not been a party in the Civil Appeal No.8393 of 1997, and further the validity of order dated 22.2.1999 had not been dealt with either by the Tribunal or the said Court.

47. In reply filed, official respondents stated that Judgment & order dated 4.11.1993 of this Tribunal had created an anomalous situation in Delhi Police. Some Stenographers of Delhi Police filed OA No.1378/1995 claiming extension of benefit of Judgment dated 4.11.1993, which was allowed vide order dated 06.02.1997. In view of said order dated 6.2.1997, some more similarly placed officers of Delhi Police, also filed OA No.2299 and 2300 of 1997 seeking extension of order dated 6.2.1997. This Tribunal vide order dated 23.5.2000 declared that the seniority of applicants therein shall be determined and seniority list of SI (Ministerial) shall be prepared after considering them and deeming them to have become SI (Ministerial) in Delhi Police w.e.f. the dates they started drawing pay of Rs.416/- per month in pay scale of Rs.330-560/-. The Department initially challenged order dated 4.11.1993 vide SLP No.8745-10 of 1994, which was disposed of vide order dated 30.10.1994. **Baljit Singh Bamel** also challenged aforesaid order, vide SLP No.305/1997, which was converted to Civil Appeal 5364/1997, and allowed vide order dated 11.1.2000 in terms of **SI Roop Lal** (supra). In view of aforesaid order of Hon'ble Supreme Court, seniority of similarly situated Stenographers,

taken on deputation and subsequently absorbed as Stenos have been fixed vide communication dated 20.2.2001 w.e.f. the dates they were appointed/promoted as Sub Inspector (Stenographers) in their parent department. The Judgment and Order dated 6.2.1997 passed by this Tribunal in OA No.1378/1995 was challenged by one Ram Kishan vide Civil Appeal No.8373/1997 which was dismissed on 11.1.2000. The aforesaid judgment & order dated 23.5.2000 is sub-judice before the Hon'ble Delhi High Court in Civil Writ Petition No.7408/2001 **Pratap Singh Saini vs. Govt. of NCT & Others.** The promotion of Stenographers is governed under Rule 16 (iii) of Delhi Police (Promotion & Confirmation) Rules, 1980. Ram Kishan was one of the applicant in RAs No.104 & 195/1993 filed against order & judgment dated 27.11.1992, which was disposed of vide common judgment dated 4.11.1993. As the said judgment had been challenged before the Hon'ble Supreme Court by **Baljit Singh Bamel**, which was allowed on 11.01.2000, the principle laid down by this Tribunal for grant of promotion to the rank of SI (Ministerial) from Stenographer on reaching their pay at Rs.416/- was negatived by the Hon'ble Supreme Court vide order dated 11.1.2000. However, Ram Kishan never claimed promotion to the rank of SI (Ministerial) on reaching pay at Rs.416/- before the court of law. The Department implemented direction of this Tribunal dated 23.5.2000, vide order dated 21.3.2001. Rule 16 (iii) had been an important aspect, which remained un-considered by this Tribunal while issuing direction to Department determining seniority & promotion of Stenographers to the rank of SI (Ministerial) on reaching pay at Rs.416/-, stated the official Respondents.

48. In absence of any assistance by Respondents in this case, status of Civil Writ Petition No.7408/2001 remained unknown.

(Signature)

FINDINGS ON RA NO 98 of 2002 as well as on MAs.

49. On consideration of all aspects of the matter, rival contentions as well as the rule position, law noticed hereinabove, as well as keeping in view the findings recorded in OA No 244/2002, we are of the considered view that aforesaid provisions of rule as well as the non-existent pay-scale of Rs. 330-560 after 1.1.1986, which clinch the issue raised in the present proceedings & go to root of the cause & controversy, in fact had not been considered by this Tribunal and therefore there is an error apparent on the face of the record. As per settled law the Tribunal has power to review its order, besides inherent power to correct patent mistake brought to its notice. We are also of the view that there is sufficient cause to condone the delay particularly in the light of the judgment cited and noticed hereinabove. In view of the discussion made hereinabove, MA No.853/2002 is allowed and the delay in filing RA is condoned. MA No 854/2002 is also allowed. RA 98/2002 is allowed & order dated 23.5.2000 in OAs 2299 & 2300 of 1997 is recalled.

FINDINGS ON OA NO 1848 of 2004

50. As far as the claim laid in OA NO 1848 of 2004 is concerned, we are of the concerned opinion that there is no substance & justification in the relief prayed for. So far as claim counting ad-hoc service from 11.10.82 to 1.8.1986 towards seniority is concerned, we find that it is not the applicant's case that his initial appointment in 1982 was in accordance with statutory rules of 1980. On the other hand, it is his specific case that he was appointed in 1982 only on "ad-hoc basis". Perusal of appointment letter dated 19.10.1982(annexure R-1) also established that he was indeed appointed only on "purely temporary and ad-hoc basis, for a period of 3 months in the first instance". However, he continued to serve till he was appointed in accordance with rules vide order dated 11.8.1986. Validity of

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said order has not been challenged either in present or any other proceedings. In view of the dicta laid down by Apex Court in **State of West Bengal V/s Aghore Nath Dey, 1993 (3) SCC 371**, the adhoc period could be counted towards seniority only when the incumbent of the post was initially appointed "according to the rules." Applicant's claim is based only on account of conferring such benefits to other persons. Merely because an administrative order is passed in favour of other person, is not a ground to issue a command or direction to respondents to treat similarly. In (1995) 1 SCC 745 **Chandigarh Administration vs Jagjit Singh & Another**, it was observed that the claim laid that another person similarly situated had been granted such a relief and non-grant of such relief to the person would lead to discrimination, has to be decided by investigating the facts before it could be directed to be followed in case of the petitioner. It was observed therein that:

"The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order." (emphasis supplied)

51. Similarly in **I.C.A.R & Anr v T.K.Surayananarayyan & Ors. JT 1997 (7)SC 437** it was observed that incorrect promotion either given erroneously by the department by misreading the said service rule or such promotion given pursuant to judicial orders contrary to service rules cannot be a ground to claim erroneous promotion by perpetuating infringement of statutory Service rules. The statutory Service Rules must be applied strictly.

52. On examination & analysis of facts as well as law, we do not find justification in the contention raised by applicant for counting his adhoc service towards seniority. Similarly, prayer to grant him the rank of Sub-Inspector when he reached the pay of Rs.416/- in pay scale of Rs.330-560/- is unfounded and untenable inasmuch as on the date when he was regularized i.e. 01.8.1986, the aforesaid pay scale stood revised and had become defunct. Therefore, OA 1848/2004 fails & is dismissed.

Findings of OA 2523/2003

53. MA No No 966/05, seeking rehearing is allowed.

54. On examination of entire matter particularly relief sought, rival contentions raised by parties, we are of the considered view that applicant, initially appointed as ASI (Steno) and promoted as SI(Steno) w.e.f. 19.11.1976, as SI(Min.) w.e.f. 31.10.1985 cannot be allowed at this stage to put the clock back and grant him rank of SI (Steno) w.e.f. 19.11.1976 for the simple reason that if the applicant had to enforce such terms and conditions laid down vide appointment letter, cause of action arose much prior to 01.11.1982 the date from which this Tribunal u/S 21 (2) of the Administrative Tribunals Act, 1985 had been conferred the power, jurisdiction and authority to consider and adjudicate the claim. Similarly the claim to count seniority from 1969 to 1976 as Sub-Inspector, for which claim was laid in 2003 vide the present OA, would be beyond the jurisdiction, authority and competence of this Tribunal to entertain such grievance under the aforesaid provisions of the Act. Applicant cannot be said to be similarly placed as of respondent no.4-6 in the said OA, as the said respondents were taken on deputation and later on absorbed while he was initially appointed in Delhi Police as ASI (Steno). Hence they are non-comparable. Therefore, there is no merit in the claim laid. Accordingly, OA fails and is dismissed.

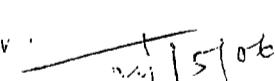
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55 Following the ratio of the aforementioned judgment, we do not find justification in the contention raised by the applicant.

56. In view of the discussion made hereinabove, we summarize the following conclusions:

- i) OA No 1848 of 2004 as well as OA No 2523/2003 are held to devoid of merits & accordingly dismissed.
- ii) MA No.853/2002 seeking condonation of delay is allowed. Delay in filing RA is condoned. RA 98/2002 is allowed & order dated 23.5.2000 in OAs No 2299 & 2300 of 1997 is recalled. MA No.854/2002 in RA 98/2002 in OA 2299/1997 seeks permission for applicants to file a joint application with single set of Court fee is also allowed.
- iii) OA No 244 of 2002 is allowed. The respondents No 1-3 should undertake the necessary exercise as observed in para 36 hereinabove, as expeditiously as possible, not later than four months from the date of communication of this Order.
- iv) No costs.


(Mukesh Kumar Gupta)
Member (J)


15/5/06
(V.K. Majotra)
Vice-Chairman (A)

/gkk/

