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**Central Administrative Tribunal  
Principal Bench**

OA No.558/2002

New Delhi, this the <sup>27<sup>th</sup></sup> day of October, 2009.

**Hon'ble Mr. Justice V. K. Bali, Chairman  
Hon'ble Dr. Ramesh Chandra Panda, Member (A)**

Shri Subhash C. Sharma  
Deputy Superintendent Jail-II  
Central Jail No.2,  
Tihar, New Delhi.

... Applicant.

(By Advocate : Shri Ajay Kumar)

**Versus**

1. Government of National Capital Territory of Delhi through the Chief Secretary, 5, Sham Nath Marg, Delhi-110054.
2. Chief Secretary, Government of National Capital Territory of Delhi, 5, Sham Nath Marg, Delhi-110054.
3. Principal Secretary Home, Government of National Capital Territory of Delhi, 5, Sham Nath Marg, Delhi-110054
4. Inspector General of Prisons, Delhi, Prisons Headquarters, Tihar, New Delhi-110064
5. Shri V.D.Pushkarna  
Deputy Superintendent Jail, Grade-I  
C/o Inspector General of Prisons,  
Tihar Jail, New Delhi-110064
6. Shri B.S. Bhatia,  
Deputy Superintendent of Jail,  
Grade-I  
C/o Inspector General of Prisons,  
Tihar Jail,  
New Delhi-110064
7. Shri Mahavir Singh  
Deputy Superintendent Jail  
C/o Inspector General of Prisons  
Tihar Jail, New Delhi-110064

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8. Shri R.D. Bohat  
Deputy Superintendent Jail  
C/o Inspector General of Prisons  
Tihar Jail, New Delhi-110064
9. Shri K.S.Meena,  
Deputy Superintendent Jail  
C/o Inspector General of Prisons  
Tihar Jail, New Delhi-110064.

... Respondents

(By Advocate: Shri Ajesh Luthra and Shri Vijay Pandita R1 to 4, Shri S.C.Luthra, R8 and Shri Sanjeev Manocha, R7)

**:ORDER:****Hon'ble Mr. Justice V. K. Bali, Chairman**

This Original Application along with two OAs relating to Ved Prakash Garg, Deputy Superintendent Grade-II, Central Jail, Tihar bearing Nos.630/1997 and 1122/2001 for promotion on due date and fixation of proper seniority were considered and heard by us together. While writing the judgment we delinked this OA from the other 2 OAs

2. Shri Subhash C. Sharma, Deputy Superintendent Grade-II in Central Jail, Tihar the Applicant herein, has been aggrieved by the orders of the official Respondents in not placing him at the proper position in the seniority list of Deputy Superintendent II and in not considering him for promotion to the post of Deputy Superintendent I whereas juniors to him were promoted. He has, therefore, prayed for the directions of the Tribunal in respect of following:-

- (i) to quash the order No P9/86/94-Home(G)/Pt./1221 dated 26-2-2001 by which the Respondents 5,6, and 7 have been promoted to Deputy Superintendent Grade - I,
- (ii) to quash the seniority list of Deputy Superintendent Grade - II issued vide order dated 16-3-2000;

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- (iii) to promote the Applicant to the post of Deputy Superintendent Grade - I, and
- (iv) to issue direction to official Respondents not to promote Shri R. D. Bohat and Shri K.S.Meena on regular basis to the post of Deputy Superintendent Grade - I before the Applicant is so promoted.

3. The factual matrix of the Applicant's case would reveal that the Applicant was appointed to the post of Assistant Superintendent (Jails) in Central Jail through direct recruitment which he joined on 8.4.1981. The Departmental Promotion Committee (DPC, for short) meeting was held 3.6.1987 to fill up 9 posts of Deputy Superintendent Grade-II (6 in general category, 2 for SC and one for ST). The Applicant belongs to the general category. Only one SC category officer namely Shri Mahabir Singh was eligible for promotion but since the departmental disciplinary proceeding was pending against him the sealed cover procedure was adopted in his case and remaining 2 SC vacancies were kept in abeyance. 3 other persons (M.S. Rittu, V.P. Pushkarna and B.S. Bhatia) were kept in sealed cover by the DPC. The DPC selected 5 ASs for promotion to the post of Deputy Superintendent II in the general category and the Applicant was placed at Sl. No.3 in the merit list. On the date of DPC there was no seniority list of Assistant Superintendents and the tentative seniority list of the Assistant Superintendent was circulated for the first time only on 22.11.1990. Consequently, on 1.7.1987, Respondent 1 promoted Shri B. S. Jarial, Shri Sunil Gupta and the Applicant as Deputy Superintendent Grade-II on regular basis. Later on Mahabir Singh, R.D. Bohat, and K.S. Meena all belonging to reserved category were promoted. It is the Applicant's case that when the Respondents 5 and 6 were in the sealed cover and they were not fully exonerated from the disciplinary/criminal proceedings, they were promoted to Deputy Superintendent Grade-II with retrospective effect. In the meantime, 2 other officers namely Shri R. D. Bohat (Respondent No.7) and Shri Mahabir Singh (Respondent No.8) were promoted on regular basis to Deputy Superintendent Grade I post on 9.10.1996. The Applicant challenged the said

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promotion before this Tribunal in the present two OAs. During the pendency of these OAs the Respondent Department issued final seniority list of Deputy Superintendent Grade II on 16.3.2000 in which the Applicant's name was shown at Sl. No.6. The **OA 1122 of 2000** and **OA 558 of 2002** were also dismissed by this Tribunal on two grounds that (i) the Applicant has not exhausted the available remedy under Section 20 of Administrative Tribunals Act 1985 and (ii) barred by limitation. He appealed against the said order before the Honourable High Court of Delhi which was considered and decided on 1-10-2007 with the directions to this Tribunal to decide the OAs on merits. The judgment of Honourable High Court of Delhi made it clear that those OAs did not suffer either from limitation or from the provisions of Section 20.

4. As stated earlier, with the consent of rival parties, we heard two OAs relating to V.P. Garg and this OA relating to the Applicant since the issues of seniority and promotion to DS II and DS I were common to both Applicants. We have dealt the issues comprehensively in our judgment in OA 630/1997 and OA 1121/2001 and such discussions are not done here. By a common order dated 14<sup>th</sup> October 2009, we have decided the issues in **OA No 630 of 1997** and **OA1122/2001** which are relevant and basis to decide the issues involved in the current OA. We like to take extract of the relevant paragraph:-

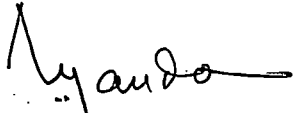
"12. In view of the total facts of the case and from the legal point of view, we come to the considered conclusion that the Respondent -1 erred on 2 counts viz (i) in not granting the DS-II on regular basis to the Applicant with effect from 1.7.1987 and (ii) granting him DS-II on *ad hoc* and temporary basis. To that extent the order dated 1.7.1987, Memorandum dated 19.10.1995, order dated 14.5.1996 and order dated 22.7.1996 are quashed and set aside with direction to the Respondent No.1 to grant promotion to the Applicant to the post of Deputy Superintendent Grade II on regular basis with effect from 01.7.1987. Consequently, the Applicant will be entitled to the seniority in the post of Deputy Superintendent Grade II as per the rank the DPC has fixed for him in the minutes of its meeting dated 3<sup>rd</sup> June 1987. The Respondents 6, 7 and 8 having been promoted after 1.7.1987, they will come in their respective seniority vis-à-vis the


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Applicant. Consequently the Respondent No.1 is directed to issue a revised seniority list of DS II as on 1.7.1987. In view of the seniority decided for the Applicant in the post of Deputy Superintendent Grade II on regular basis, there is no relevance to fix his seniority in the rank of Assistant Superintendent, but there is need for the Respondent 1 to consider his consequential promotion to the post of Deputy Superintendent Grade I within a period of 3 months from today. Insofar as, seniority of the applicant is concerned, as mentioned above, there would be no need to further delve in the issue, as surely, if the applicant is given regular promotion from 1.7.1987, his seniority would fall in order. Surely, those promoted to the post of Deputy Superintendent Grade-II after the applicant would be junior to him. That being so we direct the respondents to re-frame the seniority of the applicant vis-à-vis his colleagues, in view of the directions / observations as made above."

5. Consequent to our above order in the OAs, we are not dwelling on the rival contentions. We direct the Respondents to determine the Applicant's seniority along with Shri V P Garg in the post of Deputy Superintendent II and also direct them to examine the issue of Applicant's promotion to the post of Deputy Superintendent I along with the case of V.P. Garg within a period of 3 months. Promotion of the private Respondents will be also the subject matter of the Review DPC to determine the inter se seniority if they along with the Applicant get promoted to the post of Deputy Superintendent I.

6. With the above directions, the Original Application is disposed off leaving the respective parties to bear their own costs.

  
(Dr. Ramesh Chandra Panda)  
Member (A)

  
(V.K. Bali)  
Chairman

/pj/