

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A No. 1159/1999  
T.A No.

Date of Decision 9-5-2001

Mukesh Tyagi & Ors.

..Petitioner

Shri Shyam Babu

..Advocate for the Petitioner(s)

Versus

Lt.Governor, Delhi and Ors. Respondent

Shri Ram Kawar

..Advocate for the Respondents

Coram:-

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)  
Hon'ble Shri Govindan S.Tampi, Member(A)

1. To be referred to the Reporter or not ? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal ? No

*Lakshmi Swaminathan*  
(Smt.Lakshmi Swaminathan)  
Vice Chairman (J)

Central Administrative Tribunal  
Principal Bench

O.A. 1159/99

New Delhi this the 9 th day of May, 2001.

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).  
Hon'ble Shri Govindan S. Tamai, Member(A).

1. Mukesh Tyagi (D/2175),  
S/o Shri K.C. Tyagi,  
R/o T-1/1, Police Colony,  
Andrewsganj, New Delhi.
2. Mukesh Kumar (D-2785),  
S/o Shri Amar Singh Tyagi,  
R/o H.No. 45, VPO-Chattarpur,  
New Delhi. .... Applicants.

( By Advocate Shri Shyam Babu)

Versus

1. Lt. Governor, Delhi  
Rajnivas,  
Delhi.
2. Commissioner of Police,  
Delhi,  
Police Headquarters,  
I.P. Estate,  
New Delhi.
3. Harish Chander (D/1683),
4. Ajay Kaushik (D/2726),
5. Kailash Chand (D/2829),
6. Jaiveer Singh (D/2794)

(Service on respondent Nos. 3 to 6  
be effected through Respondent No.2) .... Respondents.

(By Advocate Shri Ram Kawar)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

This application has been filed by the two  
applicants praying for quashing of the letters issued by  
the respondents dated 26.2.1999 and 22.1.1999, rejecting  
their representation and appeal for ante-dating their  
confirmation to the rank of SIs with effect from 24.7.1991.

13

2. The respondents have taken a preliminary objection that the O.A. should be dismissed on the ground of limitation. According to them, the applicants have filed the O.A. belatedly after more than three years whereas the actual cause of action arose on 7.5.1996. They have, therefore, submitted that under Section 21 of the Administrative Tribunals Act, 1985, the O.A. is to be rejected. It is seen from the letter issued by the respondents to applicant No. 1, that they have rejected his representation on 26.2.1999 and in the case of applicant No. 2, they have rejected his representation vide their letter dated 22.1.1999. This O.A. has been filed on 17.5.1999. In the circumstances of the case, the preliminary objection taken by the respondents that the O.A. is barred by limitation is rejected.

3. On the merits of the case, Shri Shyam Babu, learned counsel has relied on the judgement of the Tribunal in Mohan Lal Vs. Delhi Administration (OA 1046/88 with connected cases), decided on 17.11.1989 (copy placed on record). He has also relied on the Constitutional Bench judgement of the Supreme Court in Direct Recruit Class II Engg. Officers' Association & Ors. Vs. State of Maharashtra and Ors. (AIR 1990 SC 1607, Paragraph 44). He has submitted that the seniority has to be determined from the date of appointment and not from the date of confirmation, which has been referred to as being "uncertain" or a mere accident" in Mohan Lal's case (supra). He has submitted that Rule 12<sup>23</sup> of the Punjab Police Rules which has been commented upon by the Tribunal in Mohan Lal's case (supra) is pari materia to Rule 22 of

the Delhi Police (Appointment and Recruitment) Rules, 1980. (hereinafter referred to as "the Rules"). In the impugned seniority list, applicant No. 1 has been shown at Serial No. 23 and applicant No. 2 at Serial No. 15 showing their dates of confirmation as Sub-Inspectors (Executive) w.e.f. 24.7.1992, that is, after extending one year due to adverse ACR from 18.7.1989 to 20.7.1990. Shri Shyam Babu, learned counsel, has submitted that the juniors to applicants were confirmed as SIs w.e.f. 24.7.1991, that is after completing the initial period of two years probation whereas they were confirmed much later. He has submitted that Rule 22 of the Rules is unconstitutional, arbitrary and contrary to the aforesaid judgements as the seniority is stated to be finally settled from the date of confirmation and not from the date of appointment. He has submitted that in accordance with the judgement of the Supreme Court in **Direct Recruit's case (supra)**, as the applicants have been appointed in accordance with the Rules, their seniority have to be determined from the dates of their appointment and not from the dates of confirmation as reckoned by the respondents for the purposes of determining their seniority in the list dated 9.5.1996.

4. The respondents in their reply have stated that due to the adverse entry in the ACRs during the initial training period from 18.7.1989 to 20.7.1990, the initial period of probation of two years was extended by one year. They have submitted that the applicants were confirmed in the rank of SIs w.e.f. 24.7.1992 vide order dated 9.5.1996. The relevant dates with regard to both the applicants are similar. They have submitted that as per

18.

Rule 8 (c) of the Delhi Police (General Conditions of Service) Rules, 1980, and Rule 22 of the Rules applicable at that time, the seniority of directly appointed SIs is to be finally settled from the date of confirmation. As the date of confirmation of both the applicants was postponed by one year, they lost their original seniority position, that is, from the date of appointment. They have submitted that the names of the applicants have been placed at appropriate places according to their seniority reckoned on the basis of their dates of confirmation and not according to inter-se seniority.

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. In **Mohan Lal's case (supra)**, the Tribunal has, after discussing the relevant provisions of law, including the decision of the Supreme Court in **S.B. Patwardhan Vs. State of Maharashtra (1977 SCC (L&S) 391)**, held as follows:

"In the light of the foregoing, we are unable to uphold the validity of Rule 12.2 (3) of the Punjab Police Rules or the corresponding rules made under the Delhi Police Act, 1978. We do not, however, propose to strike down the Rule, but would comment to the authorities concerned to revise the Rules in conformity with the latest instructions issued by the Department of Personnel in regard to confirmation (vide OM dated 28.3.88)"

This judgement was delivered on 17.11.1989. The judgement of the Supreme Court in **S.B. Patwardhan's case (supra)** had clearly held that "Confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies".

6. In view of the clear postulation of law laid down by the Hon'ble Supreme Court which has been followed

62

by the Tribunal in Mohan Lal's case (supra), it was incumbent on the respondents to have revised the relevant provisions of Rule 22 of the Rules, taking into account also the relevant O.M. issued by the DOP&T as far back as 1988 which they have unfortunately not done till date. In the circumstances, the contention of the respondents that they have issued the seniority list based on the date of confirmation of the applicants, is untenable, as it is contrary to the aforesaid judgments and law.

7. In the result, for the reasons given above, the O.A. succeeds and is allowed with the following directions:

- (1) The impugned seniority list of SIs prepared by the respondents which is based on erroneous provisions of law is quashed and set aside;
- (2) The respondents to revise the seniority list of SIs (Exe.), taking into account the aforesaid judgements and observations, within a period of two months from the date of receipt of a copy of this order.
- (3) Rule 22 of the Delhi Police (Appointment and Recruitment) Rules, 1980, is also quashed and set aside as contrary to law.
- (4) They shall also take steps to revise the aforesaid provisions of the Rules as expeditiously as possible and, in any case within four months

8.

from the date of receipt of a copy of this order so as to ensure that they strictly comply with the provisions of law and to avoid such infructuous litigation in future.

(23)

(5) In the circumstances of the case, Respondents to pay cost of Rs.2000/- (Rupees two thousand) in favour of the applicants.

(Govindan S. Tampli  
Member(A))

SRD

Lakshmi Swaminathan  
(Smt. Lakshmi Swaminathan)  
Vice Chairman(A)