

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA. No.1905/1999

Date of decision 18.9.2003

Sh.Vishveshwar Dayal : Applicant
Sharma

Shri P.P.Khurana, : Advocate for the Applicant
learned senior counsel
counsel with Shri M.K.Bhardwaj.

VERSUS


The Secretary/ : Respondents
Commissioner Transport
Department, Govt. of NCT of
Delhi and Ors.

Mrs.Avnish Ahlawat : Advocate for the Respondents
learned counsel through
proxy counsel Shri Mohit Madan
for respondents 1-2.
Shri Naresh Kaushik, learned
counsel for respondent No.3
Shri Arrun Bhardwaj, learned
counsel for respondent No.4
Shri Shyam Babu, learned counsel
for respondent No.5

CORAM:-

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri V.K.Majotra, 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.


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 1905/1999

New Delhi, this the 18th day of September, 2003

HON'BLE MRS. LAKSHMI SWAMINATHAN, VICE CHAIRMAN (J)
HON'BLE MR. V.K. MAJOTRA, MEMBER (A)

Shri Vishveshwar Dayal Sharma,
S/o Shri J.P. Sharma,
R/o C-4/140, Sector-6,
Rohini, Delhi 110 085

..... Applicant

(By Advocate : Shri P.P. Khurana with
Shri M.K. Bhardwaj)

Versus

1. The Secretary/Commissioner,
Transport Department,
Govt. of N.C.T. of Delhi
5/9 Under Hill Road,
Delhi
2. M.P. Yadav,
R/o C-21, Gokul Puri, Delhi
3. Attar Singh Kaushik,
R/o J-2/18, Khirki Extension,
Malviya Nagar, New Delhi
4. Kartar Singh,
R/o 1-159, Shiv Ram Park,
Nangloi, Delhi-41
5. Ramesh Chander,
Through The Secretary/Commissioner,
Transport Department,
Govt. of N.C.T. of Delhi,
5/9, Under Hill Road, Delhi
6. Tara Parsad Sharma,
R/o H.N. 450,
Main Sant Nagar,
Bus Stop, Burari, Delhi
7. I.P. Singh,
R/o WZ-166, G.No.5,
IInd Floor, Varinder Nagar,
New Delhi
8. Joginder Singh,
R/o H-17/1,
Sector - VII, Rohini,
Delhi - 110 085

... Respondents

(By Advocate: Mrs. Avnish Ahlawat through learned proxy
counsel Shri Mohit Madan, for respondents 1&2
Shri Naresh Kaushik, learned counsel for R-3
Shri Arun Bhardwaj, learned counsel for R-4
Shri Shyam Babu, learned counsel for R 5 & 6

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O R D E R

BY HON'BLE MRS. LAKSHMI SWAMINATHAN, VICE CHAIRMAN (J) :

This OA was originally filed by the applicant on 28.8.1999 praying that the respondents be directed to re-draft the Seniority List of Sub-Inspectors (Enforcement) (SI (Enf.)), wherein he should be placed at serial No.1 in the grade of SI (Enf.) and the tentative seniority list issued under covering letter dated 19.6.1998 (Annexure A-1) be quashed and set aside. In the aforesaid tentative Seniority List dated 19.6.1998, the applicant was placed last at serial No.8.

2. The applicant later amended the OA which was filed on 22.10.2002. In the amended OA he has prayed that respondent No.1 be directed to re-draft the seniority list and place him at serial No. 3 in the grade of SI (Enf.) and the tentative seniority list issued under covering letter dated 19.6.1998 and the final seniority issued under covering letter dated 15.2.2002 (Annexure-G) be quashed and set aside. During the hearing Shri P.P. Khurana, learned senior counsel for applicant has submitted that he has referred only to the amended OA.

3. The brief relevant facts of the case are that the applicant joined Delhi Police as Head Constable (Ministerial) on 28.4.1988 and was promoted as ASI (Ministerial) on 3.6.1998. He came on deputation to the Transport Department of the Government of NCT of Delhi in the post of SI in the pay scale of Rs.1200-1800 on 14.8.1991. It is also contended

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that the applicant as ASI (Ministerial) with the Delhi Police was in a higher pay scale of Rs.1320-2040. He was absorbed as SI in the Transport Department w.e.f. 28.5.1993. By Tribunal's order dated 1.9.1999 it had directed the respondents that if any promotion to be made by them shall be done only on ad hoc basis. The respondents had promoted four officers i.e. respondents 2 to 5 vide orders dated 29.9.1999 and 11.12.2000 on adhoc basis. The applicant has impugned the tentative seniority list dated 19.6.1998. The learned senior counsel has submitted that the impugned seniority list is completely in violation of the guide-lines issued by the Govt. of India vide OM dated 29.5.1986 for fixation of seniority of persons who are absorbed after remaining on deputation. He has also submitted that as provided in the aforesaid OM dated 29.5.1986, if a person is already holding on the date of absorption, the same or equivalent grade on regular basis in his parent Department, such regular service in the grade shall also be taken into account for fixation of his seniority, subject to the condition that he will be given seniority from the date he has been holding the post on deputation. He has contended that contrary to the laid down principle, the respondents have taken persons belonging to different grades as equivalent, which is arbitrary and not in accordance with the laid down rules or law as per the decision of the Hon'ble Supreme Court in the case of S.I. Rood Lal and Another Vs. Lt. Governor through Chief Secretary, Delhi and Others ((2000) 1 SCC 644). He has, therefore, contended that the service already rendered by the applicant in his parent Department on regular basis in the same or equivalent grade has to be considered and not the service in any lower grade, from the date of entry into the

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service. According to him, the grade to be considered is the feeder post i.e. the post of ASI in Delhi Police and not Head Constables (H.C.) and other lower ranks.

4. According to the applicant, his basic prayer is neither for quashing the impugned seniority list nor that he should be assigned seniority at Serial No. 1 or at Serial No. 3 which is incidental but that the respondents should follow the law. Shri P.P. Khurana, learned senior counsel has contended that originally the case of the applicant was based on the O.M. issued by the respondents on 29.5.1986 and later on the judgement of the Hon'ble Supreme Court in SI Roop Lal's case (supra). He has contended that the order dated 28.5.1993 only stated that the inter-se seniority will be based on the date of appointment in Delhi Police mentioned against the names of the officers without indicating the ranks held by them, which can be construed as dates of appointment as ASI, Head Constable and Constable as the case may be. He has also submitted that that order was not the order fixing seniority but was an order of absorption and no objections were called for and, therefore, the same can be treated only as a tentative seniority list. Later, the tentative seniority list dated 19.6.1998 was issued and all concerned officers were directed to submit their objections, if any. In the circumstances, learned senior counsel has contended that no seniority question stood settled, as contended by the respondents. Further, his contention is that in any case the judgement of the Hon'ble Supreme Court in SI Roop Lal's case (supra) is fully applicable to the deputationists and all persons who had come on deputation and working as ASIs in Delhi Police, who were later absorbed can count

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their earlier service rendered in that grade in Delhi Police. He has contended that there is absolutely no rule or principle that persons holding different ranks, for example, Constable, Head Constable or ASI can count their services from the dates of entry into service in ^{the} ~~the~~ grades, after their absorption in the borrowing Department where they had gone on deputation.

5. The official respondents in their reply have submitted that the applicant and other respondents came on deputation to the Department in the posts of SI and in Delhi Police they were all working as ASIs. They have submitted that S/Shri Inder Pal and Joginder Singh were working as ASIs (Ministerial) whereas the others were working as ASIs (Executive) and the post in question is SI (Enf.) which is a non-gazetted ministerial post. They have referred to the judgement of the Tribunal in OA 3967/1992. They have referred to the order dated 28.5.1993 by which seven other SIs on deputation were absorbed wherein it has been mentioned that their inter-se seniority will be based on the date of the appointment in Delhi Police against their names. The applicant was absorbed vide order dated 28.5.1993. They have stated that by this order, it was also mentioned that if any of the officers wanted to repatriate to his parent Department he may do so within two years. They have submitted that the order dated 28.5.1993 is not under challenge and has become final. According to the official respondents, in the impugned tentative seniority list dated 19.6.1998 Respondent No.2 who was absorbed earlier was placed at Serial No.1 and other seven in the same sequence as indicated in the order dated 28.5.1993. The final seniority has also been prepared

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accordingly. According to them, the seniority list cannot be varied or challenged until and unless the order dated 28.5.1993 is challenged and, therefore, the applicant cannot raise the dispute of seniority contrary to the order of 28.5.1993. They have also contended that the judgement in SI Roop Lal's case has no application to the facts of this case. They have submitted that the applicant had sufficient time either to challenge the order dated 28.5.1993 or if he was not happy he could have gone back to his parent Department. They have submitted that after 10 years the applicant cannot be allowed to change that position in the seniority list as he has accepted the same, including the seniority assigned to him. Learned counsel for official respondents as well as the other private respondents have taken a serious view of the matter that the applicant has amended his petition three times and has still not challenged the order dated 28.5.1993, including changes without taking permission of the Tribunal which is, therefore, not permissible. They have also highlighted the fact that while in the original OA filed by the applicant he had claimed seniority at serial no.1, and later at serial No.3 by amending the O.A., he has thereby changed the whole cause of action. For these reasons, learned counsel for the official respondents has prayed that the OA may be dismissed with costs.

6. We have also heard Shri Naresh Kaushik, Shri Arun Bhardwaj and Shri Shyam Babu, learned counsel for the private respondents. They have also submitted written submissions which are placed on record. They have vehemently submitted that the applicant has accepted the order dated 28.5.1993 which leaves no scope for him to succeed in the OA. They

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have submitted that the OA is barred by limitation and the applicant cannot unsettle the settled position regarding seniority which has been decided as far back as 28.5.1993. They have relied on the judgement of the Hon'ble Supreme Court in Direct Recruit's case (JT 1990 (2) SC 264). Shri Naresh Kaushik, learned counsel has submitted that with regard to Respondent No.3, he was absorbed prior to the applicant which has also not been challenged. The other arguments are more or less the same which have been contended by the learned counsel for the official respondents. According to Shri Naresh Kaushik, learned counsel, the settled position of seniority as per the order issued by respondents in 1993 cannot be unsettled even by the judgement in Roop Lal's case (supra) more so because the principle of equivalence is against the applicant. More or less the same arguments were advanced by the other learned counsel for the respondents. It is relevant to note that all the learned counsel for the respondents have taken a serious objection to several amendments made by the applicant to the OA, some of which were without permission of the Tribunal which, according to them, amounts to concealing material facts which disentitles him to any relief.

7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

8. By Tribunal's order dated 25.9.2002 the question of limitation was left open while allowing the applicant to challenge the seniority list dated 15.2.2002. On the preliminary objection of the OA being barred by limitation,

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it is relevant to note that a tentative seniority list of SI (Enf.) was issued by the respondents on 19.6.1998 on which objections, if any, were invited within 21 days. The applicant had filed objections to the said seniority list on 30.6.1998. In the circumstances, as the impugned seniority list has been termed by the respondents themselves as a "tentative" seniority list of SI (Enf.) on which objections have been called for from the concerned officials, it cannot be held that the OA is barred by limitation. Similarly, the contention of the respondents that they had already finalised the inter-se seniority of the ASIs who have been absorbed in the Transport Department by order dated 28.5.1993 which has not been challenged and hence the OA is barred by limitation cannot also be accepted with regard to the challenge of the applicant to the tentative seniority list issued on 19.6.1998. The relevant portion of the order dated 28.5.1993 reads as follows:-

"In pursuance of the issue of No Objection by the Dy. Commr. Police Q(1) Delhi, vide letter No.21610/CB-VI dated 20.5.93 and willingness given by the Asstt. Sub-Inspectors to their absorption in the Transport Deptt. Govt. of NCT of Delhi, the following Asstt. Sub-Inspectors are hereby absorbed as Sub Inspectors (Enf.) in the pay scale of Rs.1200-1800 with immediate effect. Since all the officials are absorbed in the Transport Department from the days of the issue of the order, their interse seniority will be on the basis of date of appointment in Delhi Police as mentioned against their names:-

<u>S.No.</u>	<u>Name of the officials</u>	<u>Date of Appointment</u>
1.	Sh. Mathura Prasad	17.3.69
2.	Sh. Kartar Singh	23.9.69
3.	Sh. Ramesh Chander	29.6.74
4.	Sh. Tara Prasad	29.6.74
5.	Sh. Inder Pal Singh	1.9.78
6.	Sh. Joginder Singh	2.6.80

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7. Sh. V.D. Sharma

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The above mentioned Sub-Inspectors (Enf.) have, however, option to revert back to their parent office within two years from the date of their absorption in the transport Deptt., Govt. of N.C.T. of Delhi."

9. The above order deals with the absorption of the seven officers mentioned therein in the Transport Department and it has been further mentioned that their inter-se seniority will be on the basis of the date of appointment in Delhi Police. It is not disputed by the respondents that the seven officers mentioned in that order did not belong to the same rank when they were appointed in Delhi Police as some of them were Constables and others were Head Constables, like the applicant. In K. Madhavan v. Union of India & Others (AIR 1987 SC 2291) the Supreme Court has held that it will be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. This judgement has been considered and followed in another case, namely, M. Ramachandran v. Govind Ballabh & Ors (JT 1999 (7) SC 271). After consideration of the proviso of Rule 5 (1) (2) of the Central Administrative Tribunal (Group B and C Misc. Posts) Recruitment Rules, 1989, the Hon'ble Supreme Court has held that the seniority of such recruited officers is required to be determined with reference to the dates of their regular appointments to the posts. The Supreme Court has held:

"10. In other words the period of holding of the equivalent post in the parent department would be the relevant period to be taken note of for the purposes of determining the seniority

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under Rule 5 (2) and its proviso. Any other interpretation would be against the settled rules of service jurisprudence and is likely to create many anomalies resulting in failure of justice and defeating the acquired rights of the civil servants based upon their length of service."

10. In Sub-Inspector Rooplal's case (supra), the Supreme Court has referred to K. Madhavan's case (supra). The Apex Court has held that in pursuance to the needs of the Delhi Police, the appellants were deputed to Delhi Police from BSF following the procedure laid down in Rule 5(h) of the Delhi Police (Appointment and Recruitment) Rules, 1980 and subsequently absorbed under the Rules. The Apex Court also held that on being absorbed in an equivalent cadre in the transferred post, there is no reason why the transferred officials should not be permitted to count their service in the parent department. It was held that "in law it is necessary that if the previous service of a transferred official is to be counted for seniority in the transferred post then the two posts should be equivalent."

11. Following the judgement of the Supreme Court in Rooplal's case (supra), the Government of India, DOP&T, issued OM dated 27.3.2001 with reference to their earlier OM dated 29.5.1986. In the OM dated 29.5.1986, the words "whichever is later" have been held to be violative of Articles 14 and 16 of the Constitution and hence these words have been quashed. The OM dated 27.3.2001 is relevant to the facts of this case wherein it has been provided that in case of a person who is initially taken on deputation and absorbed later, his seniority in the grade in which he is absorbed will normally be counted from the date of absorption if he was already holding the same or equivalent grade on regular basis in his parent department.

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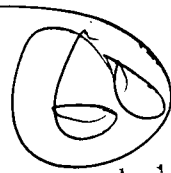
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12. When the absorption order dated 28.5.1993 was passed by the respondents, the applicant had been promoted as ASI (Ministerial) w.e.f. 3.6.1998 and had also completed two years of probation in that rank. He had come on deputation to the Transport Department from Delhi Police in the post of SI on 14.8.1991. Having regard to the aforesaid judgements of the Hon'ble Supreme Court, the determination of inter-se seniority of the officials dealt with in the order dated 28.5.1993, from the date of appointment in Delhi Police in different posts cannot, therefore, be accepted. It is not the total length of service alone which is relevant for determining the seniority but the length of service in a particular class, category or grade. The respondents do not deny the facts that the applicant and the others/private respondents were all appointed in Delhi Police in different posts/grades, which are not equivalent.

13. In the light of the judgements of the Hon'ble Supreme Court in K. Madhavan's case, M. Ramachandran's case and S.I. Rooplal's case (supra), the inter-se seniority list issued by the respondents dated 28.5.1993 based on the dates of appointments of the officials in Delhi Police in various grades and posts is not valid. Therefore, the impugned tentative seniority list dated 19.6.1998 based on the same criteria which was adopted in 1993 cannot also be held to be valid. In this view of the matter the OA succeeds as the impugned action of the official respondents is not justified or legal.

14. Although the applicant had filed this OA in 1999, he had amended the Application several times. The learned counsel for private respondents have very vehemently submitted that the nature of the reliefs prayed for by the

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applicant has undergone drastic changes as he had earlier prayed for redrafting the seniority list so that he is placed at serial No.1 in the grade of SI (Enf.), whereas in the amended OA he has prayed for being placed at serial No.3 in the revised seniority list. In fact during the hearing, Shri P.P. Khurana, learned senior counsel has submitted that all that the applicant is seeking is for correct placement in the revised seniority list in accordance with law and has prayed that the Tribunal may modify the relief clause to this extent. Having regard to the pleadings in this case, including in the amended OA, and the submissions of the learned counsel for the parties, we are unable to agree with the contention of the learned counsel for respondents that by the amendments in the OA the applicant has actually changed the entire cause of action. However, at the same time it is relevant to note that the applicant has indeed gone about making the amendments in a piece-meal fashion, which has no doubt, contributed to prolong the litigation for over three years. This has also led to filing of multiple Miscellaneous Applications and the need for all the respondents to file several replies and so on. Therefore, in the facts and circumstances of the case, we consider it appropriate that costs should be imposed against the applicant in favour of the respondents.

15. In the result for the reasons given above, the OA succeeds and is allowed with the following directions:-

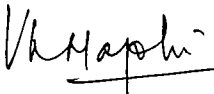
- (i) The impugned tentative seniority list issued vide letter dated 19.6.1998 and final seniority list dated 15.2.2002 are quashed and set aside. Consequently part of the order dated 28.5.1993 fixing the interse seniority


of ASIs on their absorption in the Transport Department being invalid and contrary to the aforesaid principles of law is also quashed and set aside;

(ii) The respondents are directed to revise the seniority list of Sub-Inspectors (Enforcement) in accordance with law, rules and instructions, keeping in view the aforesaid judgements of the Hon'ble Supreme Court;

(iii) Necessary action shall be taken within three months from the date of receipt of a copy of this order;

(iv) Cost of Rs.2,000/- (Rupees two thousand only) is imposed against the applicant in favour of each ^{one} of the respondents.


(V.K. MAJOTRA)
MEMBER (A)


(MRS. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN (J)

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