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Central Administrative Tribunal, Principal Bench

O.A. 760/99

New Delhi, this the 25<sup>th</sup> day of August, 2000

Hon'ble Mr. Kuldip Singh, Member (J)

Hon'ble Mrs. Shanta Shastri, Member (A)

V.B. Pandey

S/o Shri K.D. Pandey

R/o 1661, Gulabi Bagh,

Delhi 110007

At present Sr. Supdt./OSD (Lit.)

S.O. (RTE), Department of Social Welfare,

Government of NCT of Delhi.

.....Applicant

By Advocate Shri Sanjay Poddar.

Versus

1. Lt. Governor, Delhi  
(through Chief Secretary, Delhi)  
Raj Niwas, Delhi-110 054.

2. The Principal Secretary,  
Department of Social Welfare,  
Govt. of NCT of Delhi,  
5, Sham Nath Marg,  
Delhi-110 054.

3. The Director,  
Department of Social Welfare,  
Govt. of NCT of Delhi,  
1, Canning Lane, K.G. Marg,  
New Delhi-110 001.

4. Secretary,  
Union Public Service Commission,  
Shahjahan Road, New Delhi.

5. Ms. Prabha Mathur,  
Sr. Supdt./District Officer.

6. Smt. Neera Mullick  
Sr. Suptd./District Officer

7. Smt. Chandra Prabha  
Sr. Suptd./District Officer

8. Smt. C.P. Sharma  
Sr. Suptd./District Officer

9. Dr. Raj Dulari  
Sr. Suptd./District Officer

10. Shri P.N. Jha  
Sr. Suptd./District Officer

11. Shri J.P. Hans  
Sr. Suptd./District Officer  
Delhi-110 009.

.....Respondents

By Advocate Shri George Parackan.

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ORDER

By Hon'ble Mr. Kuldip Singh, Member (J)

The applicant in this case has prayed for quashing of the final seniority list of Group 'A' officers in the pay scale of Rs.3000-4500 (pre-revised) revised to Rs.10,000-15200. He has also prayed that he is entitled to assumed seniority at S.No.11 instead of S.No.20.

2. Facts in brief are that the applicant was appointed as Sr. Superintendent/OSD(Lit.)/SO (RTE) in response to an advertisement issued by UPSC on 10.10.92 on the request of the department which was sent to the UPSC on 16.12.92. UPSC had selected and recommended for appointment to the said post two persons as there were two vacancies. Shri P.P.Dhal at S.No.1 and applicant was at S.No.2. However while the selection process was going on, an OA was filed by one Shri O.P. Sharma, Welfare Office of the department bearing OA No.1216/93, wherein he has claimed that he is also eligible to be a candidate for interview and his candidature should have been accepted by the UPSC. The Tribunal granted stay as alleged to the effect that results will not be declared. However, it is stated that respondents UPSC declared the result of one post of of Sr. Superintendent out of the two posts and result of the post on which the applicant was selected was held in abeyance. OA filed by Shri O.P. Sharma was dismissed vide order dated 7.11.1996.

3. As a result of this OA, the applicant claims that his seniority has suffered as Shri P.P. Dhal has been appointed on 25.8.93 whereas the applicant was issued an offer of appointment on 14.5.97 and he joined the post

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on 20.8.97. However in the tentative seniority list the applicant's name was rightly shown at S.No.11 which was alleged to have been issued on 24.9.97 vide Annexure A-3. But in the final seniority list issued on 9.7.98, the name of the applicant has been shown at S.No.20 while it should have been at S.No.11. The applicant has been shifted to S.No.20 because some incumbents to the post of Sr. Superintendent had joined in between but the applicant claims that all of them are junior to him and those Sr. Superintendents who have joined during the intervening period of joining of Sh.P.P. Dhal and applicant, had been promoted to the post of Sr. Superintendent but at the time of joining of Dhal they were not even within the zone of consideration of promotion of Sr. Superintendents, therefore, the applicant claims that he has a right to get assumed seniority from the date on which Shri Dhal was appointed.

4. The applicant also claims that the Deputy Secretary, UPSC vide his letter dated 4.2.97 No.F.1/347/92-R.IV addressed to the Director, Directorate of Social Welfare had also stated that delay in issue of <sup>h</sup>offer of appointment to the applicant recommended by the Commission should be eliminated keeping in harmony with the orders issued vide O.M. No. 23/97/68 Estt.(B) dated 26.2.1969. The applicant further stated that this also confirms the principle of assumed seniority wherein he has been deprived of seniority due to the circumstances beyond his control on account of vexatious and malicious litigation which was finally dismissed by the Tribunal.

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5. The applicant has also stated that he does not seek any remuneration for the past service from 25.8.93 to 20.8.97 but he deserves to be given an assumed seniority.

6. The respondents contested the O.A. and admitted that they had made a requisition for two posts of Sr. Superintendent to the UPSC on 12.5.92 under the direct recruitment quota for filling up the same against which, the UPSC sponsored the name of Shri P., P. Dhal and the second candidate's name was not sponsored as one Shri O.P. Sharma had got stay from the Tribunal against the selection made by the UPSC. After the stay was vacated, the UPSC sponsored the name of the applicant vide letter No.F.1/347/92-R IV dated 4.2.97 who joined the post on 20.8.97. But as far as the case of the applicant for grant of seniority is concerned, it is stated that the rules for rota quota under which inter-se seniority for direct recruits are decided has not been applied here, hence the rules of rota quota does not cover the cases due to the court case and the offer of appointment has been delayed. The department has not followed the rule of rota quota because promotion and direct recruitment have not been made every year as per vacancies. So the inter-se seniority list was determined purely on the basis of length of service hence the department has rightly decided the inter-se seniority of the applicant on the basis of length of service.

7. We have heard Sh. Sanjay Poddar, learned counsel for the applicant and Shri George Parackan, learned counsel for the respondents.

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6. The learned counsel appearing for the applicant submitted that for no fault of the applicant his appointment has been delayed and that is why the UPSC had recommended that the applicant should be given assumed seniority and for this purpose he has also referred to an O.M. No.23/97/68-Estt(B) (Annexure-10) dated 26.2.1969 and the letter of the UPSC dated 4.2.1997, which is at Annexure-11 and we find that on the basis of all these letters, the applicant's counsel claims that he is entitled to get his seniority at least notionally at S.No.11 and he should be assigned seniority accordingly. The applicant has taken a ground that the inter-se seniority of the officer is maintained as per the approved existing Recruitment Rules and not as per the length of service in the grade. The inter-se seniority of the officers recorded under the existing RRS is being maintained under the provisions of the RRS approved and not on the basis of length of service in the grade.

9. On the contrary, the learned counsel for the respondents submitted that in this case the promotees who were promoted, were promoted against regular vacancies as it is evident from the seniority list issued by the department and placed on record by the applicant himself. The impugned seniority list as well as the tentative seniority list shows that the persons who are in between Sh.P.P. Dhal and applicant, as shown in column 9, have been regularly appointed in the present grade w.e.f. 22.5.95 whereas the applicant had been appointed on 20.8.97. Had the respondents whose seniority have been challenged by the applicant been appointed against a particular post as a stop gap arrangement and against the

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rules, then the applicant could have claimed seniority over them. But once the respondents whose seniority is under challenge are regularly appointed and they have a longer length of service, so seniority is to be taken on the basis of length of service and the O.M., on which the applicant has placed reliance is not applicable to the present case.

10. We have considered the rival contentions of the parties. The principle of fixation of seniority of Direct Recruits Vs. the Promotees have been decided by the Hon'ble Supreme Court in the case of The Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and Others, JT 1990 (2) SC 264 wherein the following principles have been laid down:-

"(ii) To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.

(D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet

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the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.

(E) Where the quota rule has broken down and the appointments are made from one source, in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date."

11. Applying the above noted principles to the case in hand, we may mention that first of all there is nothing on record to show that the respondents whose seniority has been challenged, their appointment have been made by a way of stop-gap arrangement without considering the claims of other eligible available persons and without following the rules of appointment. On the contrary, the seniority list shows their date of appointment as a regular date of appointment which is much earlier to that of the applicant so they have more length of service as compared to applicant.

12. The applicant has also failed to point out the principles of assigning the seniority to be followed in case the principle of rota quota is applied whereas the respondents have established that in the case of Sr. Superintendent the principle of rota quota has broken down and vacancies are not filled on year-wise basis and that is why the department has resorted to assigning seniority on the principle of length of service.

13. Under the circumstances, we are of the considered opinion that the department is not observing rules of rota quota for assigning seniority and they are

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observing the principle of length of service for assigning the seniority and since the applicant has joined service much later than the respondent Nos. 5 to 11 so his seniority has been rightly fixed.

14. In view of the above, OA calls for no interference and the same is dismissed. No costs.

*Shanta*

( Mrs. Shanta Shastri )  
Member (A)

*Kuldip*

( Kuldip Singh )  
Member (J)

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