

Central Administrative Tribunal
Principal Bench

O.A. 1045/1998
and
O.A. 1639/98

(14)

New Delhi this the 31 ~~ST~~ day of October, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri V.K. Majotra, Member(A).

O.A. 1045/98

1. Mr. Jose T. Paul,
ASI No. 1626/Comm.
S/o Shri C.S. Paul,
Qtr. No. 245, PTS Colony,
Malviya Nagar, New Delhi-17.
2. Mr. Joseph G.,
ASI No. 1628/Comm.
S/o Shri Mammen George,
62, PTS Colony,
Malviya Nagar, New Delhi-17.
3. Mr. Sebastian K.S.
ASI No. 1627/Comm.
S/o Shri K.M. Devasia,
D-228, Moti Bagh,
New Delhi.
4. Mr. Jacob Abraham,
ASI No. 1624/Comm.
S/o Shri N.C. Abraham,
Qtr. No. 61, P.S. Sarai Rohilla,
Delhi.
5. Mr. Devassy K.V.
ASI No. 1622/Comm.
S/o Shri Varkey K.D.,
498, PTS Colony,
Malviya Nagar,
New Delhi-17.
6. Mr. George Samuel,
ASI No. 1629/Comm.
S/o Shri C.J. Samuel,
Qtr. No. A-5, PS Keshav Puram,
Delhi-110035.
7. Mr. P.V. Mahew,
ASI No. 1623/Comm.
S/o Shri K.G. Paulose,
Qtr. No. 99, PTS Colony,
Malviya Nagar,
New Delhi-17.

... Applicants.

(By Advocate Shri M.P. Raju)

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Versus

1. NCT of Delhi through Principal Secretary (Home), Secretariat, Rajpur Road, Delhi.
2. Commissioner of Police, Police Headquarters (1), ITO New Delhi.
3. Dy. Commissioner of Police, Headquarters (1), PHQ, Delhi.
4. Dy. Commissioner of Police, Communications, Rajpur Road, Delhi.

... Respondents.

(By Advocate Shri Vijay Pandita)

O.A. 1639/98

Alex P.K.
Head Constable (AWO),
No. 702/Comn.,
(South District Control Room, Communication),
Dy. Commissioner of Police, Communication,
Old Police Lines,
Rajpur Road,
New Delhi-110 054.

... Applicant.

(By Advocate Shri R. Chacko)

Versus

1. Commissioner of Police,
MSO Building,
Police Headquarters,
New Delhi.
2. Addl. Commissioner of Police (Admn.),
Police Headquarters, New Delhi.
3. Dy. Commissioner of Police (Comn.),
5, Rajpur Road, Old Police Lines,
Delhi-110 054.

... Respondents.

(By Advocate Shri Vijay Pandita)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member (J).

The applicants, seven in number, are aggrieved by what they state are arbitrary and illegal action taken by the respondents in the order dated 26.12.1997 in fixing their seniority superseding the previous order (Annexure-I). They have stated that they are also

aggrieved by the order dated 7.4.1998 passed by the respondents cancelling the seniority list of Head Constables (HCs) (AWO) dated 26.12.1997 (Annexure-II). Their representations against these orders have been rejected by order dated 23.4.1998 (Annexure-III).

2. The brief relevant facts of the case are that the applicants had appeared in the final examination for selection to the post of Assistant Wireless Operators (AWOs) Grade-III, held in July, 1980. They were all declared failed in one subject, namely, Viva-Voce. Admittedly, no trade test was held during the years 1981 and 1982 and was held only in 1983. All the applicants were permitted to appear in the trade test held on 29.8.1983 to 9.9.1983, only in the subject in which they had failed and they were declared passed.

3. The main issue in this case is with regard to the fixing of seniority of the applicants. According to Dr. M.P. Raju, learned counsel for the applicants, the applicants should be refixed at the bottom of the seniority list of HCs of 1980 batch and not at the bottom of the seniority list of the 1983 batch candidates. The learned counsel has relied on Annexure-VIII order for this purpose dated 30.5.1994 which he states has been passed by the Deputy Commissioner of Police, Communication, Delhi in pursuance of the Police Headquarters Memo dated 25.4.1994. He has submitted that this order is correct, as the applicants' names have been placed below the names of HCs (AWO) of the 1980 batch and above the name of the HC (AWO), who is the first candidate of the 1983 batch. Learned counsel has submitted that the seniority shown by

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the respondents in the order dated 30.5.1994 is the correct seniority in accordance with para 12 of Standing Order (SO) No.223/79. According to him, the names of the candidates are to be brought on the panel and their inter se seniority has to be fixed as per the provisions of the Delhi Police (Appointment and Recruitment) Rules, 1980 (hereinafter referred to as 'the 1980 Rules') which had been correctly followed earlier by the respondents by publishing the seniority list in 1984 which has been arbitrarily revised to the detriment of the applicants. He has, therefore, submitted that by allowing the candidates who had appeared in the examination held in 1979 and who had appeared in the test in 1980, the respondents had drawn Promotion List 'D' (Technical) and they had themselves given seniority to those who had completed the training over the others who did the training in 1980. Similarly, he has submitted that in subsequent batches also, the respondents ought to give seniority to the 1980 batch, to which the applicants belong prior to those who were permitted in the subsequent batches, even if they had failed in one subject and re-appeared for that subject in 1983 because no examinations were held between these two years. He has submitted that what the applicants are aggrieved is the policy decision adopted by the respondents in reversing their earlier decision which he contends is erroneous. He has relied on the judgement of the Supreme Court in **A. Janardhana Vs. Union of India & Ors.** (1983(3) SCC 601).

4. The respondents in their reply have controverted the submissions made by the applicants. They have submitted that the applicants had passed their

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preliminary test and had undergone AWOs Grade-III course. They had appeared in the final examination held on 18/19.7.1980 and declared failed in practical/viva-voce test. As per SO No.223/79, they were eligible to appear in the subsequent test (all subjects) twice, if they so desire. Meanwhile, that SO was amended and the failed candidates were allowed to appear only in the subject in which they had failed in the subsequent tests. They agree that no trade test was held during the years 1981-82 and in the test held in 1983, all the applicants were permitted to appear only in the subject in which they had failed and they passed that test. The respondents have also stated that after obtaining the written options, their names along with the other batchmates were brought on Promotion List 'B' (Technical) w.e.f. 27.11.1984 vide order dated 10.12.1984 according to their inter se seniority and were also promoted from the same date. They were declared confirmed as HCs (AWO) w.e.f. 9.5.1989 as per their seniority in the rank. According to the respondents, after a period of 8 years, applicant No. 3 had submitted a representation on 14.8.1992 for change of the seniority claiming that his seniority as well as the other similarly situated HCs (AWO) should be re-fixed by placing them just below the last batch of 1980 and the first candidate of 1983 batches. Shri Vijay Pandita, learned counsel for the respondents has submitted that the DCP/Headquarters without examining the provisions of SO No. 223/79 as well as the relevant Rules, namely, the 1980 Rules asked the DCP (Communication) that the seniority of applicant 3, Shri K.S. Sebastian and other similarly situated 14 HCs (AWO) who passed the written test of AWOs with the batch of 1980 and cleared the

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interview with the batch of 1983 may be fixed between the batches of 1980 and 1983, i.e. just below the last candidate of 1980 batch and above the first candidate of 1983 batch. He has submitted that the seniority of HCs (AWO) has to be maintained by the Police Headquarters and not by the DCP (Communication) and he has submitted that the list issued in 1984 cannot, therefore, be relied upon by the applicants. He has submitted that on further representations by all the concerned persons, the whole question was re-examined and he has submitted that the memo dated 30.5.1994 being in violation of the relevant Rules had to be revised. Hence, the earlier decision was cancelled and the orders were issued vide order dated 24.10.1997 with the directions to PHQ to refix the seniority of HCs(AWO) with the batch when they had qualified the trade test finally and given their options for permanent absorption in the Communication Cadre as per SO No.223/79. Learned counsel for the respondents has submitted that as the orders and notifications for promotion/appointment issued by the respondents were passed erroneously, there is no bar in correcting the same. He has submitted the relevant papers, including the Delhi Police (Appointment and Recruitment) Rules, 1980 as on 31.12.1980 as well as the extracts of Rule 12.2 (3) of the Punjab Police Rules (copies placed on record). In the circumstances, he has submitted that there is no merit in the O.A. and hence the same should be dismissed.

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

6. Rule 22 of the 1980 Rules reads as follows:

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"(1) Seniority in the case of upper and lower subordinates shall be initially reckoned from the date of first appointment; officers of subordinate rank promoted from a lower rank being considered senior to persons appointed direct to the same rank on the same day till seniority is finally settled by confirmation. The seniority of direct recruits appointed as a result of same examination or selection shall be reckoned by the order of merit determined by the Selection Board and in case no order of merit is indicated, by the age of the candidates the oldest being placed senior-most and the youngest the junior most.

(2) These recruited as Constables shall take their seniority from the date of their first appointment, provided that if the date of appointment is the same, the persons older in age shall be senior to the persons younger in age.

(3) Seniority shall, however, be finally settled by the date of confirmation. The seniority inter-se of officers of subordinate rank confirmation on the same date will remain as before confirmation".

7. The relevant portion of SO No.223/79 relied upon by the parties reads as follows:

"The names of such candidates not exceeding 25% of the total number of posts sanctioned for Asstt. Wireless Operators/Teleprinter Opr. (HC) shall be brought on the panel for promotion/absorption and their inter-seniority fixed, as per provisions of rule 22(3) of Delhi Police (Appointment & Recruitment) Rules, 1980..."

8. The main issue raised in the present O.A. is with regard to the fixation of seniority of the applicants who belong to the 1980 batch of Constables on their promotion and appointment as HCs(AWO Grade-III). The respondents have relied on SO 223 of 1979 and Rule 22 of the 1980 Rules. The applicants had passed the preliminary test but had admittedly failed to qualify in one subject, namely, viva voce. The respondents have stated that after the amendment of SO No.223/79 w.e.f 27.9.1980 onwards such of these candidates who had failed were allowed to appear in the subject in which they had failed, if they so

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desired, and not in all the subjects, which was the position till the amendment of the SO upto 26.9.1980. The applicants in the present case had appeared in the final examination held on 18/19.7.1980 and declared failed in practical/viva voce. In accordance with the amended SO 223/79, they were allowed to appear in the trade test in the subsequent test which was held on 29.8.1983 to 9.9.1983 only in the subject in which they had failed and they were declared passed in that subject also. They had submitted written options in August/September, 1984 for permanent absorption in Communication Branch.

9. Rule 22 of the 1980 Rules which came into force w.e.f. 31.12.1980 would be the relevant Rule. This Rule as it existed prior to its substitution by Notification dated 15.11.1985, copy placed on record, would apply to the facts in the present case with regard to fixation of seniority of the applicants. Sub-rule (3) of this Rule provides that seniority in the case of Upper and Lower subordinates shall be finally settled from the date of confirmation and the seniority inter se of subordinate ranks confirmed on the same date shall remain as before confirmation. As the applicants have admittedly passed the trade test held in 1983, as no trade test was held during the years 1981-1982, in terms of SO No. 223/79 as amended, the earlier decision of the respondents to place them en bloc, junior to the 1980 batch and above the batch of 1983 appears to be reasonable and in order. In the reply filed by the respondents, they have referred to SO No. 223/79 as well as Rule 12.3 of PPR and Rule 22 (Delhi Police Appointment and Recruitment Rules), 1980 and had asked the DCP (Communication) to fix

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their seniority on merits between the batches of 1980 and 1983. We are unable to agree with the contention of the respondents that the order issued by Communication Branch dated 30.5.1994 with which the applicants are satisfied, is defective. The respondents themselves have stated that no trade test was held in the years 1981 and 1982, and the failed candidates of 1980 batch had been allowed to appear only in that subject in which they had failed in the test held in 1983. In the circumstances, placing them below the last candidate of the 1980 batch and above the first candidate of 1983 batch, cannot be considered contrary to the provisions of SO 223/79 read with Rule 22 of the 1980 Rules.

10. We are unable to agree with the reply filed by the respondents that as the revision of their seniority was not based on any Rule or appropriate principle applicable in determination of seniority in that grade, the earlier decision of the DCP (Communication) was cancelled by the Commissioner of Police, Delhi and orders were issued vide PHQ, UO dated 24.10.1997 to refix the seniority of HCs (AWO) with the batch when they had passed/qualified the trade test finally. From the aforesaid Rules relied upon by the respondents also, it cannot be held that the earlier action taken by them in fixing the seniority of the applicants at the bottom of the 1980 list, as they had admittedly failed in one subject earlier and above the name of the HC(AWO) of 1983 batch, is contrary to the Rules. In any case, the respondents themselves have not produced any rule to justify their later action in revising the seniority list to place the applicants among the batch of 1983. The

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respondents have not indicated what merit position has been determined with respect to the applicants by the Selection Board and in such a case it has to be determined as per Rule 22 of the 1980 Rules. Perhaps the situation might have been different if the applicants were required to pass all the subjects a second time, even if they had only failed in one subject, under the Rules, which is not the position here, after the amendment of SO No. 223/79.

Dr. M.P. Raju, learned counsel, had submitted that he would be satisfied if the applicants are placed en bloc below the 1980 batch candidates who had qualified in the first attempt and above the first successful candidate of the 1983 batch.

11. In view of what has been stated above, the impugned orders relating to the applicants are quashed and set aside and their seniority as issued by the respondents earlier in 1984 shall be restored, that is the seniority of the applicants in the grade of HCs (AWO) shall be placed just below the batch of HCs of 1980 and above the first candidate of the 1983 batch as already fixed earlier. They shall be entitled to consequential benefits arising from re-fixation of their seniority in accordance with the relevant rules and instructions. The respondents shall take necessary action in this regard within two months from the date of receipt of a copy of this order. No order as to costs.

JG

O.A.1639/98

1. In this application, the applicant has challenged the same order passed by the respondents, namely, the order dated 26.12.1997 refixing his seniority and superseding the earlier order, which was also the subject matter in Jose T. Paul & Ors. Vs. Commissioner of Police (OA 1045/98). However, Shri R. Chacko, learned counsel has submitted that there is a slight difference in facts in the present case to J.T. Paul's case, to the following extent.

2. The applicant had also failed in viva voce as the applicants in OA 1045/98. Learned counsel has submitted that unlike the other persons, the applicant alone was made to appear in all the subjects, including those which he had passed in the year 1980. He has submitted that this is contrary to the stand taken by the respondents themselves in Paragraph 4 of their reply in which they have stated as follows:

"As per S.O. No.223/79, he was eligible to appear in the subsequent test (all subjects) twice if he so desire. Meanwhile the S.O. was amended and the failed candidates were allowed to appear only in the subject in which they failed in the subsequent tests if they so desire. In the year 1982, applications were invited from eligible Consts./HCs for filling up the post of HC (AWO)....".

3. According to the respondents, the applicant had applied for the post as a fresh candidate at his own will and had also undergone the AWO Grade-III course and appeared in the final examination on 29.8.1983 to 9.9.1983. He was declared failed in Procedure and was repatriated to his parent unit. He again appeared in the

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final examination of AWO Grade-III held in 1985 only in the subject in which he had failed previously, that is, Procedure and declared passed. He had submitted his written option on 15.10.1986 for permanent absorption in Communication Unit as Head Constable (AWO). The respondents have, therefore, submitted that the name of the applicant along with other batchmates were brought on promotion list 'B' (Technical) w.e.f. 1.1.1987 (Annexure-R2).

4. Shri Chacko, Learned counsel for the applicant has submitted that as per the respondents' own averments, after the amendment of SO No. 223/79, the failed candidate was eligible to appear in the subsequent test only in the subject in which he had failed, and was not required to appear in all the subjects as per the unamended SO. His contention is that in the examination held for AWO Grade-III in 1983, in which the applicant had also taken the test along with the applicants in OA 1045/98 and declared passed in that one subject he had failed, he should not have been declared failed in another subject, that is Procedure, but should have been treated similar to his batchmates of 1980. Shri Vijay Pandita, learned counsel has, however, submitted that the expression "if they so desire" means that as the applicant applied for the test as a fresh candidate at his own will and appeared in all the tests, even though under the amended SO, he was required to appear in the failed subject only, and could pass the test only in 1985 his seniority has been correctly fixed.

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5. We are unable to agree with the contention of the respondents that even after SO 223/79 was amended and the failed candidates were allowed to appear only in the subject in which they have failed in the subsequent test, they could have allowed the applicant to appear as a fresh candidate in all the subjects, even if he had so desired. The contention of the respondents would mean that they were prepared to give a go-bye to the relevant Rules and instructions contained in SO No. 223/79 as amended, on the request made by a candidate to appear in all the papers, including those in which they had passed. The proper course for the respondents would have been to refuse the applicant's application as a fresh candidate to appear in all the subjects but allow him to appear only in the subject he had failed in 1980. The expression "if they so desire" is qualified by the words that the failed candidates may be allowed to appear only in the subject they had failed on the subsequent tests, and not that they could appear in the subsequent tests in all the subjects as was the position before the amendment of the SO. The submission of the learned counsel for the respondents would lead to negation of the provisions of the SO as amended which is accordingly rejected. In this view of the matter, as the applicant had passed in the subject he had failed in 1980 in the test held from 29.8.1983 to 9.9.1983, he shall be entitled to the same benefits as given to other similarly situated persons of the 1980 batch who are applicants in OA 1045/98. His failure in another subject in 1983 which he passed in 1985 cannot be held against him as this would be against the Rules and SO 223/79 as amended.

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-16-

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6. In the result, the O.A. succeeds and is allowed to the extent that the applicant shall be treated similarly to other candidates who passed HC(AWO) Grade-III course conducted in 1980 finally in the supplementary test in 1983 and his seniority fixed accordingly. As already directed in OA 1045/98 he shall also be entitled to the consequential benefits arising from re-fixation of the seniority in accordance with the relevant rules and instructions. Necessary action shall be taken within two months from the date of receipt of a copy of this order. No order as to costs.

V.K. Majotra

(V.K. Majotra)
Member(A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'