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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A.No. 471 /1998 Date of Decision: 27 - 10 - 1999

Shri Virender Kumar Jain .. APPLICANT

(By Advocate Shri Meera Chhibber)

versus

Union of India & Ors. .. RESPONDENTS

(By Advocate Shri Anoop Bagai)


CORAM:

~~THE HON'BLE SHRI S.P. BISWAS~~

THE HON'BLE SHRI S.P. BISWAS, MEMBER(A)

THE HON'BLE SHRI KULDIP SINGH, Member(J)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES
2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER
BRANCHES OF THE TRIBUNAL?


(S. P. Biswas)
Member (A)

Cases referred:

1. Direct Recruits Class-II Engineering Officers Association Vs. State of Maharashtra & Ors. (1990(2)SC 715).
2. Pushpa Aggarwal Vs. U.O.I. (1999(4) SCC 184).
3. Govind Prasad Vs. R.S. Prasad.
4. Shiv Kumar Sharma Vs. Haryana State Electricity Board (JT 1998(3) SC 131).
5. S.N. Mukherjee Vs. U.O.I. (SLR 1990(5) SC 8).

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-471/98

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New Delhi this the 27th day of October, 1999.

Hon'ble Shri S.P. Biswas, Member(A)
Hon'ble Shri Kuldip Singh, Member(J)

S.I. Virender Kumar Jain,
S/o Sh. Harish Chander Jain,
R/o 1/D, Arujun Nagar,
New Delhi-29.

.... Applicant

(through Mrs. Meera Chhibber, Advocate)

versus

1. Union of India through
Commissioner of Police,
PHQ, I.P. Estate,
MSO Building,
New Delhi.

2. Dy. Commissioner of Police,
South District,
Hauz Khas,
New Delhi.

3. Dy. Commissioner of Police, HQ-I,
PHQ, MSO Building,
I.P. Estate,
New Delhi.

.... Respondents

(through Sh.A.K.Singh for Sh. Anoop Bagai, Advocate)

ORDER(ORAL)

Hon'ble Shri S.P. Biswas, Member(A)

Two legal issues fall for determination in
this O.A. These are as hereunder:-

(i) Whether an official (Sub-Inspector)
working under the respondents in Delhi Police can
claim seniority on the basis of confirmation or on
the basis of initial appointment in the grade?

(ii) Whether administrative orders are
required to incorporate the reasons, particularly
when such orders contain/have adverse civil
consequences?

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2. The determination of the aforesaid two legal issues would require narration of the background facts. Briefly stated, those facts are as under:-

Initially the applicant was appointed directly as a Sub-Inspector under the respondents on 09.07.90. The inter-se seniority position of the applicant as at Annexure PV dated 21.11.94 shows applicant's seniority at S.No. 24. His immediate senior was Mr. R.K. Dahiya (D 3081) and his immediate junior was Ajay Vedvat. The said position of seniority was based on the provisions of Rule 5(e)(i) the Delhi Police (Appointment and Recruitment) Rules, 1980. As per this rule, the period of probation was to come to an end by 08.07.92. The rules under the Delhi Police provide that if there is no major penalty or no adverse remarks against an official, he or she would get automatically confirmed after the passage of 2 years of probation. Rules further stipulate that the competent authority may extend the period of probation but in no case shall the period of probation be extended beyond 3 years in all. It is not in dispute that the applicant had completed the 2 years of probation on 08.07.92 and he did not have any major penalty nor was there any adverse remarks against him. However, the respondents decided to initiate a departmental proceeding against the

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applicant, the details of which are at page 2 of the counter. It mentions that in the year 1992, the applicant had to be dealt with departmentally by the DCP (Traffic) vide order dated 21.04.92 on the allegation that while taking final examination in July, 1991 the applicant had used unfair means in the examination. The said departmental proceedings entered into the findings of lapses on the part of the applicant only August, 1995. On 01.08.95 the applicant was punished with "Censure" for having used unfair means in the examination. In other words, there was no major or minor penalty or even any adverse remarks in the ACR roll of the applicant right from July, 1990 to 30.07.95.

3. Being aggrieved of the aforesaid action by the respondents, the applicant is before us seeking relief in terms of issuance of directions to the respondents to confirm the applicant from 20.08.92 since the "Censure" dated 01.08.95 could be ^{not} taken into consideration while deciding the date of ^{1.8.95} confirmation w.e.f. 20.08.92. In other words, the applicant challenges P1 order as the punishment which has been effected in 1995 cannot be taken note of while considering him for confirmation in the year 1992.

4. The respondents have opposed the claims on the basis of the details in PVI circular dated 02.11.92. Provisions under para 4(i) and para

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4(iii) of the aforesaid circular have been cited to deny the applicant's delayed confirmation. It is said that in case a person is awarded a major punishment or adverse entry in his ACR during the probation period, the probation period will be extended for one year. The effect of punishment will be considered not from the date of award of punishment but from the date of default. It is also mentioned therein that in case a person is awarded punishment of "Censure" during the period of probation, the probation period will be extended for a period of 6 months. As per the learned counsel for the respondents, the actions initiated by them get support from the details in para 6 of the said circular.

5. We shall now examine the two issues raised in para-1 of this order. The determination of seniority in such circumstances need not detain us any longer in the background of judicial pronouncements of the Apex Court in a long line of cases. The Apex Court in a Constitutional Bench judgement in the case of Direct Recruits Class-II Engineering Officers Association Vs. State of Maharashtra & Ors. (1990(2)SC 715) has held that once an incumbent is appointed to a post according to the rules, his seniority has to be counted from the date of his appointment and not according to his date of confirmation. The law laid down by the Hon'ble Supreme Court still holds good and the same

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has been reaffirmed by the Apex Court in its latest order in the case of Pushpa Aggarwal Vs. U.O.I. (1999 Vol.4 SCC 184). Respondents stand in linking applicant's seniority to the date of confirmation is, therefore, in violation of the law laid down on the subject.

6. We also find that the respondents have not entered into any finding whatsoever during the period 1992 to 31.07.95 as regards extension or otherwise of the applicant's period of probation. In fact, as per the law laid down on the subject, it was well within the competence of the respondents to terminate the services of the applicant during the course of probation on account of misconduct. The respondents did not do so. Nor the respondents have come out with any reasons, much less convincing ones, as regards the basis for issuing an order dated 11.06.96 by which the period of probation could be extended for 6 months with retrospective effect from 20.02.92 to 20.02.93 due to "Censure" dated 01.08.95. It is well known in service jurisprudence that an administrative order cannot have any retrospective effect. Thus, in terms of law laid down by the Hon'ble Supreme Court in the case of Govind Prasad Vs. R.S. Prasad, the P1 order dated 11.07.96 is nullity in law.

7. In the instant case, the applicant should have been confirmed alongwith his

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counterparts i.e. on 20.08.92 when he had completed two years of probation. It is the stand of the respondents that the applicant lost his seniority due to delayed confirmation and this was due to punishment of "Censure" imposed on the applicant. In other words, applicant's seniority has been linked up with the minor penalty of "Censure". It is well settled in law that the question of seniority has nothing to do with minor penalty of censure. This view gets support from the decision of the Apex Court in the case of Shiv Kumar Sharma Vs. Haryana State Electricity Board (JT 1998(3) SC 131). That was the case where the appellant was imposed with a minor penalty by way of stoppage of increment for one year without cumulative effect. While confirming he was placed below his juniors in the seniority list. Their Lordships in that case held that:-

"The penalty by way of stoppage of one increment for one year was without any future effect. In other words, the appellant's increment for one year was topped and such stoppage of increment will have no effect whatsoever on his seniority. Accordingly, the Board acted illegally and most arbitrarily in placing the juniors of the appellant above him in the seniority list and/or confirming the appellant in the post with effect from December 1, 1969, that is, long after the date of confirmation of the said respondents Nos. 2 to 19. The question of seniority has nothing to do with the penalty that was imposed upon the appellant. It is apparent that for the same act of misconduct, the appellant has been punished twice, that is, first, by the stoppage of one increment or one year and, second, by placing him below his juniors in the seniority list.

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(ii) The appellant should have been confirmed on June 10, 1965 on which date he had completed two years of his probationary period."

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We find that the applicant's case is covered on all fours by the ratio arrived at in the aforesaid case decided by the Apex Court.

8. We now come to the legality of the respondents action in rejecting the applicant's representation dated 15.11.96. Annexure P.11 dated 06.12.96 indicates the following:-

"The representation of SI (Ex.) Virender Kumar, No.D-3094 for ante-dating confirmation has been considered and rejected. He may please be informed accordingly."

9. The order in this annexure looks like the head of a Phynix. It contains only conclusions but not the reasons on the basis of which the said conclusions have been arrived at. The Apex Court in a Constitution Bench judgement in the case of S.N. Mukherjee Vs. U.O.I. (SLR 1990 (5) SC 8) has held that "except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision". We do not find any reason whatsoever as to why the applicant's representation dated 15.11.96 could be rejected. Similar is the position in respect of respondents' stand in issuing PIV communication dated


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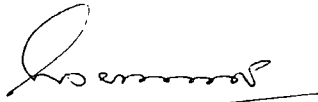
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11.12.96. Even in this subsequent order, the respondents have not cared to incorporate the reasons as to how the applicant's seniority could not be counted from the date of initial appointment in the grade. Because of the reasons aforementioned, orders dated 06.12.96 & 11.12.96 cannot be sustained in the eyes of law.

10. In view of the detailed facts as well as the position of law aforesaid, we allow the application with the following directions:-

- (a) Orders dated 11.07.96, 06.12.96, 11.12.96 and the seniority list issued on 20.09.96 shall stand quashed.
- (b) Respondents shall consider confirming the applicant as S.I.(Ex) w.e.f. 20.08.92.
- (c) Applicant's seniority shall be assigned at Sl. No. 1198A on the basis of his date of appointment.
- (d) Applicant shall also be eligible for other consequential benefits.
- (e) There shall be no order as to costs.


(Kuldip Singh)
Member(J)


(S.P. Biswas)
Member(A)