

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 64/1998

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T.A.No.

DATE OF DECISION 22.9.2000

Lila Dhar

....Petitioner

Shri Yogesh Sharma, proxy for
Shri V.P. Sharma

....Advocate for the
Petitioner(s)

VERSUS

Shri Devesh Singh through
proxy Shri Amit Rathi.

....Respondent

....Advocate for the
Respondents.

CORAM

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

The Hon'ble Shri M.P. Singh, 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 ;
Member)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.64 of 1998

New Delhi, this 22nd day of September, 2000

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Hon'ble Smt.Lakshmi Swaminathan,Member(J)
Hon'ble Shri M.P. Singh,Member(A)

Lila Dhar
S/o Shri S.N.Yadav
Head Constable No.3852/DAP
4th Bn. D.A.P. Kingsway Camp
Delhi-9

... Applicant

(By Advocate: Shri V. P.Sharma, through
proxy Shri Yogesh Sharma)

versus

1. N.C.T. of Delhi through
The Chief Secretary
Old Secretariat
Delhi
2. The Commissioner of Police
Delhi Police Head Quarters
I.P.Estate
New Delhi
3. Dy. Commissioner of Police
IV Bn DAP, Kingsway Camp
Delhi.

...Respondents

(By Advocate: Shri Devesh Singh, through
proxy Shri Amit Rath)

ORDER(Oral)

By Hon'ble Smt.Lakshmi Swaminathan,M(J)

The applicant is aggrieved by the order passed by the respondents dated 9/11.7.1996 (Annexure A/1) rejecting his claim for ante-dating his seniority in the rank of Head Constable (Executive).

2. Along with the OA filed on 5.1.1998 against the aforesaid rejection order passed in July 1996, the applicant has filed MA.No.827/99 praying for condonation of delay in filing the application. In pursuance of the Tribunal's order dated 19.9.2000, learned counsel for the applicant has submitted an additional affidavit

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explaining the causes for delay in filing the application which has been taken on record. 20

3. We have heard Shri Anil Rathi, learned proxy counsel for respondents on the plea of the applicant for condonation of delay. On perusal of the MA for condonation of delay, together with affidavit of Shri V.P.Sharma, learned counsel whom the applicant had contacted for filing the OA, we are of the view that this is a fit case to condone the delay because most of the delay has occurred in the office of the learned counsel. Shri V.P.Sharma, learned counsel, has stated that the OA could not be filed within the period of limitation due to his illness. In the facts and circumstances of the case, the applicant should not be placed in a disadvantageous position because of the delay due to unavoidable circumstances of his counsel, mentioned in the affidavit of Shri V.P.Sharma. Accordingly we allow the MA for condonation of delay.

4. The applicant has stated that he had been ordered for medical examination for training in Lower School Course and directed to report to the Civil Surgeon on or before 12.11.1990. On the night of 11/12.9.1990 he unfortunately met with an accident while travelling in a bus and fractured his left leg. He was on medical rest from 11.9.1990 to 1.5.1991. These facts are not denied by the respondents. As a result of the injury sustained by the applicant in the bus accident in September 1990, he was not in a position to proceed with the other staff for training when they were sent to the Police Training Centre, Jharoda Kalan, New Delhi from 15.11.1990.

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Thereafter, admittedly the applicant was sent for training for the said Course along with the subsequent batch, commencing with effect from 10.6.1992 which he passed in the term ending September 1992. Thereafter his name was admitted in the Promotion List 'B' (Executive) with effect from 9.12.1992. 21

5. In the facts and circumstances of the case, Shri Yogesh Sharma, learned proxy counsel for the applicant has submitted that as there has been no fault whatsoever on the part of the applicant in attending the Lower School Course held in 1990 along with his batch-mates and he had also passed the examination at the first attempt when he was sent in June 1992, there is no reason why the respondents cannot give his seniority with effect from 6.6.1991 i.e., the date when the earlier batch of Head Constables were promoted to List 'B'. He has relied on certain provisions contained in other Rules, which according to him take into account the analogous position namely, the Government of India Decision 21 regarding placement of re-employed and cured T.B., Pleurisy/Leprosy and other patients in accordance with M.H.A O.M.s dated 10.7.54, 29.9.1956, 8.5.1996 and 14.7.1958 (page 13 of the Swamy's Compilation on Seniority & Promotion in Central Government Service). He has also submitted that the impugned rejection order dated 9/11.7.1996 does not disclose any reasons for the action taken by the respondents.

6. We have seen the reply filed by the respondents and also heard Shri Amit Rathi, learned proxy counsel. According to the respondents, as per the applicant's

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request for exemption from attending the Lower School Course and deputing him in the next batch for which he was to undergo medical examination on 30.5.1991, taking into account the accident he had met with on 11.9.1990, they had deputed him for the Course with the batch commencing with effect from 10.6.1992 which ended in September 1992. They have stated that after he passed the Course he was admitted to Promotion List 'B' with effect from 9.12.1992 and promoted to the rank of Head Constable (Executive) with effect from 27.1.1993, whereas his earlier counter-parts who had passed the training of Lower School Course in the term ending in April 1991, were promoted as Head Constable (Executive) with effect from 6.6.1991 after admitting their names to Promotion List 'B' (Executive). Learned proxy counsel for the respondents has submitted that the action taken by the respondents is in accordance with the Delhi Police (Promotion and Confirmation) Rules, 1980 and the applicant can be promoted as Head Constable (Executive) only after he passed the necessary Course ending in September 1992 ie, with effect from 27.1.1993, after admitting his name in the Promotion List 'B' (Executive) on 9.12.1992. He has, therefore, submitted that prior to passing of the Lower School Course, the applicant has no right for claiming seniority along with his earlier batch-mates with effect from 6.6.1991. He has also submitted that the Rules and Government of India's Decision relied upon by the applicant, referred to above, are not applicable to the present case. He also relies on the provisions of Rule 12 of the Delhi Police (Promotion and Confirmation) Rules, 1980 in which it has been stated, inter alia, that the selected constables will be sent for

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Lower School Course subject to their medical fitness by the Civil Surgeon. He has also clarified that the Lower School Course requires rigorous physical and other training to be imparted to the constables. As the applicant was admittedly not in a physically fit condition at the time when his batch-mates were sent for the Lower School Course on 15.11.1990, he has submitted that the applicant can have no claim for seniority along with those persons with effect from 6.6.1991. He has, therefore, submitted that the impugned order is legal and valid and in accordance with the relevant rules. In the circumstances, learned counsel has prayed that the OA may be dismissed on merits.

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

8. From the facts mentioned above, it is clear that the claim of the applicant for re-fixation of seniority along with his original batch-mates who were promoted as Head Constables (Executive) with effect from 6.6.1991 can only be granted in terms of the relevant Rules and instructions. Admittedly, at the time when the other persons were sent for Lower School Course with effect from 15.11.1990, the applicant had unfortunately met with bus accident and was on medical rest with effect from 11.5.1991. Learned counsel for the applicant has contended that this period has to be treated as on duty even if he was on medical rest. However it cannot also be stated that he was in a fit condition to undergo the Lower School Course which was held by the respondents during this period as he had sustained fracture of his

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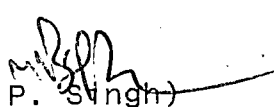
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left leg. He had been sent for training in the Lower School Course subsequently as per his own request, with effect from 10.6.1992 along with the next batch. The analogy sought to be drawn by the learned counsel for the applicant based on the rules dealing with patients who have been discharged because of TB, Leprosy etc. and later re-engaged, will not be relevant to the facts of the present case. Nowhere it has been stated that the applicant has been discharged from service but due to certain unfortunate and unavoidable circumstances, he had been unable to attend the required training for promotion to List 'B' and Head Constable (Executive) during the relevant period. The contention of the learned counsel for the applicant based on the provisions of D.G. P&T letter dated 25.6.1965 regarding promotions of persons who were suspended or facing departmental proceedings would not also apply to the facts and circumstances of the present case. In this case, the applicant has not acquired any seniority to which he can be put back when he is later promoted as Head Constable (Executive) after completing the training course^{as} prescribed in the Rules. The learned proxy counsel for the respondents has also submitted that there are no rules under the Delhi Police (Promotion and Confirmation) Rules, 1980 for giving such seniority from a back date to Delhi Police personnel for whom the police training is a pre-requisite under the Rules. No doubt, unfortunately, the applicant was not in a position to undergo the training for consideration for promotion because of the bus accident and could be promoted only with the next batch of constables.

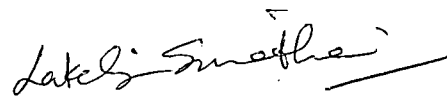
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9. Taking into account the facts and circumstances of the case and the relevant rules, it cannot be stated that the respondents have acted in any arbitrary or illegal manner justifying interference in the matter or quashing of the impugned letter dated 9/11.7.1996. Besides, if the applicant's claim is allowed it will amount to giving him ^{an} intended benefit, i.e., seniority from an ante date prior to his completion of the Lower School Course which is neither legal nor justified as it would be against the provisions of the Delhi Police (Promotion and Confirmation) Rules, 1980.

10. In the result, for the reasons given above, we find no merit in this case. The same is accordingly dismissed. No order as to costs.


(M. P. Singh)
Member(A)

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(Smt. Lakshmi Swaminathan)
Member(J)