

(21)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.149/1995

New Delhi, this 11th day of January, 2000

Hon'ble Shri Justice Ashok Agarwal  
Hon'ble Smt. Shanta Shastry, Member(A)

Madan Mohan  
80A, Gali No.1, East Saadatpur  
Karawal Nagar Road  
Delhi-94

.. Applicant

(By Shri Shyam Babu, Advocate)

versus

1. Commissioner of Police, Delhi  
Police Headquarters  
IP Estate, New Delhi
2. Dy. Commissioner of Police  
Hqrs.(I), Police Hqrs.  
IP Estate, New Delhi .. Respondents

(By Shri Rajinder Pandita, Advocate)

ORDER(oral)

Hon'ble Shri Justice Ashok Agarwal

The present case is covered by the decision of the apex court in the case of S.I.Rooplal & Anr. Vs. Lt.Governor, through Chief Secretary, Delhi & Ors. in Civil Appeal Nos.5643-44/97 decided on December 14, 1999.

2. The present OA concerns the claim of the applicant towards seniority in the cadre of Police Constable in the Delhi Police. Applicant was initially appointed as Constable in Border Security Force (BSF, for short) on 2nd February, 1971. He was confirmed with effect from 1.1.74 in the regular cadre of Constable with the BSF.

3. On 25th February, 1986, the applicant was deputed to the Delhi Police. He was absorbed in Delhi Police on 10th April, 1989. Since he was not given due position

in the seniority list of Constables in the Delhi Police, the applicant on the 2nd February, 1994 put his representation. By an order passed on 11th April, 1994, the representation was rejected. Applicant, in the circumstances, has filed the present OA.

4. The controversy similar to the one raised in the present OA had arisen for consideration before this Tribunal in the case of Antony Mathew in OA No.470/91 wherein the said Antony Mathew claimed that for determination of his seniority in the Delhi Police, the date of his continuous officiation on substantive basis in the BSF should be counted. This Tribunal by a judgement and order passed on 2nd March, 1993, placing reliance on the decision of the Hon'ble Supreme Court in the case of K.Madhavan & Anr. v. UOI AIR 1987 SC 2291, held that the applicant therein would be entitled for computing the period spent on substantive basis in the <sup>with</sup> BSF, should be taken into account for determining his seniority in the Delhi Police. The aforesaid order of the Tribunal was sought to be challenged by the respondents by filing a review petition in the Tribunal and thereafter a Special Leave Petition and also a review petition in the Supreme Court. The aforesaid view of the Tribunal was, however, confirmed. Though the respondents gave the benefit of the aforesaid judgement to Antony Mathew, the applicant therein, they did not give the same benefit to others who are similarly placed. Hence those who were senior to Antony Mathew were kept junior and hence they were compelled to

*W.A*

file OA Nos.2414/95 and 1415/94. In the aforesaid OAs, respondents placed reliance on Office Memorandum dated 29th May, 1986 whereby it was inter alia decided that for the purpose of seniority, date on which a candidate has been absorbed in Delhi Police should be taken into account. By a judgement and order passed by this Tribunal on 28th October, 1994, a view contrary to the one expressed in Antony Mathew's case was taken and it was held placing reliance on the said OM that for the purpose of seniority, the date of absorption in Delhi Police is required to be taken into account. The aforesaid decision of the Tribunal dated 28th October, 1994 was carried to the Supreme Court and by a judgement and order passed on December 14, 1999, the decision of this Tribunal in the case of **S.I.Rooplal** (supra) was set aside and the one in the case of **Anthony Mathew** (supra) was upheld. It has now been held by the apex court that for the purpose of determining seniority, the date on which a candidate has been appointed on regular basis in the parent department is to be taken into account in the matter of fixing seniority.

5. As far as ~~of~~ the applicant is concerned, he has crossed the age of 40 years and is eligible for promotion under Rule 14C of the Delhi Police (Promotion & Confirmation) Rules, 1980. The said promotion is available to those who have reached the age of 40 and have put in long service. As far as the applicant is concerned, according to the respondents, he does not have long service to his credit as he has been absorbed

in Delhi Police only on 10th April, 1989. In other words, for the purpose of considering his claim for promotion under Rule 14C, his service in the BSF cannot be taken into account. If one has regard to the law laid down by the apex court in the case of K.Madhavan (supra) as also S.I.Rooplal(supra) even for the purpose of granting promotion under Rule 14C, the service rendered by the applicant in the post of Constable on regular basis in BSF with effect from 1.1.74 will be required to be reckoned for the purpose of deciding his prayer for promotion.

6. In the circumstances, we direct the respondents to reconsider the claim of the applicant for promotion under Rule 14C in the light of the observation contained in this judgement, namely, that service of the applicant as Constable should be reckoned from 1.1.74, the date on which he was appointed as such on regular basis with the BSF. Respondents shall take a decision in this behalf expeditiously and in any case within a period of three months from the date of receipt of a copy of this order.

No costs.

  
(Ashok Agarwal)  
Chairman

  
(Smt. Shanta Shastry)  
Member(A)

/gtv/