

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

1) O.A. No. 2008/1996
2) O.A. NO. 2058/1996

(9)

New Delhi this the 10th day of April, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

1) O.A. NO. 2008/1996

1. Ashok Kumar Kaushik
S/O Ram Kumar Kaushik,
R/O Village Ranholia,
P.O. Nangloi, Delhi-41.
2. Vinod Kumar S/O Om Prakash
R/O House No. 36,
Vill. & P.O. Maghra Dabhas,
Delhi-81.
3. Surinder Kumar Malik S/O Ram Kumar,
R/O A-4/35, Sector-15,
Rohini, Delhi.
4. Sultan Singh S/O Ram Prasad,
R/O C-477, Gali No. 24,
Bhajanpura, Delhi.

... Applicants

(By Mrs. Meera Chhibber, Advocate)

-versus-

1. Union of India through
Lt. Governor,
Sham Nath Marg,
Govt. of N.C.T. of Delhi,
Delhi.
2. Govt. of N.C.T. of Delhi through
Chief Secretary,
5, Sham Nath Marg, Delhi.
3. Commissioner of Transport,
5/9 Underhill Road,
Govt. of N.C.T. of Delhi,
Delhi-110054.

... Respondents

(None present for respondents)

2) O.A. NO. 2058/1996

Anil Kumar Dhaka
S/O Deopal Singh,
R/O A/59 Chanderlok,
Shahdra, Delhi.

... Applicant

(By Dr. D. C. Vohra, Advocate)

-versus-

1. State of Delhi/Govt. of NCT of Delhi through its Chief Secretary, Old Secretariat, Sham Nath Marg, Delhi.
2. Commissioner of Transport, Govt. of NCT of Delhi, 5/9 Underhill Road, Delhi-110054. ... Respondents

(None for respondents)

(10)

O R D E R (ORAL)

Shri V.K.Majotra, AM:-

The issue involved in both the O.As. being similar, the same are being disposed of by this common order.

2. The applicants were appointed as Head Constables in the Department of State Transport Authority as direct recruits. As per the recruitment rules for the post of Head Constable (Annexure P-III to O.A. 2008/96), the posts of Head Constables are to be filled @ 40% by way of promotion and 60% by way of direct recruitment. The applicants have averred that consequent upon selection on receiving offers of appointments, the candidates gave their acceptance on different dates in 1990. In June, 1992, the respondents circulated a provisional seniority list calling for objections and after waiting for stipulated period final seniority list was issued on 7.9.1992 (Annexure P-VI). Thereafter the applicants were further promoted as ASIs on ad hoc basis vide orders dated 27.5.1994 (in O.A. 2058/96) and 1.7.1994 (in O.A. 2008/96) respectively. In 1995, one Satyendra Dabas who joined the Department, as per the version of the applicants, after all the applicants had joined, filed an O.A. being O.A. No. 793/95

W

before the Tribunal challenging the seniority list of September, 1992 vis-a-vis the applicants, on the ground that he was at Sl. No.4 in the merit list and, therefore, he should have been placed above the applicants herein who, according to him, were lower in merit than ~~him~~^{the b}. It is alleged that Shri Dabas had produced a merit list which was not signed by any selection board and had various wrong entries and blank spaces. The applicants were not impleaded as parties in the aforesaid O.A. initially. However, subsequently the applicants were also impleaded as party respondents. It has been contended that as per the provisions of Section 19(4) of the Administrative Tribunals Act, 1985, once an application has been admitted by the Tribunal, every proceeding under the relevant service rules as to the redressal of grievances in relation to subject matter of such application pending immediately before such admission shall abate. However, the Department had proceeded to revise the seniority list of Head Constables after several years of finalisation of the seniority list and after admission of the aforesated O.A. The applicants claim that there is neither a file relating to the recruitment in 1990 nor is there any merit list duly signed by the Board on the basis of which the settled position of seniority can be re-opened all over again. The applicants have sought quashing of the revised tentative seniority list of Head Constables dated 10.9.1996 (Annexure P-I).

3. The respondents in their counter have stated that when the promotions of the applicants among others were challenged in O.A. No.793/95 on the

(12)

4

ground that the promotions were made on the basis of ~~the dates~~ of their joining and not in accordance with the seniority list based on merits in selection, the Department realised the mistake and resorted to creation of the seniority list based on merit. According to the respondents, the applicants were promoted to the post of ASIs on ad hoc basis in May/July, 1994 initially for a period of one year or till regular appointments were made, whichever be earlier, in administrative exigencies. The respondents have contended that the merit list of Head Constables was prepared on the basis of marks obtained in physical test and written examination. However, since no interviews were held, SSC/Board was not constituted. The base of selection of the candidates was their performance in physical test and written examination. ~~thus~~ the base for seniority of the candidates in the list issued in 1992 was the dates of joining of the selected candidates and not merit. The mistake of relying upon the seniority list based on joining dates of the candidates was ~~sighted~~ ^{however} later on and steps have been taken to rectify the mistake. The respondents have averred that the objections of the applicants are still under consideration and not decided as yet. The applicants in O.A. No.2008/96 have filed a rejoinder as well.

4. On 10.3.2000, the respondents were directed to produce original seniority/merit list signed by the selection committee. The respondents have failed to produce the same on 31.3.2000 and 10.4.2000 when the case was taken up for final arguments.

(3)

5. The learned counsel for the applicants in O.A. 2008/96 has expressed that whereas the provisional seniority list on the basis of joining dates of the candidates was issued in June, 1992 inviting objections, the final seniority list was issued in September, 1992, after considering and deciding upon the objections. Thereafter, the applicants have been accorded one promotion as well. Though quite a few years have passed and the final seniority list released in September, 1992 has been acted upon, the respondents have taken up revision of the seniority list on all together different ~~material~~ ^{graduation}, i.e., merit in selection. She has relied upon the following decisions contending that the action of the respondents in revising the seniority list after an inordinate delay and consequential action ~~after~~ ⁱⁿ the issuance of the final seniority list, is illegal and ~~is~~ untenable :

- (1) S.B. Dogra v. State of Himachal Pradesh & Ors., JT 1992 (5) SC 667;
- (2) K.R. Mudgal & Ors. v. R.P. Singh & Ors., (1986) 4 SCC 531; and
- (3) B.S. Bajwa & Ors. v. State of Punjab & Ors., (1998) 2 SCC 523.

In the case of S.B. Dogra (supra), the objection was filed to the final gradation list after a long delay which was rejected holding, "...the Tribunal ought not to have disturbed the seniority after such a long lapse of time when Amist had not challenged it before the same was finalised in February, 1979."

In the case of K.R. Mudgal (supra) it was held as follows :

(A)

"Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the Government servants created by the writ petitions filed after several years. It is essential that anyone who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of sense of insecurity in the minds of the government servants there would also be administrative complications and difficulties. A government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity. In the present case the appellants had been put to the necessity of defending their appointments as well as their seniority after nearly three decades. This kind of fruitless and harmful litigation should be discouraged. The High court was wrong in rejecting the preliminary objection raised on behalf of the appellants (who were respondents in the writ petition before the High Court) on the ground of laches."

In the case of B.S.Bajwa (supra) the seniority list was revised after more than a decade after joining service when in the meantime promotions had also taken place. It was held by the Hon'ble Supreme Court that the question of seniority should not be re-opened in such situations after a lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the case in making such a grievance. This alone was sufficient to decline interference under Art. 226 and to reject the Writ Petition.

6. Supplementing the line of argument of the learned counsel for the applicants in O.A. 2008/96, the learned counsel for the applicant in O.A. 2058/96 referred to The Direct Recruit Class-II Engineering

(3)

Officers' Association & Ors. v. State of Maharashtra & Ors., AIR 1990 SC 1607, in which it was held, "The decision dealing with important questions concerning a particular service given after consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position."

7. Keeping in view the ratio of the aforesated judgments, the inevitable conclusion is that seniority dispute raised after a lapse of several years when in the meantime substantial action like promotion had also taken place, the question of seniority should not be re-opened because that results in disturbing the settled position which is not justifiable. The very fact that the respondents have failed to bring before us the original seniority/merit list in respect of the candidates signed by the members of the selection committee, despite a few opportunities, lends strength to the argument of the applicants that perhaps a signed merit list by the members of the selection committee does not exist. In any case, it has not been produced before us for perusal. No doubt in the appointment letters as in Annexure P-IV dated 12.11.1990 a condition has been prescribed as, "The inter-seniority of these officials will be fixed in accordance with the merit obtained by him in the merit list." The respondents have not acted upon this criterion in assigning seniority to the candidates in the provisional seniority list issued in June, 1992 and finalised in September, 1992 where the criterion adopted has been the joining dates of the incumbents. But in the light of the settled law and delay caused

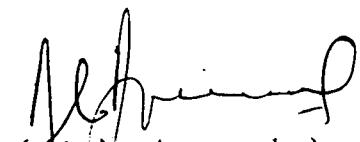
(16)

by the respondents in taking steps to correct their action within a reasonable period, the action of the respondents in revising the seniority of Head Constables cannot be supported.

7. In the light of the above reasons and discussion, the O.A.s. are allowed. The respondents are directed not to cancel the seniority list of Head Constables issued on 7.9.1992. The seniority list issued by the respondents on 10.9.1996 is also simultaneously quashed. There shall be no order as to costs.

V. Majotra

(V. K. Majotra)
Member (A)


(Ashok Agarwal)
Chairman

/as/