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(43)

Central Administrative Tribunal
Principal Bench
New Delhi

O.A. No. 384/96 Decided on 7.1.99.
& connected case.

Jaipal Singh & Ors. Applicant
(By Advocate: Sh. S.K. Dholakiya with Mohit Mathur, Adv.)


Versus

UOI & Ors. Respondents
(By Advocate: Shri N.S. Mehta & Shri Vikas Singh)

CORAM

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or Not? YES
2. Whether to be circulated to other outlying benches of the Tribunal or not? No.


(S.R. Adige)
Vice Chairman (A)

(44)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH.

1). O.A.No.384/96

Jan. 1999

NEW DELHI: This the 7th day of ~~December, 1998~~

HON'BLE MR.S.R.ADIGE , VICE CHAIRMAN (A).

HON'BLE DR.A.VEDAVALLI MEMBER(J)

1. Shri Jaipal Singh.
2. Shri Ram Narain.
3. Shri O.P.Yadav.
4. Shri O.P. Tiwari.
5. Shri Darshan Singh Sanga.
6. Shri Amarjeet Singh.
7. Shri Sham Singh.
8. Shri Randhir Singh.
9. Shri Trilochan Singh.
10. Shri S.K.Pant.
12. Shri Sita Ram Mangain.
12. Shri Ranbir Singh Yadav
13. Shri Om Vir Singh.
14. Shri R.K.Joshi.
15. Shri S.K.Jain.
16. Shri Shamsher Singh.
17. Shri S.M.Bhaskar.

ALL ASSISTANTS COMMISSIONERS OF POLICE WITH THE DELHI
ANDAMAN AND NICOBAR POLICE SERVICE, PRESENTLY POSTED
AT DELHI.

Contd....2/-

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18. Shri Lala Ram.
19. Shi Prabhati Lal.
20. Shri Kali Ram Verma.
21. Shri Durga Parsad.
22. Shri Ashok Sikka.
23. Shri Bajjeet Singh.
24. Shri K.P.Singh.
25. Shri Sham Dev.
26. Smt. Sushmlata.
27. Shri Partap Singh.
28. Shri V.P.Gupta.
29. Shri Daljit Singh Sandhu.
30. Shri P.D.Puggal.
31. Shri dal Chand.
32. Shri Anrik Singh.
33. Shri Sheedeen Singh.
34. Shri R.P.Mehta.
35. Shri Lekesh Kumar.
36. Shri Santosh Kumar Malik.
37. Shri Mauji Khan.
38. Shri Rajender Singh.
39. Shri S.S.Manan.
40. Shri RamKaran.
41. Shri Bahadar Singh.
42. Shri V.P.Sharma.
43. Shri H.V.S.Rathi.
44. Shri Gurnail Singh.

All Assistants Commissioners of police with the delhi Andaman and Nicobar Police Service, presently posted at Delhi,

Contd..3/-

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45. Shri R.K. Khanna.
46. Shri S.D. Sharma.
47. Shri Hira Lal.
48. Shri Harmit Singh.
49. Shri Banwari Lal.
50. Shri Shish Ram.

All Assistant Commissioners of Police with the Delhi Andaman and Nicobar Police Service, presently posted at Delhi.

Through their counsels

(For the purposes of service of court summons, notices etc. in the present Original application)

S/Shri Mohit Mathur and Vivek Kohli, Advocates,
A-17, Hauz Khas, Rear Ground floor, New Delhi-110016.

..Applicants.

Versus

1. Union of India,
Through its Secretary, Ministry of Home Affairs,
New Delhi.
2. Government of NCT of Delhi, through the Secretary,
Department of Home Affairs, Old secretariate,
Civil Lines, Delhi.
3. Shri Prabhakar, ACP, Son of Shri Ram Chander Parshad
R/o W-1/1, Police Quarters, Andrews Ganj, New Delhi.

.....Respondents.

DEPT

SECRETARY AND PROSECUTOR GENERAL

GOVERNMENT OF DELHI

2) DA No.1739/96

Shri Sudesh Kumar (S.K.Dua),
Retd. Asstt. Commissioner of Police,
Delhi,
S/o Late Shri Devi Dass Dua,
R/O C-249, Vivek Vihar (Phase-I),
Delhi-095 Applicant.

Versus

1. Secretary,
Ministry of Home Affairs,
Govt. of India,
Central Secretariate,
North Block,
New Delhi - 01
2. Chief Secretary,
Govt. of Delhi,
No.5, Dr. Shamnath Marg,
Civil Lines,
Delhi.
3. Commissioner of Police ,
Delhi,
Delhi Police Head quarters,
MSO Building,
IP Estate,
New Delhi-02 Respondents.

Advocates:

Shri S.K.Dholakiya, Sr. counsel with
Shri Mohit Mathur for the applicants.
Shri N.S.Mehta counsel for official respondents.
Shri Vikas Singh for private respondents.

ORDER

HON'BLE MR.S.R.ADIGE, VICE CHAIRMAN (A).

As both these DAs involve common questions of

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law and fact, they are being disposed of by this common order.

OA No. 384/1996

2. The 51 applicants in this OA impugn respondents' order dated 2.8.95 as not being in accordance with the Hon'ble Supreme Court's judgment in UOI Vs. H.C. Bhatla (Annexure-A1) and seek a direction to respondents to revise their seniority by computing the same from the date of their appointment on officiating posts, and/or issue appropriate direction to respondents to consequentially consider their cases for selection to Selection Gr. II in the Delhi & Andaman & Nicobar Islands (DANI) Police Service.

3. Applicants contend that the DANI Police Service was constituted in 1971 and recruitment into the service is governed by Rule 5 DANI Police Service (Recruitment Rules) 1971 which provides for 50% vacancies to be filled by direct recruitment and 50% vacancies to be filled by officers in the select list of regular promotees and officers considered suitable for promotion on officiating appointment. They contend that an officer would be promoted by way of an officiating appointment following the procedure provided under Rules 24 & 25. They aver that seniority inter se of members of the service is governed by Rule 29. It is argued that under Rule 25(3) officiating appointments

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to duty posts made purely on local arrangement for administrative convenience and expediency cannot exceed 6 months, and members of the service cannot be made to remain on officiating appointments for long periods of time which would disentitle them from seniority and other benefits which would in the normal course have flowed to them had they been promoted on regular basis. It is contended that this system of appointment on officiating posts for long periods was compounded by the fact that respondents did not conduct DPCs between 1975 and 1985, and while direct recruits were appointed regularly, officers of feeder cadres were appointed only on officiating basis, resulting in break down of rota quota system. This system of appointments was challenged by Shri H.C.Bhatla and three others before the CAT, PB in O.A.No.300/89 which was disposed of by judgment dated 31.3.92 (Annexure-A). This order was challenged in Hon'ble Supreme Court both by Union of India as well as by the direct recruits vide C.A.No.2841/93 which was disposed of by the Hon'ble Supreme Court by their judgment dated 8.12.94 in UOI & Anr. Vs. H.C.Bhatla & Ors. 1995 (2) SCC 48. Applicants emphasise that in that aforesaid judgment the Hon'ble Supreme Court directed the authorities to treat the dates of officiating appointments of Shri Bhatla & Ors. as the dates of their regular appointments and place them in the seniority list as required under Rule 29. Further applicants emphasise that

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the Hon'ble Supreme Court held that the seniority would accordingly be fixed of all concerned (and not only of Shri Bhatla & Ora) as indicated by them. Applicants contend that this was a judgment in rem and it was therefore incumbent upon the authorities to revise the entire seniority list but they had not done so. Applicants state that they represented to the authorities but received no reply, and eventually some of them who had represented separately received a reply dated 26.7.95 (Annexure-D Dolly) rejecting their prayer. Soon after the authorities issued impugned order dated 2.8.95 giving Shri Bhatla and Ora's seniority from the dates of their officiating appointments and interpolating their names in the seniority list with direct recruits of that particular year in accordance with the Hon'ble Supreme Court's judgment and applicants now claim the same benefit.

4. Official respondents in their reply challenge the O.A. They state that the seniority of Shri Bhatla and the three others has been revised as per Hon'ble Supreme Court's instructions. Out of the four, three have retired and only one Shri K.C. Verma is in service. Official respondents contend that the implementation of the judgment of the Hon'ble Supreme Court has resulted in certain distortions in the seniority list of DANI Police Officers. Thus consequent to this judgment Shri K.C. Verma has now been placed below the 1985 batch of DANIPS Officers as he was appointed in officiating capacity in 1985. Earlier his name stood below the direct recruit officers of 1990 batch. Official respondents state that by revision of seniority of Shri K.C. Verma from

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1990 to 1985, a number of promotee officers who were earlier senior to him have now become junior, and are feeling aggrieved. They emphasise that the Hon'ble Supreme Court's directions have two aspects. In the first part, the direction was to treat the dates of officiating appointments of Shri Bhatla & Ors. as the dates of their regular appointment. The second part was that after treating them as regular from the date of their officiating appointments, one direct recruit officer has to be interposed in between two promotees from their respective seniorities. They aver that a problem arises here, because as submitted before CAT as well as before the Hon'ble Supreme Court by them in Bhatla's case (Supra), direct recruits and promotee officers appointed against substantive vacancies under Rule 5 DANIPS Rules, 1971 in the ratio of 1:1 and already been interposed in the ratio of 1:1. The officiating appointments against temporary posts of ACP/Dy. SP and those substantive posts of ACP/Dy. SP which could not be filled up due to non-availability of substantive officers, were filled in by obtaining the panel from UPSC and making appointment under Rule 25(1) DANIPS Rules, 1971. These vacancies were not distributed in the ratio of 1:1 between the direct recruits and promotees and as such there is no direct recruit officer available for interposing with a number of officiating ACPs who have subsequently been adjusted against substantive

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vacancies and the seniority given thereafter. Official respondents state that it is in this background that only Shri Bhatla and the three others have been treated as regular from the dates of their officiating appointments by making adjustments in the seniority list, more particularly as there was no direction from the Hon'ble Supreme Court to treat the other officiating AC Ps who were not parties to that case as regular from the dates of their officiating appointments. Respondents state that even otherwise it is not possible to interpose one direct recruit between such type of officiating AC Ps as no direct recruitment was made in the ratio of officiating AC Ps. Official respondents apprehend that after treating all the officiating AC Ps as regular from the dates of their officiating appointment, the quota rota could break down as direct recruits have not been appointed in the ratio of officiating appointments made by Govt.

5. It needs to be mentioned here that direct recruit DANIPS Officers had separately filed OA No. 797/96 impugning the action taken by the authorities in implementation of the Hon'ble Supreme Court's judgment dated 2.12.94 contending that the fixation of seniority of Shri Bhatla and the 3 others was not as per Hon'ble Supreme Court's judgment. That OA was heard along with the present OA at an earlier stage, but was subsequently delinked and orders were passed in that OA

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separately dismissing the same, against which we are informed that an SLP has been filed in the Hon'ble Supreme Court.

6. Subsequently the direct recruit DQNIIPS Officers were also allowed to be impleaded in the present OA in a representative capacity and have filed their reply, in which also it has been contended that the fixation of seniority of Shri Bhatla and 3 others is not in accordance with the Hon'ble Supreme Court's directions dated 8.12.94. It is also emphasised that as per those directions seniority is not to be fixed in any other way except as specified under Rule 29, and only those applicants of all the applicants herein who are eligible for revision of seniority can be given the benefit and the rest cannot seek the benefit of revision of seniority on the ground of continuous officiation alone.

7. Applicants have filed their rejoinder to the reply of official respondents in which they have broadly reiterated the contents of their OA.

OA NO.1739/96 :

8. In this OA, applicant claims the identical relief granted to Shri Bhatla and 3 others in accordance with the Hon'ble Supreme Court's direction dated 8.12.94.

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(S.9)

9. His case is that he stood promoted as an Officiating D.S.P in Delhi Police w.e.f. 26.2.73, and was brought under DANIPS cadre as an A.C.P, on probation in Delhi Police w.e.f. 26.3.80 but those orders were subsequently cancelled on account of pendency of court cases. He states that his name was brought on probation as an A.C.P. in DANIPS Cadre w.e.f. 28.7.84 (Annexure-A3), but by doing so, and not taking into account, the officiating duration of his service as DSP/A.C.P in Delhi Police from 26.2.73 to 28.7.84, respondents illegally usurped 11 years of his officiating service. He states that in the Civil/Seniority list dated 1.1.86, his name stood above that of Shri H.C.Bhatla who like him had been promoted on officiating basis as Dy.S.P./A.C.P. in Delhi Police w.e.f. 6.11.72 and whose date of appointment on probation also stood as 28.7.84 like that of the applicant and states that after the Hon'ble Supreme Court's decision in Bhatla's case (Supra), he submitted detailed representations to the concerned authorities on 15.2.96 praying for revision of seniority as per judgment in Bhatla's case (supra), but upon receiving no response despite reminders he was compelled to file this OA. He states that he was similarly situated in all respects as Shri Bhatla and for this reason he is entitled to all the benefits granted to Shri H.C.Bhatla & others in terms of the Hon'ble Supreme Court's judgment in their case.

10. Respondents in their reply despite taking plea

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that the OA is barred by limitation, and furthermore that the judgment in Bhatla's case (supra) was confined to those officers alone and is not of general application, have contended that the applicant's appointment in an officiating capacity under Rule 25(1) of DANIPS was not against duty post in DANIPS as envisaged under Rule 24 and Rule 29 of those rules contemplates fixation of seniority of direct recruits vis-a-vis promotee officers in respect of only such of the officers who have been appointed under Rule 5 of the DANIPS. Respondents contend that although applicant was appointed as ACP in officiating capacity against non-duty post of DANIPS, he could not be given seniority and treated as a member of the service from the date of his officiating appointment even if he had been appointed against a duty post of DANIPS in officiating capacity. While not expressly denying that the applicant is similarly situated in all respects as Shri Bhatla, the respondents in their reply state that there are no directions from the Hon'ble Supreme Court for revision of the seniority of all the promotee A.C.Ps. They state that after treating all the A.CsP as regular from the date of their officiating appointment, the quota-rota would break down as direct recruits have not been appointed in the ratio of officiating appointment made by the Deptt.

11. Applicant has filed rejoinder and additional affidavit in which he has challenged the respondents' averment and has broadly reiterated the contentions made in the OA.

12. Meanwhile the applicant has retired on superannuation

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as an A.C.P on 30.11.87.

13. In O.A.No.384/96 we have heard Shri Dholkia, Senior Counsel for the applicants, Shri N.S.Mehta for the official respondents and Shri Vikas Singh for private respondents; in OA No.1739/96 Shri Pradeep Gupta for applicants and Shri N.S.Mehta for the respondents, and have also perused the materials on record and have considered the matter carefully.

14. - In so far as the stand of respondents is concerned that the benefits of judgment in H.C. Bhatla's case (supra) are limited to those officers alone, and cannot be extended to the applicants in the two OAs before us, we see no force in the same. It is not the case of the respondents that the applicants in the two OAs are not similarly placed as the officers in Bhatla's case (supra) and denial of relief to one set of employees while granting the same to other similarly placed persons would itself be discriminatory and violative of Articles 14 and 16 of the Constitution. Nor can limitation be pleaded as a valid ground to deny the applicants in the two OAs before us the relief granted to the officers in Bhatla's case (supra) because the Hon'ble Supreme Court in a 5 Member Bench's judgment in K.C.Sharma & Ors. Vs. UOI & Ors.1998(1) AISLJ 54 have set aside the order of the Tribunal on this very ground and held that the application filed by the similarly placed persons should not be dismissed as barred by limitation. Further more in Bhatla's case the Hon'ble Supreme Court has rejected the argument of the UOI that those officers were not entitled to the benefits claimed ^{as they were appointed on} against non-duty post, and hence that argument does not help the respondents in the present OAs.

15. In this connection, the operative portion of the

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Hon'ble Supreme Court's judgment dated 8.12.94 in Bhatla's case (supra) as contained in para 11 thereof reads as follows:-

"According to us, the just and proper order to be passed would be to direct the appellants to treat the dates of officiating appointments of the respondents as the dates of their regular appointments and then to place them in the seniority list as required by Rule 29 i.e. to interpose a direct recruit in between two promotees as per their respective inter se seniorities; and we direct accordingly. The seniority would therefore be refixed of all concerned, not as per length of service alone as ordered by the Tribunal, but as indicated by us."

16. Respondents have correctly pointed out that there are two aspects of the Hon'ble Supreme Court's direction, both of which are equally important. Firstly there is the direction to treat the dates of the officiating appointments of Shri Bhatla and others as the dates of their regular appointments, and the second direction is that after treating the dates of their officiating appointments as the dates of their regular appointments one direct recruit has to be interposed in between the two promotees as per their inter se seniority. Such an interposition will necessarily entail revision of the seniority list, as the respondents have done in implementation of the Hon'ble Supreme Court's direction in Bhatla's case and Shri Vikas Singh's assertion, ^{that} the Hon'ble Supreme Court's decision did not envisage any revision in the seniority list cannot be accepted. However, it is extremely important to mention here that while revising the seniority list both directions of the Hon'ble Supreme Court noted above have to be kept

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squarely in view, because the judgments of the Apex Court has to be implemented in totality as per operative portion extracted above. Furthermore while doing so, this has to be done within the frame work of the quota-rota rule as well as the other provisions of DANIPS Rules.

17. Keeping in view the above parameters, these two OAs are disposed of with a direction to respondents to scrutinize the claims for refixation of seniority in respect of each of the applicants in the two OAs before us within 3 months from the date of receipt of a copy of this order, by means of reasoned order in each case, and subject to their claims falling within the parameters discussed ^{in para 16} above, refix their seniority in the same manner as was done in the case of Shri Bhatla & others, with consequential benefits. No costs.

A. Vedarathi
(DR. A. VEDAVALLI)
MEMBER(J)

S.R. Adige
(S. R. ADIGE)
VICE CHAIRMAN(A).

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