

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1149/97

New Delhi this the 23<sup>rd</sup> day of March, 2001.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)  
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

K.K. Sharma,  
S/o Shri Tara Chand,  
working as MVI,  
R/o B-238, Moti Bagh,  
New Delhi.

..Applicant

(Applicant in person)

-Versus-

1. Govt. of NCT of Delhi,  
through: Chief Secretary,  
5, Sham Nath Marg,  
Delhi.
2. Commissioner,  
Department of Transport,  
5/9, Under Hill Road,  
Delhi-110 054.
3. Sh. A.R. Joshi,  
M.L.O.,  
Department of Transport,  
Sheikh Sarai,  
New Delhi.
4. Ms. Kiran Dhingra,  
Commissioner,  
Transport Department,  
5/9, Under Hill Road,  
Delhi-110 054.

...Respondents

(By Advocates Shri Rajinder Pandita & Sh. H.B. Mishra)

O R D E R

By Mr. Shanker Raju, Member (J):

In this application the applicant has sought fixation of his seniority in the cadre of Motor Vehicle Inspector (MVI) over and above respondent No.3 with all consequential benefits and has also prayed for quashing of a memorandum dated 8.10.96 whereby the request of the applicant for grant of notional promotion and seniority has been turned down.

2. The applicant being an ex-serviceman having

served as Motor Mechanic Trade in the Indian Air Force for 15 years joined the Transport Department of Government of NCT of Delhi on 9.10.87 as a direct recruit after a selection process had taken place, whereby the name of the applicant was placed at serial No.1 in the seniority as Driver Test Inspector (DTI). The respondent No.3 Sh. A.R. Joshi (hereinafter called as R-3) belonging to SC category was placed at serial No.3. According to the applicant the channel of promotion from the grade of DTI to the grade of MVI is by way of promotion with a minimum eligibility for having two years standing in DTI grade. According to the applicant in March, 1989 ignoring the process of promotion direct recruitment was resorted to by advertising the post of MVI by the respondents. Accordingly in May, 1989 nine persons were selected as MVI while the applicant continued to serve as DTI and ultimately appointed as MVI by way of promotion on 6.2.92. Vide a seniority list issued on 7.3.94 the name of the applicant figured in this seniority list of MVI at serial No.15 below R-3. On enquiries it has been learnt that R-3 was promoted to the post of Headquarter Inspector (HQI) in December, 1990 without considering the case of the applicant despite being placed in the panel prepared in the year 1987. The applicant had preferred a representation on 16.11.94 and finding no decision OA-2186/95 was preferred by the applicant which was disposed of on 23.6.96 with a direction to the respondents to pass a speaking order on the representation of the applicant dated 16.11.94 where he had questioned the seniority assigned to R-3. According to the applicant there is no difference in the posts of MVI and HQI and the same are identical in all respects except nomenclature. As the representation was not disposed of, a Contempt Petition

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was filed. Thereafter the respondents passed an order dated 8.10.96 whereby the claim of the applicant had been rejected. The aforesaid order is challenged on the ground that the initial seniority assigned to R-3 in the cadre of DTI was on the basis of date of joining and was not on the basis of the merit attained in the select panel. According to the applicant, as admitted by the respondents the applicant stood at serial No.1 in the seniority of DTI and thereafter promoted to the post of HQI. The applicant was shown junior to R-3 by giving accelerated seniority to R-3 in violation of the ratio laid down by the Apex Court in Ajit Singh Januja v. State of Punjab 1996 (1) SCSLJ 424. According to the applicant accelerated promotion does not entitle a candidate from the SC community to also attain accelerated seniority over a general candidate. It is further contended that further promotion of R-3 as Motor Licensing Officer (MLO) is also not legally sustainable and needs review.

3. On the other hand, the respondents refuted the contentions of the applicant by stating that as in March, 1989 when the DPC had taken place the applicant was not qualified for promotion to the post of MVI as he had not completed 2 years experience as DTI, as such he had not been found fit to be promoted as MVI. As a post of general category had become available in 1992 the applicant was given promotion as MVI. It is further contended by the respondents that as in December, 1990 a post was made available for reserved category of SC, R-3 was promoted as HQI was further accorded promotion on ad hoc basis to the post of MLO. It is further brought to our notice that R-3 had been accorded seniority w.e.f. 1.11.89 as the post of

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HQI in the reserved category fell vacant on 2.8.89 but the benefit of pay and allowances were not accorded to R-3. According to applicant as R-3 being a SC candidate was promoted prior to the applicant against a reserved post his seniority has been rightly fixed.

4. R-3 in his reply took exception to the OA of the applicant by contending that the same is barred by limitation as the issue of assumed seniority accorded to the applicant by the DPC held on 11.12.91 w.e.f. 1.11.90 and his subsequent promotion as MLO w.e.f. 19.8.96 the applicant cannot claim seniority over and above the respondents after a long lapse of time. It is further contended that the posts of MVI and HQI are distinct and fall in different grades. The applicant had been promoted to the grade of non-technical MVI. According to the respondents the ratio of Ajit Singh's case (supra) would not apply as R-3 is senior in the seniority list of DTIs and was promoted as HQI earlier to the applicant. It is stated that the applicant has been rightly accorded the seniority and he cannot compare his case with R-3.

5. It is further stated that the post of MVI is a technical post whereas the post of HQI is a non-technical post. It is contended that the applicant was having no technical qualification and he has been wrongly promoted without following the rules as MVI and rather promotion is a grace granted by the respondents to him. As such the appointment of applicant as MVI is de hors the rules. It is further contended that as the cadre of MVI and HQI is entirely different wherein the applicant was promoted as MVI on 16.2.92 and respondent No.3 as HQI w.e.f. 1.11.90

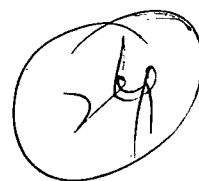
and further promoted as MLO w.e.f. 19.8.96 there cannot be a similarity between the two and two dis-similar cannot be treated equally. Further on the issue of limitation it is contended that the seniority list was published in 1994 but the challenge was made on 14.5.97 which is beyond the prescribed period of limitation. Drawing our attention to a grievance put by the applicant on 14.11.90 it is contended that he had never raised any grievance against R-3 and accepted his promotion in the reserved category of SC. It is lastly contended that R-3 has been appointed on the basis of his roster point and as such on promotion earlier to the applicant he has been rightly ranked senior to the applicant. It is contended that the seniority should have a role to play in the event the applicant and R-3 are simultaneously appointed to the post of MVI.

6. In the rejoinder the applicant contended that while serving in the Army he was issued a certificate of technical qualification which is equivalent as ITI and rather HQI is a non-technical post wherein the post of MVI is technical. The applicant has taken resort to SO 301 of the Transport Department to substantiate his plea. The applicant in his representation against the seniority list, which according to the respondents has attained the finality objected to grant of accelerated seniority to R-3 in the feeder cadre of MVI by contending that as admitted by the official respondents in their memorandum dated 8.10.96 that the applicant was placed above R-3 in the matter of seniority on the basis of merit attained in the seniority list for the post of DTI. The applicant has also drawn our attention to the memorandum of his appointment wherein clause 4 determines the inter-se-seniority of the

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officials appointed as DTIs on the basis of merit obtained in the select list. Placing reliance on instructions No.22011/7/86-Estt.(D) dated 4.11.92 it is contended that the seniority should have been fixed in the order of merit obtained at the time of initial appointment. In this background it is stated that fixation of seniority in the feeder cadre of DTI on the basis of joining.

7. We have carefully considered the rival contentions of the parties and perused the material on record. The applicant in his representation against the tentative seniority list, which admittedly is the final list objected to the grant of accelerated seniority to R-3 in the feeder cadre of DTI by contending that the applicant as admitted by the respondents was put in the select list of DTI in direct recruitment above R-3. Drawing our attention to memorandum whereby the applicant was offered appointment and in clause 4 it has been contended that the inter seniority of the officials appointed as DTI is to be fixed in accordance with the merit obtained in the merit list. In this background and placing reliance upon Government of India's instructions prevailing at that time and also the instructions contained in OM No.9/23/71-Estt. (D) dated 6.6.78 and OM No.20011/15/90.Estt.D dated 4.11.92 it has been contended that the seniority should have been fixed in the order of merit indicated at the time of initial appointment. In this conspectus it is stated that fixation of seniority in the feeder cadre of DTI on the basis of joining is absolutely in derogation with the principles enunciated and in force at that time. It is in this conspectus it is stated that although the applicant joined on 10.10.87 whereas R-3 had joined on 5.10.87 but as



the applicant stood senior in the merit in the select panel prepared for the post of DTI he should be ranked senior to R-3. The respondents had not at all taken into consideration this contention of the applicant taken in his representation and rather vide an order dated 8.10.96 although admitting the fact of higher merit of the applicant in the feeder post of DTi, it is contended that as the DPC was held on 11.12.91 and only a post in reserved category was available and as R-3 was within the zone of consideration he was promoted in December, 1990. It is further contended that as the applicant and R-3 are falling in different categories, i.e., general and scheduled caste his contention that he should have been promoted prior to R-3 is baseless. It is further explained that as the applicant was appointed as DTI on 19.8.87 and in accordance with the recruitment rules for the higher post of MVI in absence of minimum eligibility requirement of two years qualifying service in the feeder grade in May, 1989 the applicant was found ineligible for promotion to the post of MVI and thereafter as soon as the post became available he was promoted as MVi on 6.2.92 and as such his seniority is rightly fixed in the joint seniority list of MVI and HQI. The respondents have taken a plea that for the post of HQI three years qualifying service is required which R-3 had attained on 4.10.90 as such he was given seniority to the post of HQI w.e.f. 1.11.90. In this context it is contended by the applicant that what he seeks in the OA is not quashing of the seniority list but to accord him higher place in the seniority list over and above R-3 and further direction to fix the seniority of the applicant in the cadre of MVI over and above R-3 on the basis that though R-3 was given accelerated promotion to the post of HQI, yet

while fixing the seniority the same accelerated principle should not be made applicable and candidate belonging to SC category ~~who~~<sup>he</sup> gets<sup>in</sup> promotion over and above the general candidate who is senior, the general candidate would regain his seniority over such earlier promoted SC candidate. As such in this background relying upon the ratio of Januja's case (supra) as well as the ratio of Union of India v. Veerpal Singh Chauhan, JT 1995 (7) SC 231 it is contended that the applicant's seniority was wrongly fixed in the cadre of DTI and if the same is accorded on the basis of merit in the select list the applicant becomes senior to R-3 and further promotion to the cadre of HQI and on subsequent promotion of the applicant to the post of MVI and the fact that common seniority list is published for two cadres the applicant cannot be treated as junior to R-3 in the matter of his seniority to the cadre of MVI.

8. We have carefully considered this aspect of the matter and also the contention of the official respondents where this aspect of the applicant had not at all been considered either in the order passed on representation or in the reply despite the applicant had taken a specific plea in his representation. As regards the reply of R-3 except to state that the cadres of MVI and HQI are different and the applicant had been given promotion to the post of MVI later than R-3 fixation of seniority was justified and the ratio of Januja's case (supra) would not apply in the circumstances.

9. The contention of R-3 that the applicant was not a technical person is not tenable as the applicant was having the requisite technical certificate issued from the

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Army which is equivalent to an ITI certificate and apart from this for the post of DTI in view of their direct recruit both the applicant as well as R-3 were equally qualified and those appointed as DTIs. We have also perused the RRs for the post of MVI where a certificate in Motor Mechanical Institute and experience is the qualification required. The applicant as well as respondents are having the requisite eligibility to be considered for the post of MVI and HQI. The further contention of R-3 that he was in his separate channel of promotion in the quota meant for the reserved category as such rightly given promotion in December, 1990 and on assumed seniority he was given a right place in the common seniority list of MVI and HQI. This contention of R-3 is not correct. In fact the applicant as well as R-3 were from a common feeder category and while being considered for promotion to the rank of MVI and HQI respectively and the fact that no post for general category was available and on availability of a post in reserved category the applicant was promoted keeping in view the fact that on merits the applicant had ranked senior to R-3 in feeder grade of DTI his seniority should have been maintained in the seniority list of next higher post of MVI/HQI as the promotion given to R-3 was an accelerated one. Apart from it, from the perusal of the recruitment rules for the post of HQI the feeder category is DTI and RSI (Road Safety Inspector). Admittedly R-3 was in the grade of DTI and as such qualified and thus promotion as HQI on the basis of his seniority in the DTI. Mere nomenclature of the post of HQI and MVI would not be a decisive factor in the present case. What is to be seen is that subsequently while issuing the seniority list for both the posts a common list

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was prepared. In our considered opinion in case of accelerated promotion as in the case of R-3 the seniority assigned to the applicant in the feeder grade of DTI should not have been given a go-bye. In fact by virtue of his subsequent promotion in the year 1992 the applicant is legally entitled for his seniority to be reckoned above R-3 on the basis of ratio laid down by Apex Court in Januja's case (supra).

10. As regards the question of delay we find that the applicant had made a representation to the authority taking all his grievance including according seniority to R-3 on 10.11.94 and thereafter vide an order dated 23.7.96 the Tribunal has directed the respondents to pass a speaking order on the representation of the applicant. The order on representation was passed by the respondents on 8.10.96 and the applicant had come before the Tribunal on 14.5.97 as such the application is within the stipulated period of limitation prescribed under the Administrative Tribunals Act, 1985.

11. In the result, we allow this OA and set aside the memorandum dated 8.10.96 and direct the respondents to accord to the applicant his due seniority in the post of DTI on the basis of merit obtained in the select list and further accord him due seniority over and above R-3 in the post of MVI with all consequential benefits.

S. Raju  
(Shanker Raju)  
Member (J)

V. K. Majotra  
(V.K. Majotra)  
Member (A)

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