

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No.491/94

New Delhi: this the 6th JANUARY 2000

(10)

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

HON'BLE MR. P. C. KANNAN, MEMBER (J)

Ved Parkash,

(1563/Communication),
S/o Shri Mauji Ram,
R/o Quarter No. 96,

Police Colony, IIT Gate,

New Delhi,

Presently working as Assistant Sub-Inspector
in the Communication Unit of the
Delhi Police. Applicant.

(By Advocate: Shri Shyam Babu)

Versus

1. Deputy Commissioner of Police,
(Headquarter I),
Police Headquarters,
I.P. Estate,
New Delhi.
2. The Addl. Commissioner of Police,
(Administration),
Police Headquarters,
IP Estate,
New Delhi.
3. Veena Bala (524/Communication)
4. Usha Talyal (525/Communication)
5. Neelam Kukreja (526/Communication)
6. Prem Kumari (527/Communication)
7. Dharan Pal (529/Communication)
8. Pushaplate (522/Communication)
9. Balwinder Kaur (194/Communication)
10. Veena Kumari (554/Communication)

..... Respondents.

(By Advocate: Shri Anil Singh proxy for Shri Anoop
Bagai).

ORDER

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

Applicant impugns respondents' orders dated

7.8.92 (Annexure-A) and dated 17.8.93 (not fixed)

and claims seniority above private Respondents 3 to 10.

2. Applicant's case is that he joined Delhi Police as Constable on 22.10.69 and was confirmed as a Constable on 15.5.73. He was promoted as Head Constable (ACD) on 24.2.75 and was confirmed as such w.e.f. 1.1.81. He passed the Wireless Operator Grade II Course on 6.12.91. On the other hand, Respondents 3 to 10 were directly recruited as Head Constables (TEO) in September/October, 1976 and were confirmed as such in September/October, 1979. Applicant states that in 1986 the recruitment rules were amended for the first time to enable the Telephone Exchange Operators (HC) to be included in the feeder category for the purpose of promotion as ASI (ACD's). However, no combined seniority list of TEO (HC) and HC (ACD's) were prepared. He states that in 1988 Respondents 3 to 10 who were working as HC (TEO's) qualified Grade III Exam. and vide order dated 30.6.91, Respondents No. 3 to 10 were deputed to undergo WD Grade II Course w.e.f. 17.6.91. In that order dated 30.6.91, the Head Constables (ACD's) and TEO's were indicated separately. Subsequently vide order dated 28.2.92 (Annexure-G) the result of WD Exam. Grade II was declared in which applicant stood at serial No. 2 whereas Respondents 3 to 10 were shown at serial Nos. 29 onwards. The names of various officers were shown in order of seniority. Subsequently by order dated 28.4.92 (Annexure-H) 141 posts of HC (ACD's) were upgraded to the rank of ASI (WD's) and Respondent 1 by order dated 18.6.92 (Annexure-I) promoted 10 Head Constables (ACD's) Grade II as ASI (WD's) w.e.f. 18.6.92. Applicant

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submits that serial Nos. 6 to 10 in the order dated 18.6.92 were his batchmates but they were promoted as ASIs (WOs) w.e.f. 18.6.92 without linking their promotion with TEDs which showed that Head Constables (ACOs) were to be promoted not only being senior but as being a distinct category from TEDs (HCs). In these circumstances, applicant states that he was shocked to receive the impugned order dated 7.8.92 in which Respondents 3 to 10 were shown senior to him. He states that he represented against the aforesaid order dated 7.8.92 on 29.9.92 but the same was rejected vide order dated 17.8.93, a copy of which was not supplied to him as a result of which he has filed this OA.

3. A reply has been filed on behalf of Respondents 1 and 2 in which the contentions of applicant have been challenged. It is stated that Communication Unit is a Technical Branch of Delhi Police which is divided into three cadres viz. Operational, Technical and Stores. In accordance with Rule 6 of Delhi Police (Promotion and Confirmation) Rules, 1980 the promotions of officers are made in their respective cadres. The applicant is borne on the operational cadre. The feeder posts for promotion to the rank of ASI in different cadres are laid down in Rule 17-B(iii) of Delhi Police (A & R) Rules. It is stated that the inter se seniority of Head Constables belonging to the above mentioned three cadres is reckoned from the date of confirmation as Head Constables for promotion to the post of ASI in

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their own cadres. A DPC to consider the names of Head Constables (AWOs/TEOs) of operational cadre for admission of their names to promotion list 'D' (Technical) for promotion to the rank of ASI (WD) was held on 3.8.92 and 73 Head Constables (AWOs/TEOs) Grade-II with 5 years service in the grade and 68 Head Constables (AWOs) Grade-III with 8 years service were brought on promotion list 'D' (Technical) vide order dated 7.8.92. 73 Head Constables (AWOs/TEOs) Grade-II with 5 years service were promoted to the post of ASI (WD) w.e.f. 6.8.92 on regular basis and the remaining Head Constables (AWOs) Grade III with 8 years service were also promoted to the rank of ASI (WD) subject to the condition that they shall pass Grade-II Wireless Operator Course conducted/approved by the DCP W, MHA within a period of 3 years from the date of their promotion. It is emphasised that as Respondents 3 to 10 were confirmed w.e.f. 29.11.79, they were senior to applicant who was confirmed as Head Constable (AWD) w.e.f. 1.1.81 and their names have correctly been placed above his name by the DPC. In regard to Para 4.7 of OA wherein applicant has stated that by order dated 28.2.92 the result of final examination of WDs Grade II was declared in which his name stood at Sl. No. 2 (above Respondents 3 to 10) in order of seniority, respondents in corresponding paragraph of reply do not specifically deny the contention but only stated that the seniority was reckoned from the date of confirmation in the grade for promotion to the post of ASI (WD).

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4. The question for adjudication is therefore, whether applicant is entitled to claim seniority over Respondents No. 3 to 10 as ASI (WO).

5. No reply has been filed on behalf of Respondents 3 to 10 although notices were served upon them. None appeared on their behalf either when the case came up for hearing.

6. We have heard Shri Shyam Babu for the applicant and Shri Anil Singhvi for the respondents.

7. Shri Shyam Babu has vehemently contended that the applicant is entitled to be declared senior to Respondents 3 to 10 as ASI (Wireless Operator), as according to him it is the date of appointment/promotion in the feeder cadre of Head Constable (AO) which is the relevant date and not the date of confirmation as HC(TED). He has relied upon several rulings in this regard. One of these rulings is G.P. Doval & Ors. Vs. Chief Secretary, Govt. of U.P. & Ors. AIR 1984 SC 1527 wherein it has been held that where officiating appointment is followed by confirmation unless a contrary rule is shown, the service rendered as officiating appointment cannot be ignored for reckoning length of continuous officiation for determining the place in seniority list. Another ruling relied upon by Shri Shyam Babu is S.B. Patwardhan & Another Vs. State of Maharashtra & Ors. AIR 1977 SC 2051 wherein while discussing Rule 8(iii) Bombay Service of Engineers (Class I and Class II) Recruitment Rules, 1960, the Hon'ble Supreme Court has held that seniority is to be determined on the sole touchstone

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of confirmation which is indefensible. Confirmation is one of the inglorious uncertainties of Govt. service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies.

8. Yet another ruling relied upon by Shri Shyam Babu is S. S. Godhi Vs. State of Punjab & Ors. 1990 (13) ATC 718 SC wherein while discussing the provisions of Punjab State Agricultural Marketing Board (Class I) Service Rules, 1988, the Hon'ble Supreme Court has held that where more than one sources are open for making appointment and rules specifies order of preference, appointing authority must consider the candidates for appointment in accordance with that order. This ruling is not directly relevant for the purposes of this case before us.

9. Another ruling relied upon by Shri Shyam Babu is contained in CAT PB order dated 6.12.94 in OA No. 2340/90 Manoj Kumar Sharma Vs. Delhi Admini. & Ors. In that case, the applicant who was appointed as an ASI (Stenographer) on 11.10.82 on adhoc basis, and was substantially appointed as such on 1.8.86 and was confirmed on 1.8.88, had sought seniority from 1.8.86. The Tribunal in the aforesaid order dated 6.12.94 referred to Rule 22 of the Delhi Police (Appointment & Recruitment) Rules, as substituted by Notification dated 15.11.85 which lays down that seniority in the case of upper and lower subordinate shall be initially reckoned from the date of first appointment, and officer of subordinate rank promoted from a lower rank being considered senior, to persons appointed direct to the same rank on the same day, till seniority is

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finally settled by confirmation. The seniority of direct recruits in all ranks except Sub Inspector (Ex.) appointed as a result of some examination or selection shall be reckoned by the order of merit determined.

10. The Bench in its order dated 6.12.94 held that such a rule runs contrary to the view taken by the Hon'ble Supreme Court in S.B. Patwardhan's case (supra) and the Direct Recruit Class II Engineers Officers Association & Ors. Vs. State of Maharashtra & Ors. 1990(2) SLJ 40 and accordingly directed the respondents to determine the seniority of that applicant from the date of his substantive appointment.

11. Nothing has been shown ^{to} us to suggest that the aforesaid order dated 6.12.94 has been stayed or modified.

12. Another ruling relied upon by Shri Shyam Babu is that of Punjab & Haryana High Court in CWP No. 4468/91 Mohinder Singh, Head Constable & Ors. Vs. The State of Haryana & Ors. decided on 4.6.91, wherein it has been held that the seniority of Head Constable is to be counted from the date of appointment or promotion as the case may be and not from the date of confirmation. Reference in this judgment has been given to Rule 12.2 of Punjab Police Rules, 1934. Rule 12.2 (3) of those Rules also provides that seniority, in case of upper subordinates, will be reckoned in the first instance from the date of first appointment, officers promoted from a lower rank being considered senior to persons appointed direct on the same date.

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and the seniority of officers appointed direct on the same date being reckoned according to age. Seniority shall, however, be finally settled by dates of confirmation.

13. We have considered the matter carefully.

14. As the case relates to one of promotion from Head Constable to ASI, it is the Delhi Police (Promotion & Confirmation) Rules which are relevant. Rule 15(ii) of these Rules lays down as follows:

"(ii) List D (Technical)

Confirmed Head Constables (Specialised/ Technical), who have put in a minimum of 5 years' service as Head Constable, shall be eligible. The selection shall be made on the basis of the recommendations of the Departmental Promotion Committee. The Head Constables so selected, shall be brought on List-D (Technical) in order of their respective seniority, keeping in view the number of vacancies in the rank of Asstt. Sub Inspector (specialised/ Technical) in their respective trades likely to occur in the following one year and promoted to the rank of Asstt. Sub-Inspector as and when vacancies occur."

From this it is clear that while only confirmed Head Constables are eligible for promotion as ASIs, they shall be brought onto promotion List 'D' (Tech.) in order of their respective seniority. Thus, while confirmation will determine eligibility, there is nothing in the rules which state that it will determine seniority. For determining seniority we would therefore have to fall back on the rulings relied upon by Shri Shyam Babu and referred to above, from which it is clear that

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seniority would depend on length of service in the
feeder grade of Head Constable.

15. Under the circumstance applying the aforesaid
rulings to the facts and circumstances of the present
case, this OA succeeds and is allowed, to the extent
that applicant's position at Serial No.12 in the
impugned order dated 7.8.92 is quashed and set aside.
Applicant's seniority as ASI should be reckoned from
the date of his substantive appointment as Head Constable,
and he shall be entitled to such consequential benefits as
are admissible to him in accordance with rules,
regulations and judicial pronouncements. These directions
should be implemented within three months from the
date of receipt of this order. No costs.

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(P. C. KANNAN)
MEMBER (J)

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

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