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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.NO. 1414 of 1994
and

O.A.No. 1415 of 1994

DATE OF DECISION: 28.10.94

S.I. Roop Lal and
Kharak Singh Sandhu

Vs.

Delhi Administration & Ors


CORAM: Hon'ble Shri J.P. Sharma, Member (J)

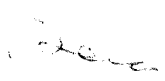
Hon'ble Shri B.K. Singh, Member (A)

Counsel for Applicant ~~Shri~~/Ms. Meera Chhibber

Counsel for Respondent Shri/~~Ms~~ Bimal Roy Jad, Proxy
counsel for Shri H. L. Jad.

1. Whether to be referred to the Reporter? ✓
2. whether reporters of Local Newspapers
may be allowed to see the judgement? ✓
3. Whether their Lordships wish to see
the fair copy of the Judgement? ✓
4. Whether to be circulated to other
Benches? ✓


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

DA No.1414 of 94
and
DA No.1415 of 94

New Delhi, dated this 20th day of October 1994.

HON'BLE MR. J.P. SHARMA, MEMBER (J)
HON'BLE MR. B.K. SINGH, MEMBER (A)

D.A. No.1414 of 1994

S.I. Roop Lal (B-2609),
S/o Shri Om Prakash,
Resident of 33, Police Colony,
Shalimarbagh, Delhi.

... Applicant.

By Advocate: Mrs. Meera Chhibber.

Versus

1. Lt. Governor of Delhi
through the Chief Secretary,
Govt. of National Capital Territory of Delhi
Old Secretariat, Delhi.
2. Commissioner of Police,
PHQ, I.P. Estate,
New Delhi.
3. Dy. Commissioner of Police,
HQ-1 Police Head Quarter,
I.P. Estate,
New Delhi.

... Respondents.

By Advocate: ...

D.A. No.1415 of 94

Kharak Singh Sandhu,
S/o Shri M.S. Sandhu,
R/o Type II, F-3, Police Lines,
Kingsway,
Camp, Delhi.

... Applicants

By Advocate: Mrs. Meera Chhibber

Versus

1. Lt. Governor,
Through the Chief Secretary,
Govt. of National Capital Territory of Delhi,
Old Secretariat, Delhi.
2. Commissioner of Police,
Police Head Quarters,
I.P. Estate, New Delhi.
3. Dy. Commissioner of Police,
HQ-I, Police Head Quarters,
I.P. Estate, New Delhi.

... Respondents.

By Advocate: Shri Bimal Roy Jad, Proxy
counsel for Shri H.L. Jad

JUDGEMENT

Shri B. K. Singh, M(A)

The OA.No.1414/94 S.I. Roop Lal as applicant and Lt. Governor of Delhi and Commissioner of Police and Deputy Commissioner of Police, New Delhi as respondents, has been filed for claiming the benefit of judgement dated 2.3.93 and for a direction to the respondents to reckon the seniority of the applicant from the date of his initial regular appointment in B.S.F., i.e. 17.11.78 on the basis of the judgement dated 2.3.93, passed in Anthony Mathew's case by the Principal Bench, CAT.

2. The admitted facts of the case are that the applicant was appointed directly as a Sub Inspector in Border Security Force with effect from 17.10.78. The appointment letter and other terms and conditions are enclosed as Annexure 'A' & 'B' of the paper book. In November, 1985 on the requisition of the Delhi Police authorities, the applicant, along with other Sub Inspectors was sent on deputation to Delhi Police. This was in pursuance of a decision taken by the authorities to take trained personnel from other Central Police organisations and after watching their work and performance and suitability to absorb them in the cadre of Delhi Police. This is Annexure 'C' of the paper book.

3. The applicant was permanently absorbed as Sub Inspector (Executive) in Delhi Police with effect from June 10, 1988 with the stipulation that the date of permanent absorption will be taken as a crucial date for fixing up the seniority in Delhi Police.

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It has been alleged that the applicant came to know of such an order only in 1991. He filed a representation to the Commissioner of Police on 24.12.91 for grant of benefit of seven years regular service rendered by him in BSF for fixing his seniority in Delhi Police. A copy of this representation is enclosed as Annexure-'E'. Getting no reply, a reminder was sent on 10.9.92 to respondents. In the meantime another similarly situated Sub Inspector got the relief from the Principal Bench, CAT, New Delhi vide its judgement dated 2.3.93(Annexure-'F'). It is admitted by both the parties that a Review against the above judgement was filed in the Tribunal and a S.L.P. was also filed in the Hon'ble Supreme Court and both were dismissed. These are Annexures-'G' & 'H' of the paper book.

4. In the judgement and order dated 2.3.93 Antony Mathew has been given the benefit of his earlier service in BSF and assigned the seniority with effect from the date of his substantive appointment in BSF. Antony Mathew was appointed in BSF on 20.4.80 whereas the applicant was appointed on regular basis with effect from 19.11.78. Antony Mathew's seniority was reckoned from 1984, the date from which he was given regular appointment in BSF. Admittedly, the applicant is senior to Antony Mathew and he has asserted that it would amount to discrimination and violation of Article 14 & 16 of the Constitution if his seniority is reckoned from the date of his absorption, i.e. from 10th June, 1988.

5. OA. No.1797/93 was filed in the Tribunal indicating the anomaly in fixation of the applicant's seniority vis-a-vis Antony Mathew. This Tribunal directed the respondents to dispose of the applicant's

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representation within three months from the date of receipt of a certified copy of the order of the Tribunal (Annexure-'I' of the paper book). The respondents rejected the application as time-barred vide their letter dated 8.3.94 (Annexure-'J' of the paper book). Another representation was filed vide Annexure-'K' followed by reminders Annexure-'L' & 'F' of the paper book.

6. It is also admitted by both the parties that the seniority of Antony Mathew has been fixed between S.I. Attar Singh (No. D-1848) and Bhim Singh (No. D-482) by reckoning his seniority from the date of his substantive appointment in BSF i.e. from 1.10.84. A copy of this order is annexed as Annexure 'N' of the paper book.

7. It is admitted that 228 vacancies of Inspectors are to be filled up shortly, and it is also averred that CRs of 750 Sub Inspectors have been called for. The name of Antony Mathew figures at sl.no. 202A of the list and his case is being considered for promotion to the post of Inspector whereas the claim of the applicant has been ignored and that there is no justification for ignoring the claim of the applicant vis-a-vis Antony Mathew and also that without finalising the inter-se-seniority of the Sub Inspectors and without issuing the correct gradation list there is no justification for holding a DPC meeting to consider the case of the eligible candidates.

8. Under Rule 17 of the Delhi Police (General Conditions of Service) Rules, seniority is the basic criteria for promotion and unless inter-se-seniority is determined and gradation list finalised, no promotion can be made. A

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perusal of the record shows that this application was filed on 12th July, 1994 and the Tribunal considered the prayer for interim relief and passed an order on 13.7.94 that one vacancy be kept unfilled. This order has been continuing since then.

9. The applicant has prayed for the grant of following reliefs:-

- “(a) Call for the records as even the officials in files have also opined that applicant should be given the seniority from his regular appointment in B.S.F.
- (b) Direct the respondent to reckon the applicant's seniority w.e.f. the date of his substantive appointment in Border Security Force i.e. 17.11.78, while fixing his seniority in Delhi Police by giving him the benefit of Antony Mathew's judgement dt. 2.3.1993.
- (c) Take out final seniority list of all Sub Inspectors in Delhi Police as on date before making any promotions.
- (d) Grant all consequential benefits flowing from prayer (a) and (b) to the applicant i.e. seniority, promotion etc...”

10. A notice was issued to the respondents who filed their reply contesting the application and grant of reliefs prayed for.

11. We heard the learned counsel for the applicant, Mrs Meera Chibber and the learned ^{Proxy} counsel Shri Bimal Roy Jad for Shri H. L. Jad, counsel for the respondents, and perused the record of the case.

12. The main contention of the learned counsel for the applicant was that the applicant is entitled to the benefit of

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judgement given by the Tribunal in the case of Antony Mathew delivered on 2.3.93 since he is similarly situated as the applicant and that he is also senior to him having been appointed on 17.11.78 whereas Antony Mathew was appointed on temporary basis in 1980. If Antony Mathew, according to the learned counsel for the applicant, was given seniority with effect from the date of his confirmation in BSF i.e. 1.10.84, the applicant should be allowed to reckon his seniority with effect from 17.11.78. It has further been argued that once the question of law is decided by a court applying the same the facts of the case, then similarly situated persons have to be extended the same benefit without compelling them to come to the court of law. There is no denial that the applicant is senior to Antony Mathew and there is no denial that the judgement of the Tribunal in respect of Antony Mathew delivered on 2.3.93 reckoned the crucial date of his seniority from the date of his substantive appointment in BSF. Once this benefit was allowed to a junior, senior has a better claim since he is not only similarly situated but he is also senior to him in the BSF having been appointed in 1978 whereas Antony Mathew was appointed in 1980. The plea of the respondents that the representation of the applicant was time-barred and therefore it was rejected, is not justified. The principles once decided by a court of law have to be followed by the respondents. The rejection of the

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representation amounts to discrimination and thus Article 14 & 16 of the Constitution are clearly attracted in this case. It was further argued that the respondents ^{should be} restrained from filling up/finalising the promotional vacancies of Inspectors till the inter-se-seniority is decided by them. As against this, the learned counsel for the respondents argued that the applicant does not have a fresh cause of action and that it is barred under the provision of Section 21 of the AT Act, 1985. The initial application made to the respondents was also time-barred. It was further argued that the application is barred by res-judicata since these issues were raised in OA.No.1797/93 directing the respondents to dispose of the representation.

13. It was further argued by the learned counsel for the respondents that the benefits of the judgement in OA.470/91 Antony Mathew Vs Delhi Administration and Ors. delivered on 2.3.93, is not maintainable in view of the judgement and order dated 24.2.93 of the Tribunal in OA. 560/92 Bachan Singh Vs UOI & Ors. wherein the Tribunal has not permitted the applicant to procure the benefit of judgement given in a particular case (Kedar Nath's case) and the instant case is squarely covered by judgement dated 24.2.93 in OA.560/92. It was further argued that those who have taken their berth in the cadre earlier than the absorption of these deputationists who are necessary parties, have not been impleaded as such and, therefore, the mandatory

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provisions of CrPC as enunciated in proviso added to Rule 9 Order 1 of the CPC by Amendment of 1976 will make this application liable for rejection. On merits, it was argued that on the date of joining the BSF, the applicant Shri Rooplal was in the pay scale of Rs.380-12-500-EB-15-560. He was appointed on substantive basis in BSF as Sub Inspector in the grade with effect from 1.10.84 vide order No.60011/4/89-Staff/BSF, Govt. of India/MHA dated 25th September, 1989. It is admitted that there was an urgent need to fill up the newly created posts in Delhi Police and that the names of desirous persons were asked from central police organisations for deputation. As the applicant was willing to join the Delhi Police on deputation, hence he was taken on deputation as Sub Inspector with effect from 14.11.85 vide notification No.25245/Estt(IV) dated 28.11.85. He was permanently absorbed in Delhi Police as Sub Inspector(Executive) with effect from 10.6.88 vide notification No.F-14/127/86-P-III/14353/Estt(IV) dated 21.6.88 alongwith others who were willing for permanent absorption as Sub Inspector(Executive). It was further argued that at the time of his deputation in Delhi Police, the applicant opted for the pay scale of his parent department i.e. BSF, and therefore he was permitted to draw that pay scale along with deputation allowance. Prior to his deputation, he was in the pay scale of Rs.380-560(pre-revised pay scale) and Rs.1400-2300(Revised pay scale) i.e. the pay scale of Sub Inspector of BSF. On his absorption, the applicant was allowed the pay scale of Rs.1640-2900. He was



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given the notional benefit from the date of his joining and he was not allowed to draw any arrears nor was he asked to refund the deputation allowance drawn by him. It was further argued that the pay scale of Sub Inspectors of Delhi Police was higher than that of the BSF in the pre-revised scale and also in the revised scale. Sub Inspector in BSF was drawing Rs.380-560 in the pre-revised scale whereas Sub Inspector of Delhi Police was in the pay scale of Rs.425-600 and the replacement pay scales were Rs.1400-2300 for BSF Sub Inspector and Rs.1640-2900 for Delhi Police Sub Inspector. By implication, the Sub Inspector of Delhi Police was graded higher than the Sub Inspector of BSF. It was further argued that the applicant was not taken on an analogous post on deputation in Delhi Police. The inter-se-seniority of the applicant was fixed in the rank of Sub Inspector (Executive) with effect from the date of his permanent absorption i.e. with effect from 10.6.88 vide order dated 21.7.89 in accordance with the Government of India's instruction issued vide letter No.20070/7/80-Estt(D) dated 29.5.86. After absorption he along with other similarly situated deputationists were sent for initial training meant for the post of Sub Inspector(Executive) and after completion of initial training he was deputed for training(A,B,C&D Course) meant for the post of Sub-Inspector(Executive). It is therefore contended that the seniority of the applicant in the rank of Sub

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Inspector(Executive) has rightly been fixed as per instructions of the Government of India quoted above. As regards the reliance of the learned counsel for the applicant and the judgement of Antony Mathew in OA.470/91 delivered on 2.3.93 it was submitted that the Tribunal has wrongly placed reliance on the judgement of the Hon'ble Supreme Court in AIR 1987 SC 2291 between K. Madhavan and Anr. Vs. UOI & Ors while deciding the case of Antony Mathew. The facts and circumstances of the case of Antony Mathew are neither identical nor similar to the case of K. Madhavan & Anr. In the case of CBI there was no regular cadre of DSPs when Shri O.P. Sharma, Deputy Commandant from BSF and Shri K. Madhavan were taken on deputation and subsequently they were absorbed and similarly in a large number of cases of constables also who were drawn from the various States like these DSPs were absorbed and the Hon'ble Supreme Court held that their length of service rendered with the States/BSF could not be ignored if equivalence had been declared and that the deputationists whether drawn from one State or the other or from one police organisation or the other could be treated at par and their regular service in the State/Central organisation would count for seniority purposes. This is not so with the Delhi Police. The Delhi Police has its own cadre of Sub Inspectors and makes promotion/direct recruitment to these posts and people coming on deputation from other central police organisations will have to reckon their seniority from the date of their absorption, i.e. below those who have taken berth in the cadre earlier to absorption of deputationists and the former will

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deputation insts.
rank senior to the / It was further submitted that
the Review Application filed by the respondent
department against the decision of Hon'ble Tribunal
in OA.470/91 was dismissed in circulation on 30.4.93.
However, it was pointed out that the Tribunal gave a
different view in OA.No.2089/90 Baljit Singh Bamel Vs.
UOI & Ors.(decided on 27.11.92) OA.No.856/90-Rai Singh
Dabas Vs. UOI & Ors.(decided on 5.1.93) OA.No.591/93
Raj Kumar Vs. UOI & Ors.(decided on 4.11.93) which view
of the Tribunal was challenged in Hon'ble Supreme Court
by a S.L.P. in OA.No.2089/90, but unfortunately the
said S.L.P. was dismissed vide order dated 12.8.93.
In spite of dismissal of S.L.P. in OA.2089/90, the
Tribunal changed the earlier view and gave a different
judgement in these cases on 4.11.93 which has also been
challenged by the respondent department through S.L.P.
Nos.8705-10/94. The view held in the various OAs are
that the seniority should be reckoned from the date of
their initial appointment to the rank of Sub Inspector
(Steno) which changed later in R.A. Nos.104/93, 195/93
and 169/93 on 4.11.93 with a direction to the department
to give promotion/seniority from the particular stage of
pay scale. It was argued that there are conflicting
judgements and that the dismissal of the S.L.P. by the
Hon'ble Supreme Court does not lay down a principle
or a ratio to be followed in other cases. It was
further argued that the applicant joined as Sub Inspector
with effect from 18.11.78 but he was appointed on a
substantive basis in that grade only with effect from
1.10.84, the date on which Antony Matheu was appointed

substantively vide order No.60011/4/89-Staff/BSF, Govt. of India/MHA, New Delhi dated 25th September 1989. It was further argued that the applicant is trying to by-pass the limitation with a plea that he came to know about fixation of his seniority only in 1991. The RA and the S.L.P., according to the learned counsel for the respondents, were dismissed in circulation. The applicant and Antony Mathew both were appointed in the grade on a substantive basis vide orders quoted above (Annexure R-1 of the paper book). He also quoted judgement of Hon'ble Supreme Court in the case of S.S. Rathore Vs. State of M.P. reported in AIR 1990 SC 10 and argued that this is a highly belated application and that repeated representations do not extend the period of limitation, and as such on grounds of limitation alone, the application is fit to be rejected. The learned counsel for the respondents placed before us the order of the competent authority regarding arriving on deputation of the various officers vide order dated 29.10.86 and the name of the applicant is at sl.no.11. The learned counsel for the respondents also quoted the observation of the Hon'ble Supreme Court in case of Civil Appeal No.3412/86 SCC 1991 p.553 Supp(2) decided on October 9, 1990. This judgement quotes the observation made in direct Class-II Engineer Officers Association Vs State of M.P. 1992 2 SCC 715 as follows:

"The term 'absorption' in service jurisprudence with reference to a post implies that an employee who has not been holding a particular post in his own right by virtue of either recruitment or promotion to that post but is holding a different post in a different department is brought to that

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post either on deputation or by transfer and is subsequently absorbed in that post thereafter he becomes a holder of that post in his own right and lose lien of parent post."

It was held that the absorbees cannot be granted benefit of entire service rendered by them in the parent department because this will adversely affect the existing Sub Inspectors including those who had already been promoted as Inspectors. The ratio laid down is that where there ^{are} executive instructions laying down principles of the fixation of inter-se-seniority and these are reasonable, just and equitable, judicial interference is not warranted.

14. We have gone through the judgement of this Tribunal in case of Antony Mathew Vs. Delhi Administration & Ors and also K. Madhavan's judgement.

15. The Hon'ble Supreme Court have been laying down norms regarding fixation of seniority on the basis ^{of} either statutory rules or on the basis of various administrative instructions issued by the executive from time to time to supplement the rules. The Hon'ble Supreme Court have also been distinguishing the facts of the various cases and their judicial pronouncements vary based on facts and circumstances of each case. It is usual for the lower courts such as High Courts and Tribunals to adjudicate upon such matters of seniority/inter-se-seniority on the basis of precedents or rulings in deciding the cases to indicate

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that their conclusion is in accordance with the ratio established by the Hon'ble Supreme Court and that there is a precedent recognised and having a footing in the existing law. The ratio-decidendi propounded in the various judgements are thus quoted to find out an answer in a particular case in terms of a precedent or in terms of analogy. The Hon'ble Supreme Court laid down a proposition of law in the case of K. Madhavan Vs UOI & Ors(supra) and these were based on certain matters where there was no determinate answer on account of indeterminacy of legal rules on the subject. The question whether a rule applies or does not apply to some particular situation of fact is not the same as the question whether according to the convention of language this is determined or left open by the words of that rule. For a legal system often on the basis of other resources decides the words used in the formulation of rules which serve to determine their content or meaning in particular cases e.g. where an organisation does not have a cadre of its own and draws its personnel from other organisations, the determination of their seniority must either be according to their date of absorption or according to their confirmation in the parent cadre or according to the total length of regular service put in by an officer in a particular grade in which he was working prior to his transfer on deputation to another organisation.

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16. In K. Madhavan & Anr Vs UOI & Ors Writ Petition Nos.9847-48 of 1983, 1021 of 1986, decided on 9.10.87 (AIR 1987 Vol.74 SC 2291), it was held by the Hon'ble Supreme Court that retrospective appointment or promotion to a post should be given most sparingly and on sound reasoning and foundation.

An employee may become eligible for certain post but he cannot claim appointment to such post as a matter

In this case, of right. / there were three vacancies to be filled up by non-deputationist DSPs and not by deputationists but as non-deputationist DSPs with the requisite period of service were not available, the vacancies were proposed to be filled up by the deputationist DSPs. Considering that as the vacancies were meant for the non-deputationist DSPs and two of such DSPs would become eligible for promotion in January and March 1971, the Director of CBI postponed the meeting of the DPC scheduled to be held on October 13, 1970. In the circumstances, there was no arbitrariness in the decision of the Director of CBI postponing the meeting of the DPC as there was ample justification for such postponement or cancellation of the meeting. Respondent-5 might have been eligible for being considered for appointment to the post of S.P. in July 1970, but he had no right to claim such consideration when the vacancies were meant for non-deputationist DSPs.

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In July 1971 also respondent-5 was not found suitable by the DPC. It was only when the senior Board found him suitable that respondent-5 was appointed on October 28, 1972 to the post of S.P., CBI. As the foundation of the appointment of respondent-5 to the post of S.P. with retrospective effect from October 21, 1971 (forenoon) namely the postponement of the meeting of the DPC in October 1970 arbitrarily shaken to a great extent, there was no question of any injustice having been done to respondent-5. There was thus no justification for the respondent-5 to the post of S.P. in CBI with retrospective effect from October 21, 1971 so as to make him senior to the petitioners in W.P. Nos. 9847-48 1983. The orders were quashed and set aside and a writ in the nature of certiorari and another writ of mandamus was directed to be issued to Respondent 1&2 to publish a fresh seniority list showing the petitioners as seniors to respondent-5.

17. Thus the facts of the case of Antony Mathew and those of K. Madhavan & Ors are totally different. The Hon'ble Supreme Court decried the executive for giving retrospective promotion and the order was set aside. Madhavan and other petitioners have been regularly absorbed and their regular past service

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was counted for making them eligible as they were non-deputationists i.e. regular incumbents of CBI as the promotional posts were meant for them and therefore DPC was rightly postponed to be held after a few months later when K. Madhavan and others could become eligible to be considered for promotional posts meant for them. The ration of K. Madhavan's case is completely at variance with the facts of the case of Antony Mathew. This is not a precedent for the case of Antony Mathew. It will be a wrong analogy.

18. The Delhi Police has its own established cadre and has its own Recruitment Rules for direct recruitment of ASIs/SIs for their promotion. It is only in exigencies of service or to meet the functional requirements of emergent situations that they ask for deputation of trained personnel from other central police organisations and after watching their work and performance and after judging their suitability and finding them fit, absorb them. In such cases where an officer initially comes on deputation and is subsequently absorbed, the normal principle that the seniority should be counted from the

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date of such absorption should apply. Those absorbed employees cannot steal a march over those who are already members of the cadre earlier than their absorption. However, there are rules in this regard issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training vide O.M. No.20070/7/80-Estt(D) dated 29.5.86. Para-2 of the O.M. deals with the fate of an officer initially coming on deputation and subsequently getting absorbed, the normal principle being that seniority should count from the date of such absorption. There are, however, cases where it was found that prior to coming on deputation a person was holding the same or equivalent grade on regular basis in his parent department and therefore it was felt that such regular service in the grade should also be taken into account in determining the seniority subject only to the condition that at best, it would be only from the date of deputation to the cadre in which absorption is being made. The two principles enunciated in the O.M. dated 29.5.86 are that an officer coming initially on deputation should be allowed to count his seniority from the date he

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has been holding the post on deputation or from the date he was appointed substantively in his parent department on the same or equivalent grade. These are the instructions which will determine the facts of the applicant and various deputationists who came from BSF to the cadre of Sub Inspectors in Delhi Police. It is admitted by both the parties that these Sub Inspectors of BSF were in a lower pay scale, i.e. their pay scale was Rs.380-560 whereas the Sub Inspectors of Delhi Police were in the pay scale of Rs.425-600 in the pre-revised pay scale and the Sub Inspectors in the revised pay scale of BSF were given 1400-2300 whereas the Sub Inspectors of Delhi Police were drawing Rs.1640-2900. Thus, it is clear that the applicant was not in the same grade as his counterpart in the Delhi Police. He was in a lower pay scale than the direct recruits and promoted Sub Inspectors in the Delhi Police cadre. This holds good not only for the applicant but also for Antony Mathew and other deputationists. Thus in terms of the circular they cannot be equated with the Sub Inspectors of Delhi Police since they were not holding an equivalent post or equivalent

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grade in their parent department and therefore their substantive appointment also as Sub Inspector would be in the grade of Rs.380-560 and it cannot be in the grade of Rs.425-600 which is the grade given to the Sub Inspectors of Delhi Police. Thus, the date of absorption of these employees in their parent cadre will not give them any additional advantage because there is no parity in their pay scales and BSF Sub Inspector post cannot be described as equivalent post. It is true that the applicant was absorbed in Delhi Police with effect from 10.6.88 but was allowed notional fixation of pay in the rank of police Sub Inspector of Delhi Police with effect from the date he came on deputation i.e. 14.11.85 and regular pay scale of Sub Inspector only with effect from the date of his absorption, ie. 21.6.88 which is Rs.1640-2900 and this is in conformity with the Rule 17 of Delhi Police (General Conditions of Service)(Amendment) Rules, 1983. Thus, by no stretch of imagination can we assign seniority in the cadre of Delhi Police prior to the date of his absorption, and that is the reason why the respondents

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have allowed him the benefit of notional pay fixation from 14.11.85, actual benefit of Rs.1640-2900 with effect from 21.6.88. Till the date of absorption they were drawing their pay scale plus deputation allowance and all contributions towards pension, leave salary etc. were being credited to BSF.

19. In the light of these mandatory rules and also taking into consideration the OM dated 29.5.86, the only reasonable date of counting the seniority in the Delhi Police would be from the date of absorption. We are fortified in our view by the judgements of the Hon'ble Supreme Court in the case of Ashok Gulati Vs. B.S. Jain AIR 1987 S.C. 424 where it was laid down that according to the accepted canons of service jurisprudence seniority of a person appointed must be reckoned from the date he becomes a member of that service. The date from which seniority is to be reckoned should be laid down by the rules or instructions, (a) on the basis of appointment, (b) on the basis of confirmation, (c) on the basis of regularisation of service, (d) on the basis of length of service, or (e) on any other reasonable basis. When appointments are made from more than one source, it is



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permissible to fix the ratio for recruitment from different sources and rules are framed in this regard they must be followed strictly. The Delhi Police (General Conditions of Service) Rules hold good in this case of the applicant. The applicant became a member of the service only from the date of his absorption, i.e. 21.6.88 and this date becomes crucial to the counting of his seniority in the cadre. In Civil Appeal No. 823/89, CCP No. 191/91 1(a) No. 1-10-1991 in C.A. No. 293/89 Ayed Khalid Rijvi and Ors Vs UOI and Ors and in W.P. No. 668/91 Krishna Bahadur Srivastava Vs State of UP & Anr, C.A. No. 4953, 4949 and 4950 of 1992 Ramesh Prasad Singh and Ors, the Hon'ble Supreme Court held that there is no right to promotion. There is right to be considered for promotion. In the case of Ram Janam Singh Vs State of UP and Anr in C.A. No. 354/94 from the judgement and order dated April 25, 1990 of the Allahabad High Court in W.P. No. 7409/86 a Division Bench comprising of Hon'ble Mr Justice K. Ramaswamy and N. P. Singh J.J. with C.A. 355-59/94 State of UP & Ors Vs Rajender Singh Malhan and Ors C.A. No. 355-59/94 decided on 21.1.94, the Hon'ble

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Supreme Court held (a) that the seniority must be reckoned from the date of entry in a particular service. It was held that this is the safest criterion for fixation of seniority. Any preferential treatment should be given only in terms of statutory rules failing which Article 14 & 16 of the Constitution would be attracted. We are dealing with a case like the one the Hon'ble Supreme Court decided on 25.1.94. When we have a large number of Sub Inspectors already working prior to the absorption of the applicant on 21.6.88 and they are regular members of the service and those who initially came on deputation and absorbed subsequently will be deemed to be its members from the date of their absorption and they cannot be assigned a place higher particularly when prior to their coming to Delhi Police they were in a lower scale of pay than those who are working as Sub Inspectors in Delhi Police. They were not holding equivalent post or grade and they cannot be treated at par with such regular incumbents till they become regular member of the cadre. The applicant and such similarly situated people will become members

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of the cadre only from the date of their absorption. In the aforesaid judgement dated 25.1.94, the Hon'ble Supreme Court clearly laid down the proposition that seniority in service has to be determined with reference to the date of entry in the service which will be consistent with the requirements of Article 14&16 of the Constitution. The facts are admitted that these applicants who are before us were in a lower grade of pay in BSF. They got the benefit of the pay scale of Delhi Police only from the date of their absorption. Only notional pay fixation was allowed to them from the date of their joining but this cannot confer benefit of seniority. The judgement of the Hon'ble Supreme Court in the aforesaid Appeals, laid down that if the circumstances so require, a group of persons can be treated a class separate from the rest for any preferential treatment while fixing their seniority. The OM of 29.5.86 and Rule 17 of Delhi Police (General Conditions of Service) Rules can give them benefit only from the date of absorption. Any preferential benefit, according to the Hon'ble Supreme Court in matters of seniority, must be decided

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on objective considerations and by taking into account the relevant rules and factors which can stand the test of Article 14 & 16 of the Constitution. Normally such classification should be by statutory rules or rules framed under the proviso to Article 309. The far reaching implications of such rules is that they purport to affect the seniority of persons who are already members of the service. For promotional post generally the rules regarding merit and ability or seniority-cum-fitness is followed in most services. The seniority of an employee in the later case is material and relevant to further his career prospects which can be affected by factors which can be held to be reasonable and rational. His Lordship of the Hon'ble Supreme Court while delivering the judgement on 25.1.94 referred to Direct Class-II Engineers Association Vs State of Maharashtra 1990 2 SCC 715, State of West Bengal Vs Aghornath Dey 1993(3) SCC 371. It was held that preferential treatment to those who joined armed force during Chinese Aggression in 1962, Indo-Pak War, 1965, Indo-Pak war, 1971 were entitled to the benefit granted to them when they were demobilised from the Short

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Service Commission because they had taken great risks in joining the Armed Forces for the defence of the country and therefore they were given the benefit of 4 to 5 years of service for purposes of their seniority, this can be held to be justified. But His Lordship struck down the preferential treatment given to persons who were discharged from army in normal course and allowed seniority by the Hon'ble Allahabad High Court since seniority can only be assigned for some compelling reasons which is based on reasonableness. While dealing with the case of State of UP & Anr Vs Rajender Singh Malhan in the aforesaid Civil Appeals, His Lordship relied on the decisions of the Hon'ble Supreme Court in the case of Dhan Singh Vs State of Haryana 1991 Supp. 2 SCC 1990, UOI Vs Dr S. Krishnamurthy 1989 (4) SCC 689, Narendra Nath Pandey Vs State of UP 1988 3 SCC p.527. In the aforesaid Civil Appeals J.L.P. was allowed and it was held that those getting adversely affected when there are no reasonable and compelling grounds to assign seniority it was held that Allahabad High Court was not justified in granting benefit of war service to those who were demobilised after 1980 as a result of

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reservation of vacancies made for such officers in 1980 issued by the Government of U.P. in technical and non-technical services. It was further held that those who are adversely affected by such orders have a locus-standi since they are aggrieved parties and they can file a S.L.P. in the Hon'ble Supreme Court or a Review Petition before the High Court because the decision of the High Court upholding the validity of the reservation of 1980 adversely affected them and once the State Civil Services were not impleaded as parties in the Writ Petition filed by Ex-servicemen seeking seniority by taking into consideration the service in Armed Forces and the High Court deciding in favour of Ex-servicemen. It was held that on the facts and circumstances of the case this was not justified and the orders of the High Court were set aside as violative of Article 14 & 16 of the Constitution and all the judgements where the benefit was conferred by the High Court upholding the validity of the reservation of vacancies for officers demobilised later when there were no compelling reasons to confer this

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benefit were set aside by the Hon'ble Supreme

Court and the right of the adversely affected

parties to agitate the matter through a S.L.P.

before the Hon'ble Supreme Court was upheld.

Going through the entire judgements of the Hon'ble

Supreme Court, one comes to the conclusion that

unless there are compelling reasons, one cannot be

allowed to become member of a service from a date

earlier than the date of his actual becoming of a

member of that service, i.e. the date of his

absorption.

20. In the present case, the applicant became a regular member of the service only with effect from 21.6.88. In normal course, he is not entitled to claim the benefit of seniority prior to the date of his absorption. He will be entitled to seniority only from the date of his absorption, i.e. 21.6.88 when he was given the regular pay scale of Rs.1640-2900 admissible to the Sub Inspectors of Delhi Police. The judgement and order in case of Antony Mathew relying on the judgement of K. Madhavan(supra) is not based

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on the full analysis of facts and the norms laid down by the Hon'ble Supreme Court in regard to the determination of seniority of deputationists.

K. Madhavan's judgement is not applicable to the case of the applicant or to that of Antony Mathew.

The case of deputationists on their absorption, will be governed under Rule 17 of Delhi Police (General Conditions of Service) Rules which governs recruitment, promotion and fixation of seniority etc. This does not confer the benefit on the applicant which has been given to Antony Mathew.

Since the judgement in the case of Antony Mathew was on wrong appreciation of facts and also is not in conformity with the various judgements of the Hon'ble Supreme Court cited above, it would be difficult to treat it as a binding precedent.

21. The interim order passed by the Tribunal may be vacated and the respondents should also be directed not to hold a DPC till the gradation list is finalised after determining the inter-se-seniority of the direct recruitees/promotees/officers coming on

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deputation initially and then getting absorbed subsequently.

22. Taking a synoptic view of all the facts and circumstances, the precedents and norms set by the Hon'ble Supreme Court and their application to the instant case under adjudication, the application fails on merit, on the grounds of non-joinder of necessary parties and unexplained delay and laches and is dismissed, leaving the parties to bear their own costs.

23. The ratio of this judgement will hold good in case of OA.No.1415/94 Kharak Singh Sandhu Vs UOI & Ors also.


(B. K. Singh)
Member(A)


(J. P. Sharma)
Member(J)

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