

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A No. 2028/2001
T.A No.

18

Date of Decision 23-10-2001

Smt. Sudeshan Agarwal..Petitioner

Ms. Jagwinder Kaur

..Advocate for the Petitioner(s)

Versus

Director, Police Telecommunication Respondent
& Son.

Shri J.B. Mudgal / Mr. P.P. Bhatia..Advocate for the Respondents
for R-1 & Shri R.N. Pant for R-2

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

Hon'ble Shri Govindan S. Tambe, Member (A)

1. To be referred to the Reporter or not? Yes ✓
2. Whether it needs to be circulated to other Benches of the Tribunal? No

G. GOVINDAN S. TAMBE
M (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2028/2000

New Delhi, this the 23rd day of October, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Smt. Sudershan Aggarwal
Extra Assistant Director (Cipher)
Directorate of Co-ordination Police Wireless
Block No.9 C.G.O. Complex
Lodi Road, New Delhi - 110 003.

...Applicant

(By Ms Jaswinder Kaur, Advocate)
V E R S U S

1. DIRECTOR POLICE TELECOMMUNICATIONS
DIRECTORATE OF CO-ORDINATION
(POLICE WIRELESS)
Block No.9, C.G.O. Complex
Lodi Road, New Delhi - 110 003.

2. Mr. Shri Krishan
Assistant Director (Cipher)
Directorate of Co-ordination Police Wireless
Block No.9, C.G.O. Complex
Lodi Road, New Delhi - 110 003.

...Respondents

(By Advocates Shri J.B.Mudgil with Shri P.P.Ralhan,
for R-1 and Shri K.N.Pant, for R-2).

O R D E R

By Shri Govindan S. Tampi,

Challenge in this OA, is directed against the order dated 24-9-1999, by the respondent, rejecting the applicant's memorial dated 30-10-1995, for correct fixation of her seniority.

2. Heard Ms. Jaswinder Kaur, learned counsel for the applicant, Shri J.B.Mudgil and Shri P.P.Ralhan and Shri K.N.Pant, learned counsel for the respondents No. 1 & 2 respectively. We have also perused the written submissions filed by all the counsel.

3. Facts as brought out in the OA, briefly stated, are that the applicant was selected for the post of Cypher Operator, on the basis of a test and was appointed by the respondent Directorate vide order Part II No.390/69 dated 20-11-69, along with four

others who were also tested along with her. In the said selection list, respondent No.2, who was assessed "Poor" was placed below the applicant. In the appointment order dated 20-11-69 had shown her above Shri SriKrishan, respondent No.2 below her though both were appointed on 11-11-1969. That being the case. Respondent No.2 could not at all have been placed above her at any subsequent stage, as in terms of Govt. of India, Ministry of Home Affairs OM No.9/11/55/RPS dated 12-12-59, inter se seniority of direct recruits was dependent on the order of merit in which they are selected. Still vide memo No. Cy/7/6/76 wireless dated 4-8-75, respondent No.2 was nominated for Grade I Course, in preference to the applicant and was thereafter promoted as Cipher Asstt. after a few months. Respondent No. 2 had been thereafter promoted as EAD (Cipher) and has been considered for promotion as Asstt. Director at the cost and prejudice of the applicant. Hence this OA. According to the applicant, respondent No. 2 had been given undue indulgence and undeserved preference, though his performance at the time of initial appointment was of a lower order and he had been assigned only a lower placement. In view of the above, respondents' action in rejecting the memorial of the applicant and justifying their decision deserved to be interfered with, in the interest of justice, pleads the applicant.

4. Rebutting the above, respondents - Directorate of Co-ordination - Police Wireless point out that five persons, including the applicant and the respondent No.2 were offered the appointment, vide order No. A.18/16/69-Wireless dated 23-10-1969, on

the terms that "you will be appointed on probation for two years against a temporary post of Cipher Operator. You will be required to qualify the Directorate's "Police Basic Cipher Course" and will be taken on the regular temporary strength of this Directorate on completion of probationary period, satisfactorily and passing the course in question". The office order dated 20-11-1969, did not show the inter se seniority of these five individuals though the applicant was shown at Sl.No.3 and the respondent No.2 at Sl.No.4, for reasons not known. However, the Establishment List of DCPW of the year 1970, showed the respondent No.2 and applicant at Sl.No.5 and 7 respectively which was followed in the confirmation list dated 23-5-1977 with their being placed at Sl.No. 91 & 92. For promotion as Cipher Asstt., a Cipher Operator had to pass Grade I Cipher Operator test and complete five years of regular service, which respondent No.2 did on 23-4-76. Therefore, respondent No.2 was approved by DPC which met on 7-5-76, and was promoted on 7-6-76. On the other hand, applicant passed the test and acquired the eligibility on 19-11-1976, was approved by DPC dated 9 to 12/11/76 and was promoted on 7-5-1977. 5. Respondents also question the veracity of the "results" shown in annexure "A" which was an unsigned document, produced by the applicant. Further, the plea by the applicant that she had scored more marks in the test than the respondent No.2 and was accordingly placed above falls to the ground as in the order dated 20-11-1969, the person who is placed at Sl. No.5, below the applicant (Sl.No.3) and respondent No.2 (Sl.No.4) had scored more marks than both of them. Therefore, nothing turns on the

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so-called data sheet. Respondents also point out that the seniority in terms of the Directorate's order was fixed with reference to the date of appointment and if it was the same, to the date of passing the conversion course. Results of the Conversion course declared on 29-5-70/2-6-70 showed both the applicant and the respondents as 'Passed' at Sl.No. 2 and 3. Thus evidently respondent No.2 was senior to the applicant and so shown in the confirmation list of 23-5-77 at Sl.Nos. 91 and 92 respectively. The selection of candidates for the Cipher upgrading Grade I course was done strictly by seniority and though both the applicant and respondent No.2 attempted the 1st entrance test, but the former could not make the grade, as the selection stopped with the sixth candidate while she was at seven (7). The applicant, therefore, had to appear for the same a second time, when she was selected. Obviously thereafter respondent No.2 went ahead to become Cipher Asstt. and Extra Asstt. Director (Cipher) ahead of the applicant, which was absolutely correct and legal. In view of the above, respondents have committed no mistake in rejecting the applicant's memorial 24-9-99 for re-fixation of his seniority.

6. In the separate counter filed on behalf of the respondent No.2, it is claimed that the application, not having been filed within one year from the representation dated 30-10-95, was clearly time barred. Such delay cannot be countenanced in view of a number of decisions like Dhanapal Vs. Union of India on 21-11-94 [Swamy's News 554 (Madras)], Malcom Lawrence C.D'souza Vs. UOI and others (1976 SCC. (L&S) 115). Seniority once settled cannot be

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unsettled after a lapse of three decades and after the parties have got over three promotions. The applicant was seeking the seniority on the basis of an unauthorised document. Interestingly, she had appeared for the post of Cipher Asstt. but not having been found fit she was given the offer of appointment as Cipher Operator and she cannot claim any seniority over respondent No.2. The fact that the individual shown to have got the maximum marks has been placed at Sl.No.5, means that the said "mark sheet (data sheet)" had no relevance at all. Seniority of direct recruits though examination is fixed through the rank. Establishment lists of 1970, 71, 73, 77, 81 & 89 have always shown the respondent No.2 above the applicant which was not objected by the applicant all the years. She cannot, therefore, come up in protest. It is also interesting to note that the applicant was, on the basis of review DPC held on 2-7-1990, placed at Sl.No.9 in the seniority list of Cipher Asstts. with respondent No.2 at Sl.No.1. She had also got two further promotions i.e. as Technical Supdt. (Cy) on 15-11-1990 and as EAD (Cy) on 8-6-1991. On those occasions, she had represented only against seniority accorded to one Ramamurthy not the applicant. Respondent No.2 also avers that at no time, was the applicant placed above him in seniority and the only reason for putting her name in the order dated 20-11-69 appeared to be that she had joined earlier on the same day. The same did not confer any seniority to her, which was dependent on her passing the course and her performance in which she did not gain over respondent No.2. In the first entrance test for Police Cipher upgrading grade I course, she did not

make the grade, but could pass only in the second entrance test and had lost out to the respondent No.2. Except in the order of appointment as Cipher Operator in which both of them were appointed on the same day i.e. 11-11-69, in all promotions thereafter i.e. Cipher Operator Grade I, Cipher Asstt, Technical Supdt. (Cipher), Extra Assistant Director (Cipher), he was ahead of the applicant and therefore the present attempt to gain seniority as Cipher Operator with consequential benefits was improper and irregular.

7. During the oral submissions considerable acrimony was exhibited with opposite counsel trading charges that the parties have produced documents before the Tribunal, which they could not have gained access to in the normal and legal manner. Learned proxy counsel for the official respondents was not in a position to provide ~~at~~ any assistance to us and the hearing was adjourned, directing them to file an additional affidavit bringing out the correct position. They did so on 4-10-2001 and also produced the service books of the applicant and the respondent No.2. All the counsel also filed written submissions which have been taken on record.

8. Oral submissions are general reiteration of the earlier pleadings and written submissions. The main points urged by the learned counsel for the applicant are that her application was not hit by latches as no seniority list was published earlier, the seniority had not been fixed in accordance with the results of the conversion test, her promotion to the grade of Asstt. Director has been delayed, seniority had fixed in the post to which she was first

appointed, the respondents cannot take the plea of non-availability of documents, recruitment rules have not been annexed and that placing her above respondent No.2 would not unsettle any unsettled position. This would set aright the situation. She has relied upon a few decision including those of Shri Vallabh Glass Works ltd & Anr. Vs. UOI & Ors. (1984 (3) SCC 362), UOI & Anr. Vs. Cyanamide India Ltd. & Anr. (1987 (2) SCC 720) to explain the delay, State of Haryana Vs. Bant Rai Gupta & Ors. (1994 (1) SCC 601), to show that seniority is related to the post to which a person is originally appointed. The applicant has not explained, however, as to how she has come in e possession of the personal date sheet with marks, she had produced as Annexure A-2.

9. In their written submissions, respondent No.1 say that they are not aware of the circumstances as to how the respondent No.2 came in possession of the documents. It is pointed out that respondent No.2 had made a request for their supply but the same was not granted. It is stated that both the applicant and respondent No.2 were appointed together, but over the years and postings respondents was clearly and correctly placed above the applicant, which is the settled position in law. Thee position has been explained in the impugned OM No.A-12012/6/95 - Ad II dated 24-9-99, while disposing of the applicant's memorial dated 30-10-95, wherein it was clearly pointed out that the applicant's version about her seniority was not supported by thee "data sheet" produced by herself. The said decision was correct and did not permit of any interference, according to the respondents.

10. In the written submissions filed for the respondent no.2 it is submitted that the applicant was raking up issues settled 30 years ago. The applicant had relied upon some documents the reliability of which is suspect. On the other hand, the documents produced by the respondents are unclassified records available in the Office and permissible for senior officers like Respondent No.2 for perusal. The same, therefore, produced before the Tribunal. In fact the respondent No. 2 had also sought permission of the organisation from Respondent No. 1 for producing the same before the Tribunal. The so called "personal data sheet" produced by the applicant at Annexure A-II had no relation whatsoever with the seniority fixed or the placement of individual in Annexure III has no bearing on the seniority position. It is clear from the appointment letter that both the applicant and respondent No. 2 were to be put on probation for 2 years and they were required to pass Police Basic Cipher Course (PBCC) and only on passing the same they were to be adjusted on regular temporary strength. After passing the same the order was issued showing respondent No. 2 at Sr. No. 2 and applicant at Sr No. 3. Thereafter the respondent No. 2 had passed the Police Cipher upgrading Grade I course on 22.4.76 while the applicant did so only on 19.11.76. The seniority list issued thereafter for a number of years also so show Respondent No. 2 above the applicant and the promotions also had been made from the post of Cipher Operator to that of Extra ^{Asst} ~~Assistant~~ ₂ Director (Cy) through the stages of Cipher Asstt. and Technical Supdt in all of which respondents had been placed above the applicant and the promotions. In the

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circumstances it was just not possible to accept the view canvassed by the applicant that she was all along the senior to the respondent No.2 and she should get the benefit of re-fixation of seniority .

11. We have carefully considered the matter and perused the papers produced before us. Preliminary objection raised in this case is that the application is hit by limitation. The applicant says it is not so. Both sides have relied upon various judgements in support of their case. But on facts the applicant succeed as the OA is filed against the impugned order dated 24-9-99 rejecting the applicant's memorial dated 30-10-1995. It, therefore, is well within limitation.

12. Undisputed facts in this case are that both the applicant and respondent No. 2 were recruited as Cipher Operators on 11.11.69 and orders were issued on 20.11.69 indicating the applicant at Sl.No. 3 and respondent No.2 at Sl. No. 4. The applicant has relied upon this letter to show that she was above the respondent No. 4 and also has produced as Annexure A-II the 'Personal Data Sheet' which shows that she had scored more marks than the respondent No. 2 in the test. Veracity of this statement is suspect and the applicant has not established the same. Nor has the applicant proved as to how she had got hold of the relevant document and verified the same. On the other hand, the letter No.A-18/16/69-Wireless dated 23.10.69 issued by the respondent to both the applicant and the respondents No. 2 very clearly reads as below:

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"You will be appointed on probation for 2 years against a temporary post of Cipher Operator. You will be required to qualify the Directorate Police Basic Cipher Course and will be taken on regular strength of this Dte. on completion of Probation period satisfactorily and passing the course in question."

(28)

The seniority having been fixed accordingly has to stand the test of law. The respondents have also indicated that the order in which the name of the individuals appeared in the letter of 20.11.69 had no relativity to the respective rank they obtained on the selection. This is evident from the fact that the person who had obtained the maximum marks as per the "unauthenticated data sheet" was placed at Sl.No. 5. Obviously, therefore, this letter cannot be relied upon and even if taken into account, it cannot relate to seniority /placement of individuals on merit. Fixation of seniority was possible on completion of the successful completion of the probation and passing the test, from which stage onwards it is found that respondent No. 2 has always been placed above the applicant. Further the establishment list/seniority lists issued over the years - 1971, 73, 77, 81 & 89 have shown the respondent no. 2 as always senior to the applicant. The version put forth by the individual that the seniority lists were not made available to the applicant cannot be accepted as these are public documents duly circulated among the staff. It is also worth noting that in the letter dated 19.5.1977 appointing both the applicant and respondent no. 2 as Substantive Cipher Operator had showed respondent 2 at Srl No. 91 and applicant at Sl. no. 92. Further in Police Upgrading Grade I course, respondents No.2 was declared as passed on 23.4.76 while the applicant did so only on 19.1.76. Naturally

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therefore there is no case for the applicant to plead that she should have been placed above the respondent No. 2. Details of the series of promotions earned by the applicant and respondent No.2 shown below also show that respondent was always ahead of applicant.

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<u>Date of appointments</u>	<u>Applicant</u>	<u>Respondent No.2</u>
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(i) Cipher Operator	11-11-69	11-11-69
(ii) Cipher Assistant	07.05.77	07-06-76
(iii) Technical Supdt(CY)	15.11.90	13-5-85
(iv) Extra Asstt.		
Director(CY)	08.06.91	18-8-88
(v) Assistant Director(CY)	Not yet	06-06-96

It is the above settled position in law, which the applicant seeks to unsettle, which cannot be countenanced in law.

13. This means that except on the date of appointment i.e. 11.11.69 and respondent No.2 had always been ahead of applicant to the promotion as Cipher Assistant, Tech. Supdt (CY) and Extra Asstt. Director (CY). It is also seen that the applicant is yet to be promoted as Asstt. Director (CY) a post which the respondent is holding from 6.6.96. This has been on account of the respondent No. 2 acquiring the necessary qualification earlier and also on the findings of the DPC. It is also pertinent to find out that on the basis of the review DPC held on 02.07.1990 the applicant and the respondent No. 2 were posted substantively in the grade of Cipher Asstt. from 27.1.80 with respondent No. 2 at Sl.No. 1 and the

applicant at Sl. No. 9. Interestingly the applicant had not challenged this at any time earlier. However, it is noticed that at some stage in their career, the applicant was given the higher pay than the respondent No.2. This was rectified by stepping up of the pay of the respondent on 19-7-78 at par with that of his junior Smt. Sudershan Aggarwal. This being the case. We have to conclude that the steps taken by the respondents cannot be assailed. The impugned order dated 24 .9.99 very clearly illustrates the position as below:

"b) As per the available records, it has been observed that the then Director, DCPW had pointed out that the seniority of the newly recruited Cipher Operators should be fixed (a) as per the date of appointment OR (b) seniority of passing out of Police Basic Cipher Course (New entrants) examination of which the result was declared vide Office Order dated 2.6.70 wherein she was declared "Pass" and placed at S. No. 3 below Shri Srikrishan at S No. 2. The establishment list of DCPW published above. Ms. Sudershan Gupta (now Aggarwal) at S. No.7. The confirmation order dated 23.5.77 for the Cipher Operator grade also showed the name of Shri Sri Krishan at S. No. 91 above Ms. Sudershan Gupta (now Aggarwal) at S. No. 92."

There is no reason for assailing the correctness of this order. Disturbing such an arrangement would be incorrect in principle and wrong on facts.

14. Both the counsel have referred to a number of judicial pronouncements, which we have carefully perused. However, on facts, the said cases are distinguishable from the OA under adjudication. Hence, we are not referring to them specifically.

15. In the above view of the matter, we hold that the applicant has not made out any case for our interference. The OA, therefore, fails and is accordingly dismissed

16. Before parting with this order, we would

like to point out that the applicant and the respondent No. 2 had been dragged to the Tribunal primarily because of the inefficiency of the respondents organisation, by not maintaining the records properly and also not keeping the staff concerned informed about the decisions being taken from time to time. The respondent may have acted legally but have dealt with the staff in a clumsy manner on the basis of which this avoidable litigation has cropped up. Therefore, while upholding order of the respondents, we have to direct that they have to pay a Rs. 1,000/- (Rs. one thousand only) each to the applicant and respondent No.2.

(Govindan S. Tampi)
Member (A)

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Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)