

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2276/2000

Tuesday, this the 7th day of August, 2001

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (Admn)

Head Constable/M.T. (Welder) Mulak Raj No.779/L
S/O Shri Desh Raj, aged 36 years,
Presently posted in Provisioning & Lines,
Delhi, R/O D-104, New Police Lines,
Kingsway Camp, Delhi.

..Applicant

(By Advocates: Shri Sachin Chauhan & Shri Rajeev Kumar)

Versus

1. Union of India
Through its Secretary
Ministry of Home Affairs
North Block, New Delhi.
2. Dy. Commissioner of Police
Provisioning & Lines,
Raj Pur Road, Delhi.
3. Head Constable, M.T. Janak Raj,
No. 158/L, S/O Shri Bihari Lal,
aged 34 years, R/O D-131, New Police Lines
Kingsway Camp,
Presently posted in Provisioning & Lines,
Delhi.

..Respondents

(By Advocate: Shri Anil Kumar Chopra)

O R D E R (ORAL)

By Hon'ble Shri S.A.T. Rizvi, M (A):-

The applicant in this case who is a Constable (Helper), M.T. in Delhi Police is aggrieved by incorrect fixation of his seniority in the rank of Head Constable, M.T. (Welder), vis-a-vis, Shri Janak Raj, HC M.T., the respondent No.3 in this OA. Hence the present OA.

2. We have heard the learned counsel on either side and have perused the material placed on record.

3. Briefly stated the facts of this case not in dispute are that the applicant was appointed as Constable

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in Delhi Police on 3.8.1987 and was later selected as Head Constable M.T. (Helper) on 25.1.1989. The private respondent No.3 (Shri Janak Raj) was appointed as Constable on 24.8.1987 and later selected as Head Constable M.T. (Helper) w.e.f. 2.2.1989. Following the familiar confirmation rule, the applicant was confirmed as Head Constable M.T. (Welder) w.e.f. 25.1.1991 whereas the private respondent No.3 was so confirmed w.e.f. 2.2.1991. Both the applicant as well as the private respondent No.3 were promoted as Head Constable on the basis of a test in which the private respondent No.3 was found to be more meritorious in terms of marks gained than the applicant herein. The respondents, wanting to recognize merit, proceeded to ^{& bring} ~~fix~~ down the date of confirmation of the applicant from 25.1.1991 to 2.2.1991 on par with the private respondent No.3. This was done with a view to enabling the respondents to refix seniority on the basis of merit. This is what they did by issuing Corrigendum dated 10.1.1997 (Annexure A-4) *which accords seniority of the respondent no.3.*

4. Aggrieved by the aforesaid Corrigendum, the applicant approached the Tribunal through OA-1671/1997 which was decided by the Tribunal on 1.6.2000 by quashing and setting aside the aforesaid Corrigendum. At the same time, the respondents were directed to issue notice to the applicant before an order was passed altering the date of his confirmation. Meanwhile, the Tribunal also restored the seniority of the applicant.

5. In compliance of the aforesaid order of this Tribunal, the respondents have issued a show cause notice

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to the applicant on 26.7.2000 and based on the applicant's reply thereto have passed orders dated 16.10.2000 reiterating the decision conveyed by means of the aforesaid Corrigendum.

6. The learned counsel appearing in support of the OA places reliance on Rule 22 of Delhi Police (Appointment & Recruitment) Rules, 1980 which provides as under:-

"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 finally settled by confirmation..."

7. The aforesaid rule, in our view, clearly lays down that seniority ^{& inter se} of promotee officers is in any case to be computed from the date of confirmation. The applicant as well as the private respondent No.3 have been confirmed in a proper manner by following the prescribed procedure on 25.1.1991 and 2.2.1991 respectively. That being so, it is not open to the respondents to alter the aforesaid dates for whatever purpose.

8. The learned counsel appearing in support of the respondents places reliance on the circular issued by the respondent-authority on 27.7.1992 in order to show to us that in cases, such as the present, the respondent-authority has the power to alter the date of confirmation in order to ensure that ^{the} ~~the~~ merit prevails. In support of his contention, the learned counsel has drawn our attention to the following provisions made in the aforesaid circular:-

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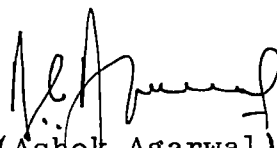
"5. Keeping in view the above complications, the matter has been re-examined at this Hdqrs. It has been decided that we should consider one date for confirmation of HCs (Min.) by fixing a date of last joining candidate within one year who were selected in one recruitment batch, and confirm them from the date when last candidate joined the post. In this way, the inter-se-seniority fixed on the basis of merit will not be disturbed."

9. On consideration, we find that though the aforesaid circular does empower the respondents to alter the date of confirmation in the manner argued by the learned counsel, the same cannot be applied in the present case inasmuch as any such circular can be applied only prospectively. The applicant as well as the private respondent No.3 were confirmed respectively on 25.1.1991 and 2.2.1991, i.e., prior to the date of issuance of the aforesaid circular. In their cases, therefore, the aforesaid policy circular of 27.7.1992 will not apply.

10. In the facts and circumstances of this case, we find merit in the arguments advanced by the learned counsel for the applicant on the basis of Rule 22 of the Delhi Police (Appointment & Recruitment) Rules, 1980. The impugned order dated 16.10.2000 is, therefore, quashed and set aside. The date of confirmation of the applicant is accordingly restored to 25.1.1991. Following the aforesaid Rule 22, the applicant will thus be treated as senior to the private respondent No.3.

11. The present OA is disposed of in the aforestated terms. There shall be no order as to costs.


(S.A.T. Rizvi)
Member (A)


(Ashok Agarwal)
Chairman

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