

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 850/89

New Delhi this the 7th day of April, 1994.

Shri Justice V.S. Malimath, Chairman.

Shri P.T. Thiruvengadam, Member(A).

Amin Singh Tyagi,
S/o Shri Chuni Lal Tyagi,
R/o H-52, Man Sarover Garden,
G.T. Road, Shahdra,
Delhi.Petitioner.

By Advocate Shri Shyam Babu.

Versus

1. Chief Secretary,
Delhi Administration,
5, Shyam Nath Marg,
Delhi.
2. Commissioner of Police, Delhi,
Police Headquarters, IP Estate,
New Delhi. ...Respondents.

By Advocate Ms. Ashoka Jain.

ORDER(ORAL)

Shri Justice V.S. Malimath.

The petitioner, Shri Amin Singh Tyagi, was appointed temporarily as Sub-Inspector in the Delhi Police on 18.10.1969. By order dated 27.9.1975, he was confirmed in that post w.e.f. 29.8.1975. A seniority list of the Sub-Inspectors was prepared as per Annexure 'D' dated 11.12.1984. The petitioner's name was shown at serial No. 651. The names were, however, arranged in the seniority list according to the dates of confirmation. The petitioner had approached this Tribunal in O.A. No. 290/88 in which he had sought the following reliefs:

"(a) declare that the applicant is confirmed as Sub Inspector with effect from 22.5.1974 the date when his juniors were so confirmed as such;

(b) direct the respondent to consider the case of the applicant for next higher rank of Inspector/Assistant Commissioner of Police as if the applicant was confirmed as Sub Inspector with effect from 22.5.1974 and appoint him to the next higher rank granting all consequential reliefs/benefits including seniority and promotion;

(c) direct the respondent to take necessary corrections/amendments in the seniority list in view of the reliefs mentioned in the prayer (b);

(d) award cost of the application against the respondent in favour of the applicant".

That application came to be disposed of on 8.8.1988. The concluding portion of the judgement reads as follows:

"Following our judgements in R.N. Singhal Vs. Union of India, V.K. Mehra Vs. The Secretary, Ministry of Information & Broadcasting and Satyabir Singh Vs. Union of India, we hold that this application in respect of reliefs claimed at (a) and (b) is barred by time and accordingly dismiss the same. So far as relief at (c) is concerned, that will be considered if the applicant files a separate application and all questions arising therein will be considered on their own merits. This application is disposed of accordingly".

Thereafter, the petitioner filed representation on 1.11.1988 in which he has taken several grounds and sought correction of his ranking in the seniority list of Sub-Inspectors. That

representation of his was rejected by Annexure 'J' dated 29.11.1988 saying that the earlier order rejecting his earlier representation made on 2.11.1987 is self explanatory. A similar request made by the petitioner was rejected in the year 1987 on the ground that his claim is highly belated, it having been made after 12 years. It is in this background that the petitioner has come forward with the present application in which he has prayed for the following reliefs:

- "(a) call for the records of the case and direct the respondent to take into account the officiating/ad hoc service rendered by the applicant from 18.10.1969 till 28.8.1975 for the purpose of seniority;
- (b) quash/set aside order dated 29.11.88 (Annexure J) and direct the respondent to make necessary corrections/amendment in the seniority list (Annexure D) in view of prayer (a) and fix the seniority of the applicant in the said list;
- (c) direct the respondent to promote the applicant to the next higher ranks taking into consideration the relief claim in prayer (a) of the application;
- (d) declare Rule 12.2(3) of the Punjab Police Rules and Rule 22 of the Delhi Police (Amendment and Recruitment) Rules, 1980 as arbitrary and ultra vires;
- (e) grant all consequential benefits/reliefs whether mandatory or otherwise in view of prayer (a) to (d);
- (f) award cost of the application against the respondent and in favour of the respondent".

2. The principal contention of Shri Shyam Babu, learned counsel for the petitioner, is that Rule 12.2(3) of the Punjab Police Rules (hereinafter referred to as 'the Rules') which prescribes that the seniority in the cadre of Sub-Inspectors is regulated by the date of confirmation, is arbitrary, void and violative of Articles 14 and 16 of the Constitution. If the said Rule is void, he maintains that the seniority of the petitioner should be redetermined on the basis of the date of his appointment as a temporary Sub-Inspector. He points out that several ^{who} persons/were appointed as temporary Sub-Inspectors later than him having been confirmed earlier than the petitioner have been able to march over him in the seniority list. He invited our attention to the fact that those who are at serial nos. 403 to 411 in the seniority list (Annexure 'D') who joined as temporary Sub-Inspectors on 6.4.1970 later than the petitioner have been placed above him because they were confirmed on earlier dates such as 22.5.1974. There is no doubt that the seniority list has been prepared strictly in accordance with the dates of confirmation. It was urged by Shri Shyam Babu, learned counsel for the petitioner, that the Tribunal having given liberty to file a representation in ~~the~~ regard to the seniority list, he having given a detailed representation, the same has been arbitrarily rejected without proper examination of the same on merits.

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It has already been pointed out that the representation of the petitioner was rejected on the ground that his representation is highly belated. It would not be right to accept the submission of Shri Shyam Babu that the Tribunal in the earlier case permitted the petitioner to file a representation to the authorities in regard to the ranking in the seniority list. We have extracted the order of the Tribunal which says that so far as relief (c) is concerned, that will be considered if the applicant files a separate application and all questions arising therein will be considered on their own merits. It does not give liberty to the petitioner to file fresh representation to the authorities and to approach the Tribunal for relief in case he gets no relief on consideration of the representation filed by him. Shri Shyam Babu, however, wants us to understand his submission that he never said that the Tribunal had given liberty to the petitioner to file a representation, but ^{he said that} / it is the petitioner who had himself filed a representation before approaching the Tribunal. The question for consideration is as to whether the representation of the petitioner was rightly considered or not rightly considered or disposed of without application of mind. We should first determine the precise scope available for the petitioner to agitate his rights in the present application.

The two reliefs (a) and (b) claimed by the petitioner have been specifically rejected in the earlier case. Those reliefs are for altering the date of confirmation of the petitioner. That request having been rejected by the Tribunal, we cannot examine the claim of the petitioner for an earlier date of confirmation. Hence, we proceed on the basis that the date of confirmation is not liable for being questioned in these proceedings. So far as the validity of Rule 12.2(3) of the Rules is concerned, it was pointed out that the very same prayer was made in the earlier application as prayer (d). That prayer has not been granted in the earlier application, O.A. No. 290/88 filed by the petitioner. Shri Shyam Babu is right in pointing out that there is nothing to indicate that the prayer was considered or rejected either. But then it is settled law that when the parties ask for a particular relief and the court is silent and it does not grant the same, the said relief shall be deemed to have been rejected. As a specific relief challenging the vires of Rule 12.2.(3) of the Rules was asked in the earlier case, the question of giving liberty to the petitioner to agitate the matter in the fresh application would not arise. The Tribunal would have certainly gone into that question as there was ^a/specific prayer in that behalf. There is obviously good reason for the Tribunal not granting the relief to the petitioner in this behalf. Similar relief

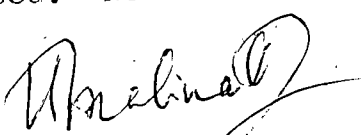
was claimed in O.A. No.1046/88 filed by one Shri Mohan Lal. That application was disposed of on 17.11.1989. The Tribunal was called upon to strike down Rule 12.2(3) of the Punjab Rules. But in paragraph 15 of the judgement in that case the Tribunal specifically said that they do not propose to strike down the Rule but would commend to the authorities concerned to revise the rules in conformity with the latest instructions issued by the Department of Personnel in regard to confirmation. It is no doubt true that this is preceded by a sentence in paragraph 15 that in the light of the foregoing, we are unable to uphold the validity of Rule 12.2(3) of the Punjab Police Rules or the corresponding rules made under the Delhi Police Act, 1978. But then what is clear is that though the petitioner in that case had specifically prayed like the petitioner in this case for striking down Rule 12.2(3) of the Rules as being ultra vires offending Articles 14 and 16 of the Constitution, that prayer was specifically declined. It is precisely for this reason that the Tribunal obviously did not in express terms say anything in regard to the prayer (d) of the petitioner regarding striking down Rule 12.2(3) of the Rules in his earlier application, O.A. No.290/88. We must, therefore, proceed on the basis that so far as the validity of Rule 12.2(3) of the Rules is concerned, the petitioner having unsuccessfully assailed the same in O.A. No.290/88,

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he cannot be permitted to assail the same once again in these proceedings. But then there is liberty reserved undoubtedly to the petitioner so far as relief (c) is concerned to file a separate application. Relief (c), as already stated, is for suitably correcting the seniority list in view of the reliefs claimed by the petitioner in prayer (b) of the application. Prayer (b), as already stated, was considered and rejected by the Tribunal. Hence, there is hardly anything which can be examined in this application. But then the liberty having been reserved in favour of the petitioner, we should understand the said liberty as having relevance to claiming correction of the seniority list, in the context, on the grounds other than those which have been rejected by the Tribunal in its judgement. As already stated, The Tribunal rejected the claim of the petitioner for alteration of his date of confirmation. So far as the validity of Rule 12.2(3) of the Rules is concerned, we have already held that the petitioner cannot be permitted to assail the same once again in these proceedings. Excluding these two grounds, if there is any other ground, the petitioner ~~seniorityxxxxxxx~~ ~~xxxxchallengedxxxxxxx~~ was entitled to avail of the opportunity and file a fresh application. Hence, it follows that in the present application, we cannot go into the question of correctness ^{nor} of the date of confirmation /we can go into the question of vires of Rule 12.2(3) of the Rules. ^{other} If there is any /error committed in assigning ranking to the petitioner in the seniority list, it is open to the petitioner in view of the liberty having been reserved, to file

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a fresh application before the Tribunal. But then the learned counsel for the petitioner has no other ground to advance other than the vires of the Rules. Hence, it is obvious that there is no scope for examination of the claims of the petitioner he having been concluded by an earlier judgement of the Tribunal. On this short ground, this application fails and is accordingly dismissed. No costs.

P. J. 25
(P.T. Thiruvengadam)
Member(A)


(V.S. Malimath)
Chairman

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