

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA/940/89

Date of decision: 20.10.1989.

Shri P.P. Bhatnagar

....Applicant

Vs.

Delhi Administration & Others

....Respondents

For the Applicant

.... Shri R.N. Saxena,
Counsel

For the Respondents

.... Shri M.M. Sudan,
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. P.C. JAIN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporters or not? No

(The judgment of the Bench delivered by
Hon'ble Mr. P.K. Kartha, Vice Chairman(J))

The applicant, who is working as Superintendent Grade I in the Delhi Administration filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying that his seniority in the respective grades (Grade III, II and I) of the Delhi Administration Subordinate Service (hereinafter referred to as the Service) should be "refixed correctly" and that he be given the benefit of notional promotion vis-a-vis notional pay fixation by stepping up his pay with reference to the pay of his "juniors" in the respective grades. The pleadings in this case are complete.

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The application came up for admission on 3.10.1989 when we heard the learned counsel of both parties. We have also gone through the records of the case. We feel that the application can be disposed of at the admission stage itself.

2. The service was formed in 1967. Previously each department under the Delhi Administration had maintained separate seniority list of officers holding various posts. The applicant was initially appointed as Block Level Extension Officer on 24.9.1964. He was inducted into the Service under the Delhi Administration Subordinate Service Rules, 1967 (hereinafter referred to as the Rules). As Block Level Extension Officer, he was having the pay scale of Rs.168-300. Officers in the said pay scale as well as officers in the pay scale of Rs.130-300 were inducted in Grade III of the Service under the Rules. The grievance of the applicant is that while doing so, the respondents violated the Rules and made several officers junior to him (i.e. having lower pay scale) his seniors. Induction of officers including the applicant in Grade III took place in 1968. The seniority list of Grade III officers was notified in 1985.

3. The applicant was appointed in Grade II of the Service in 1969 on the basis of the recommendation made by the Departmental Promotion Committee. A seniority list of officers in Grade II was notified on 2.1.1987. Thereafter, on the basis of the recommendation of the Departmental Promotion Committee, the applicant was promoted to Grade I on 22.6.87^Q of the Service. A seniority list of Grade I officers was

issued on 9.1.1987.

4. The case of the applicant is that had his seniority been correctly fixed in Grade III when he was inducted into the Service, he would have gained in seniority not only in that grade but also in Grades II and I.

5. The case of the respondents is that the seniority of the applicant in Grades III, II and I has been fixed correctly and in accordance with the Rules. They have also argued that the application is barred by limitation.

6. It is seen that the respondents fixed the seniority of the officers in Grade III of the Service on the basis of their initial appointment to the post held by them, regardless of their scales of pay. Grade III of the Service was formed by amalgamating various categories of posts, some of which carried the pay scale of Rs.160-300 while some others carried the pay scale of Rs.130-300. Rule 5 of the Rules provides inter alia that the Appointing Authority may, at the commencement of these Rules, appoint to the Service any person, who at such commencement or at the time of temporary addition of posts, holds any of the posts specified in Schedule II or temporary posts so added, in a regular manner in accordance with the method of recruitment prior to the Constitution of the Service, subject to the availability of duty posts in the Grade, on the recommendations of the Selection Board so constituted under Rule 11 for appointment to the Service. The Chief Secretary may not, however, consult the Selection Board in

regard to absorption of persons in Grade II, III and IV (non-Gazetted). The persons not appointed in the Service shall continue to work in the posts held by them in a regular manner and corresponding number of duty posts shall be excluded from the cadre. Such persons shall be periodically considered for absorption in the Service. Sub-Rule(2) of Rule 5 reads as under:-

"(2) The seniority shall be determined with reference to the date of regular appointment (appointment made in a regular manner in accordance with the method of recruitment prior to the Constitution of the Service) to the post, concerned.

Provided that the existing inter-se seniority of the person _____ to be determined under the Delhi State Service (Seniority) Rules, 1954 or Delhi Administration (Seniority) Rules, 1965 in different scales of pay in different offices shall not be disturbed.

Provided further that the holder of posts to which promotion is made from lower posts shall be en block senior to the incumbents of the latter posts if they are also appointed.

Where the strict application of these principles results in hardship, the Chief Secretary may, assign seniority in such manner as may be considered necessary by him".

(vide pages 86-87 of the Paper Book)

7. The contention of the applicant is that in the instant case, the second proviso to Rule 5(2) would be applicable as promotions to the higher pay scale of Rs.160-300 is made from the lower pay scale of Rs.130-300. The respondents have refuted this contention. According to them, when forming a new cadre by amalgamating different posts, more or less with identical pay scale, there can be some anomaly but it cannot be construed that one post is a feeder grade for promotion to the other post though there may be slight variation in the initial starting scale of pay. The maximum of pay of the different posts

that were amalgamated were the same. After amalgamation, the seniority list was prepared on the basis of the said criterion and the date of initial appointment was taken as the relevant criterion.

8. The question arises whether there is anything illegal or unreasonable in the fixation of seniority by the respondents as indicated above. It is now well settled, as a result of the decision of the Supreme Court in *Kishori Mohanlal Bakshi Vs. Union of India*, AIR 1962 SC 1139 that Articles 14 and 16 of the Constitution do not forbid the creation of different cadres for Government service. These Articles do not also stand in the way of the State integrating different cadres into one cadre. It is entirely a matter for the State to decide whether to have several different cadres or one integrated cadre. This is a matter of policy which does not attract the applicability of the equality clause. It is not competent for the Court to strike down a Rule providing for integration of cadres on the ground that in its opinion another Rule would have been better or more appropriate. The only inquiry which the Court can make is whether the Rule laid down by the State is arbitrary and irrational so that it results in inequality of opportunity amongst employees belonging to the same class (vide *Reserve Bank of India Vs. N.C. Paliwal*, 1977 SCC (L&S) 82 at 96; and *V.T. Khandoze and Others Vs. Reserve Bank of India and Others*, 1982 SCC (L&S) 147 at 167).

9. In view of the aforesaid judicial pronouncements, we are of the opinion that there was nothing arbitrary or irrational in the fixation of seniority in Grade III of

the Service in the instant case.

10. The applicant has referred to some instances in which on the aforesaid basis his alleged juniors have been shown as senior to him in the seniority list in Grade III of the Service. All of them were inducted into the Service long ago. None of them has been impleaded as respondents in the present application.

11. The Supreme Court has held that a Government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity. Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the Government servants ^{created} ~~by the writ~~ petitions filed after several years. It is essential that ^{who a} any one ~~/~~ feels aggrieved by the seniority assigned to him should approach the Court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the Government servants, there would also be administrative complications and difficulties (vide K.R. Mudgal & Others Vs. R.P. Singh & Others, 1986 (2) SCALE 561, and Yashbir Singh & Others Vs. Union of India & Others, 1987(2) SCALE 371).

12. The applicant is seeking to challenge the seniority of officers in Grade III of the Service fixed by the respondents

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years ago and the present application cannot succeed on that ground alone.

12. In the facts and circumstances of the case, we do not see any merit in the present application and the same is dismissed at the admission stage itself. The parties will bear their own costs.

(Enc-21/10/89)
(P.C. JAIN)
ADMINISTRATIVE MEMBER

Enc-20/10/89
(P.K. KARTHA)
VICE CHAIRMAN(J)