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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 961/89

New Delhi, this the 16th day of March, 1994.

SHRI J.P.SHARMA, MEMBER(J).

SHRI B.K. SINGH, MEMBER(A).

Girish Kumar,
S/o Late Shri Jagdish Lal,
R/o IX/223, Main Road, Gandhi Nagar,
Delhi-110031,
working as A.S.I. (Stenographer),
in the office of the Dy. Commissioner of Police,
Special Cell (PHQ) & Crime Prevention, Delhi.
...Applicant
(Through advocate Shri Shyam Babu)

VERSUS

1. Delhi Administration, Delhi through its
Chief Secretary, 5, Sham Nath Marg, Delhi.
2. The Commissioner of Police, Delhi, Police HQRS.,
I.P. Estate, New Delhi.
3. The Dy. Commissioner of Police,
Spl. Cell (PHQ), & Crime Prevention,
R.K.Puram, New Delhi.
4. The Dy. Commissioner of Police,
Police Headquarters (I),
I.P.Estate, New Delhi. ...Respondents
(Through advocate Mrs. Avnish Ahlawat)

O R D E R (ORAL)

SHRI J.P.SHARMA:

The applicant was initially recruited in
1978 as Head Constable (Ministerial) in Delhi Police.
He was given an ad hoc appointment/promotion w.e.f.
13-10-80 by an order dated 22-10-1980. The applicant
was initially appointed for a period of three months

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but that period continued till 7-4-82. He was reverted to the substantive post of Head Constable notionally but again promoted w.e.f. 5-5-82 initially for a period of three months and he continued till 30-1-83. Then, he was given a break and again appointed from 1-2-83 on regular basis. He was also confirmed in his appointment from 1-2-85. The grievance of the applicant is that though he has worked on the post of Stenographer ASI (Ministerial) from October, 1980 but the services he has rendered on ad hoc basis has not ^{been} counted for seniority inspite of the repeated representations made to the respondents from time to time even citing the case of one Sharvan Kumar who was also appointed in August, 1980 but was allowed to pass the typing test subsequently in a period of three months having earlier failed in the same. When the respondents did not pay any heed to his request, he filed the present application in May, 1989, praying for the grant of the reliefs that the respondents be directed to count the ad hoc service on the post of Stenographer from October, 1980 after quashing the order of 28-2-89 annexed to the application and he should also be given consequential benefits.

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2. A notice was issued to the respondents who contested the application and took the stand that when the applicant was initially tested for typing and shorthand in August, 1980, he could not qualify as he could not gather the minimum prescribed limit of 40/100 words per minute. However, the applicant due to paucity of posts continued as a stop-gap arrangement. Again, a test was held in February, 1982 and in that too, he could not qualify as a result of which, he was reverted w.e.f. 08-4-82. Again, he was appointed as a stop-gap arrangement on ad hoc basis on a vacant post in May, 1982. The applicant ultimately cleared the stenography test in October, 1982 and thereafter he was regularly appointed on regular basis w.e.f. 1-2-83. The applicant, therefore, has no claim to count the ad hoc service which he rendered purely on temporary/stop-gap arrangement basis on the post of Stenographer ASI (Ministerial).

3. On merits also, it is contended that the applicant has no case.

4. The applicant has also filed the rejoinder reiterating almost the same facts he has alleged in the application.

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5. We have heard the learned counsel for the parties at length and perused the records. The counting of officiating service by an incumbent to a post has been clearly laid down in the recent Constitution Bench decision of the DIRECT RECRUITS CLASS II ENGINEERS ASSOCIATION Vs. STATE OF MAHARASHTRA reported in 1990(2) SLJ Page 40. While concluding the judgment, the Hon'ble Supreme Court in para 43 in clause (a) observed that if initial appointment is not according to rules, the service rendered on officiating basis shall not be counted for seniority. The same view has been held by the Hon'ble Supreme Court in a latter decision of ^M S.A.HAQUE Vs. UNION OF INDIA reported in 1993 VOL.III SLJ Page ⁶⁴ ~~111~~. In that case, the issue was of the regularisation of doctors who were appointed on ad hoc basis and the Hon'ble Supreme Court in the decision in the case of DR. A.K.SEN Vs. UNION OF INDIA decided in 1987 directed the respondents to regularise the services of such doctors who have been working on ad hoc basis for a period of more than two and half years on the basis of their record of service and that those who have rendered less than one year, they should be cleared through U.P.S.C. in the selection, according to rules. Certain doctors approached the Hon'ble Supreme Court

that if such doctors are regularised from the date of their initial appointment, then those who have come through selection procedure, according to the reules, will become junior. The Hon'ble Supreme Court, therefore, laid down that those who have come according to the rules shall be senior to those who have come through modified procedure either relaxed by the respondents or on the direction in a judgment by a court. This position of law is not disputed by the learned counsel for the applicant. The only grievance of the applicant highlighted before us is that since Sharvan Kumar appointed in August, 1980 also like the applicant could not clear the minimum eligible typing and shorthand limit prescribed and was allowed for 3 months but he was appointed on a regular basis while the applicant was only appointed as a stop-gap arrangement, though vacancy was available. If the rules were relaxed in the case of Sharvan Kumar, then the rules should have also been relaxed in the case of the applicant. However, no ^{parallel} ~~panel~~ can be drawn in the case of the applicant and that of Shri Sharvan Kumar. Shri Sharvan Kumar was given regular appointment in August, 1980 and if the applicant was discriminated at that time, then he should have sought the grievance departmentally and thereafter, if dissatisfied, by

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judicial review. The applicant also in this application did not seek the redress of that grievance and only prayed for tagging of ad hoc service to be counted for the purpose of seniority.

6. The appointment letter of the applicant also goes to show that he was appointed purely on ad hoc basis and this ad hoc service is not to be counted either for purposes of regularisation or for counting seniority. No further appointment letter was issued and the period of ad hoc service was continued from time to time and also it came to stand still when the applicant failed in the test in April, 1982 and was reverted thereafter only to be appointed in May, 1982. In view of this, though the break, according to the applicant, is of only technical nature, but the facts go to show that he has been reverted after because he failed in getting cleared in the prescribed limit of shorthand and typing. The applicant has also not assailed that reversion at the relevant time. The applicant was again appointed on ad hoc basis for a period of 3 months in May, 82, and that period continued till January, 1993. In the meantime, the applicant cleared in October, 1982 the typing and shorthand test. In view of this, his date of


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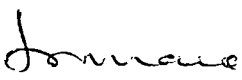
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regularisation cannot be said to be unfair or has been fixed arbitrarily by the respondents.

7. The learned counsel has also argued that the applicant be given liberty to make another representation to the respondents for relaxation of rules in his case. However, we do not visualise any substance in this contention. Seniority is a matter where other persons are affected and they are not before us. Since 1983 till 1994, persons could have been appointed and must have got their berth in the seniority. It will be unsettling the settled matter after such a long time. So, this request of making further representation on the same cause of action has no force and logically also it cannot be accepted.

8. In view of the above facts and circumstances, the application is devoid of merit and dismissed, leaving the parties to bear their own costs.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

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