

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Regn. No. OA-1677/88

Date of Decision 11-11-1988

Shri Bal Krishan

... Applicant.

Versus

Delhi Administration and
Anr.

... Respondents.

For the applicant

... Shri J.P. Verghese,
Advocate.

For the respondents

... Mrs. Avinash Ahlawat,
Advocate.

CORAM: Hon'ble Shri P.K. Kartha, Vice Chairman (Judl.)
Hon'ble Shri Ajay Johri, Member (Administrative).

1. Whether Reporters of local papers may be allowed to see the Judgement? *y/n*
2. To be referred to the Reporter or not? *y/n*

JUDGEMENT

(Judgement of the Bench delivered by Hon'ble
Shri Ajay Johri, Member (Administrative)).

Being aggrieved by a show cause notice dated 26.8.1988 issued by the Additional Commissioner of Police (Adm.) Delhi proposing to revert the applicant from the post of Inspector of Police, the applicant has filed this application under Section 19 of the Administrative Tribunals Act. He has prayed for the quashing of the impugned notice and for restraining the respondents from reverting him from the post of Inspector to which he was promoted vide order No.1/834/CB-I Promotion dated 20.4.1988.

2. The applicants case is that his confirmation as Head Constable was delayed on account of certain adverse remarks in his confidential report which were later expunged. These had resulted in his promotion as Assistant Sub Inspector (ASI) being delayed. So he filed a Writ Petition in Delhi High Court claiming his confirmation and seniority from the due date which was 1.2.1966. His petition was allowed on 25.9.84. According to him the High Court had ordered refixation of

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seniority but when the respondents did not comply with the order he filed a contempt petition on 4.2.1985. As a result the respondents implemented the order on 22.8.1985 placing him above his next juniors. On the basis of this seniority he was promoted as Inspector on 20.4.1988. The applicant alleges that his seniority is now proposed to be depressed by the impugned show cause notice and he is being brought below two persons who lost their seniority because of their delayed confirmation against which they never agitated at the appropriate time when he was given relief by the Delhi High Court. So according to the applicant the impugned notice is an attempt to do away with the relief granted by the High Court and bring him back to the original position.

3. The respondent's case is that the petitioner was wrongly given seniority from the date of confirmation. This resulted in those Head Constables who were actually promoted much before the petitioner but confirmed later on becoming junior to him. By this erroneous action the applicant was shown senior to those Head Constables who were promoted between 1960 and 1963 whereas the applicant was promoted as Head Constable on 1.2.1964. It is this erroneous fixation of seniority that is sought to be corrected by the impugned notice. According to the respondents, Punjab Police Rules, Rule 12.2.(3) lays down the rules for fixation of seniority. According to this rule, the seniority in case of lower subordinates is reckoned from the date of appointment and not from date of confirmation while in the case of upper subordinates the same is reckoned from the date of confirmation. This error crept in because of the 'hush hush manner' in which the department dealt with the matter on the petitioner's filing of contempt petition. They did not even go into the actual facts of the claim made in the Writ Petition by the applicant. Since the order was wrongly passed, the

respondents gave notice to the applicant. According to them correction of this error and consequential redetermination of seniority does not amount to reversion or reduction in rank. After the impugned notice, a final order dated 25.10.88 has also been passed. The respondents have said that this does not violate the High Court's orders.

4. We have heard the learned counsel for both parties. Shri J.P. Verghese, the learned counsel for the applicant contended that the respondents had taken certain pleas before the High Court and the matter became final thereafter so they cannot agitate the matter again. In the contempt petition also they never took these pleas. The original orders were based on High Court's direction and persons who did not agitate the matter then, could not represent against the consequential effects of the implementation of the High Court's orders. The plea of a mistake is an after thought. According to the learned counsel, the applicant was being unnecessarily harassed and by the impugned order the respondents are making an attempt to take away what the applicant got legitimately from the High Court. On behalf of the respondents the learned Counsel Smt. Avinash Ahlawat made a spirited defence of the action taken by the respondents. According to her a genuine error in the implementation of the High Court's order can rightly be corrected on its detection. According to her the rules being explicit on the subject it is only in line with these rules that the respondents have corrected the seniority which was fixed by wrong and hurried issue of orders. We have gone through the paper-book and the replies and counter-replies filed by the parties.

5. The operative part of the Delhi High Court decision in CW 686/75 given on 25.9.84 reads as follows: -

".....It is apparent that the petitioner is to be considered as a permanent head constable with effect from February 1, 1966. In that view of the matter, on refixation of his seniority in that rank, he is to be considered for promotion as Assistant Sub

Inspector from the date his next junior was promoted as such. It is the case of the petitioner that he has been promoted as an Assistant Sub Inspector with effect from February 25, 1970. This is not disputed by the respondents. But in view of my findings that the petitioner is deemed to be permanent from February 1, 1966, his seniority as an Assistant Sub Inspector from date his next junior was promoted is to be re-fixed. If on re-fixation of his seniority as an Assistant Sub Inspector his next junior or juniors have been considered for promotion as a Sub Inspector the petitioner be also considered for promotion from that date....."

The petitioners claim was also mentioned by the High Court in these words: -

"The second grievance of the petitioner is that under Rule 13.18 of the Punjab Police Rules his probation period expired on February 1, 1966 and therefore, his seniority as Head Constable ought to be shown from the day he was promoted as an officiating Head Constable on February 1, 1964....."

The High Court had accepted this submission and gave the operative decisions based on this acceptance. Hence it is clear that the High Court had accepted that the applicant should be considered permanent with effect from his due date i.e. 1.2.1966 which was the date he completed his probation and that the seniority was to count from 1.2.1964 the date he was put to work as Head Constable.

6. Rule 13.18 of Punjab Police Rules is on the subject of Probationary period of promotion. It lays down this period as two years. On completion of the probation the officer has to be either confirmed or reverted. This period is not extendable. It was under this rule that the applicant had sought for relief of confirmation. The High Court gave him the relief.

7. Rule 12.2(3) is the rule regarding determination of seniority. This rule reads as follows: -

"(3) All appointments of enrolled police officers are on probation according to the rules in this chapter applicable to each rank.

Seniority, in the case of upper subordinate will be reckoned in the first instance from the date of first appointment, officers promoted from the lower rank being considered senior to persons appointed direct on the same date,

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and the seniority of officers appointed direct on the date being reckoned according to age. Seniority shall, however, be finally settled by dates of confirmation, the seniority inter se of several officers confirmed on the same date being that allotted on them on first appointment. Provided that any officer whose promotion or confirmation is delayed by reason of his being on deputation outside the range or district shall, on being promoted or confirmed, regain the seniority which he originally held vis-a-vis any officer promoted or confirmed before his during his deputation.

The seniority of lower subordinates shall be reckoned from dates of appointment, subject to the conditions of Rule 12.24 and provided that a promoted officer shall rank senior to an officer appointed direct to the same rank on the same date.

Provided that in the case of officer recruited direct after 23rd December, 1958, as a result of the same examination or selection, their inter se seniority shall be reckoned.

- (a) by the order of merit fixed by the selection body, and
- (b) When there is no such order by merit indicate by the age of the candidate i.e. the oldest being placed the senior most and the youngest the junior most."

So according to this rule in case of lower subordinates viz. the Constables and Head Constables the seniority counts from date of appointment while in case of upper subordinates in the first instance it is reckoned from the date of first appointment but it is finally settled by dates of confirmation. The applicant belonged to the category of lower Subordinates when he went to the High Court against his delayed confirmation. The High Court ordered his confirmation w.e.f. 1.2.1966 i.e. when he completed his probation. This did not affect his seniority which was to count from 1.2.1964.

8. The respondents, however, in the 'hush hush' manner in which they acted, determined applicant's seniority on the basis of his date of confirmation i.e. 1.2.1966. This action was against the rules and could not sustain itself. The mistake was detected when representation were received consequent to the publication of seniority list of Head Constables and revision of dates and promotion of the

applicant ordered in August, 1985. Series of orders were issued on 22.8.1985. The applicant's averment in para 3 of the rejoinder that the principle of date of appointment being the key to seniority has never been adopted in the Delhi Police is negated by the rules themselves and his own submission before the High Court. For lower subordinates' seniority does not depend upon date of confirmation. This has also been held in the various judgements cited in the rejoinder in para 4 II(i). Similarly, the seniority in the ASI's cadre will depend on the date of confirmation as ASI in terms of the rules. The applicant had rightly asked for this relief in the Writ Petition (Para 4 II(iii) of rejoinder).

9. Any revision of seniority, which was not based on rules or appropriate principles, is not arbitrary. Hence the action taken by the respondents in August, 1985 to fit the applicant in the cadre of H.Cs., ASI's and SI's against the provisions of Punjab Police Rules which are applicable to Delhi Police and have a statutory force was liable to hit article 16 of the Constitution. The respondents have taken corrective action after following proper procedure of giving a notice etc. This action is, therefore, not assailable. Earlier action was in any case ultra vires of the provisions of the rules and would have been struck down if it was challenged. Where seniority rules exist they will prevail and unless there is serious failure in their implementation resulting in grave injustice the courts would not interfere with the working of the scheme. We find that the submissions made by the learned counsel for the respondents are supported by the relevant rules. So their action cannot be said to be an exercise to take away what the High Court gave, as alleged by the applicant. We thus do not find any merit in the prayers made by the applicant and they are liable to be rejected.

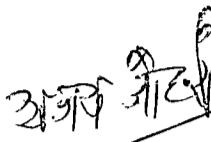
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10. The applicant was promoted as Inspector by an order dated 20.4.1988 which was without any doubt based on wrong assignment of seniority to the applicant. We have been told that the applicant is not due to become an Inspector on the basis of his correct seniority. A refixation of seniority resulting in cancellation of an earlier promotion based on earlier erroneous seniority, does not amount to reduction in rank within the meaning of Article 311(2). Moreover, the applicant was promoted only in April, 1988 and has not yet been confirmed in the post of Inspector. A Government servant can be sent to his substantive post in ordinary routine administration. But the matter has to be viewed as one of substance and all relevant factors are to be considered to ascertain whether the order is a genuine 'Accident of service' where there is no aspersion cast against the character and integrity or it is by way of punishment. We find that the action of respondents is based on rules and is not malafide or biased or a camouflage to penalize the applicant. (AIR 1971 SC 998, K.H. Phadnis Vs. State of Maharashtra). Further we do not find any thing wrong if an administrative order is revised on its being found to have been issued on misinterpretation etc. Any subsequent order cancelling the previous order which affects the person adversely must be issued after giving opportunity to the affected individual. The respondents did issue the show cause notice. There is thus no arbitrariness in the respondents' action and this action, cannot, therefore, be assailed. The prayer made in the application to quash the impugned action therefore is liable to be rejected.

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11. In view of the above, we dismiss this application.
We direct that parties to bear their own costs.


(Ajay Johri)
Member (A)


(P.K. Kartha)
Vice Chairman (J)