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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 302 & 392 1986
T.A. No.

DATE OF DECISION 7.1.1987

REGN. NO. OA 302/86
Shri Narender Kumar
REGN. No. OA 392/86
Shri Krishan Kumar
Applicants
~~Petitioner~~

Ms. Rekha Sharma, Advocate for the ~~Petitioner(s)~~ Applicants

Versus

Delhi Administration & ors.
Respondent s

Shri B. R. Prashar, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman

The Hon'ble Mr. Kaushal Kumar, Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes.
2. To be referred to the Reporter ~~or not~~ ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether to be circulated to all the Benches ? Yes.

(Kaushal Kumar)
Member 7.1.87

(K. Madhava Reddy)
Chairman 7.1.87

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

Dated: 7.1.1987

REGN. NO. OA 302/86

Shri Narender Kumar ..... Applicant

Vs.

Delhi Administration & Ors. ..... Respondents

REGN. NO. OA 392/86

Shri Krishan Kumar ..... Applicant

Vs.

Delhi Administration & Ors. .... Respondents

CORAM : Hon'ble Mr.Justice K. Madhava Reddy, Chairman
Hon'ble Mr. Kaushal Kumar, Member

For the Applicants .... Ms Rekha Sharma, counsel

For the Respondents .... Shri B.R. Prashar, counsel.

(Judgement of the Bench delivered by Hon'ble Mr. Justice K. Madhava Reddy, Chairman)

These two applications (OA No.302/86 and OA 392/86) in which the seniority list prepared on 5.12.1984 is called in question could be conveniently disposed off by a common order.

2. The appointment of Sub Inspectors in Delhi Police is partly by direct recruitment and partly by way of promotion. For filling up 50% posts reserved for direct recruitment an advertisement was issued in the year 1969 and the candidates were required to appear for a test, interview, physical fitness test and medical test etc. Based on these tests, the Staff Selection Commission prepared a merit list in which Narender Kumar applicant in OA 302/86 (D.917) was placed at Sl.No.85 and Krishan Kumar applicant in OA 392/86 (D.856) at Sl.No.49. In pursuance of that selection both the applicants were appointed as Sub Inspectors along with 115 others vide order dated 27.10.1969. In the letter of appointment,it was stated that the candidates are appointed

as temporary Sub-Inspectors(Executive) in the Delhi Police with effect from 27.10.1969. It was also stipulated that their inter-se seniority will be fixed later on, that the provisions of Rule 12.8(1) of Punjab Police Rules will not be applicable to them as they were temporary employees and that they would be governed by the provisions of the Central Civil Services(Temporary Services) Rules, 1965. By order dated 22.12.1980, some of the temporary Sub-Inspectors(Executive) including Narender Kumar were confirmed with effect from the date noted against each of them. Narender Kumar was confirmed with effect from 3.7.1976. It is stated that most of those who were selected along with him and appointed on 27.10.69 were confirmed with effect from 22.5.1974 including even some juniors to him in the merit list. In the seniority list that is placed on record Narender Kumar is shown at Sl.No.788 and Krishan Kumar at Sl.No.623 confirming them respectively with effect from 3.7.76 and 1.4.75. According to the applicants, they should have been confirmed with effect from 22.5.1974 and if so confirmed, having regard to their rank in the seniority list, Narender Kumar should be placed immediately below Shri Daulat Ram Bindi who is placed at Sl.No.378 and above Shri Vijay Pal Singh who is shown at Sl.No.379; and Krishan Kumar should be shown immediately below Shri Sumer Singh who is shown at Sl.No.353 and above Mohan Singh who is shown at Sl.No.354.

3. The case of the Respondents is that this seniority list of Sub Inspectors is based on the date of confirmation as Sub Inspectors. Rule 12.2(3) of the Punjab Police Rules lays down the determination of the seniority as under:-

> " Seniority, in the case of upper subordinates, will be reckoned in the first instance from date of first appointment, officers promoted

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

This Rule is challenged in these two applications as arbitrary and violative of Article 16 of the Constitution. Though Miss Rekha Sharma, the learned counsel for the applicants, addressed argument in that behalf but in the view we are taking on the facts of the case, we deem it unnecessary to go into the validity of this Rule. Assuming that seniority could be determined based on the date of confirmation even that Rule has not been followed in the case of these two applicants. Admittedly as and when the Respondents confirmed the applicants, they were to give a date with effect from which they were confirmed. In paragraph 6(iv) to 6(vi) of the counter filed on behalf of the Respondents, it is admitted that:-

" In the year 1974 temporary posts of 176 S.Is. 59 SIs and 252 SIs were converted into permanent one

with effect from 9.7.70, 3.7.1972 and 20.10.1973 respectively. Besides due to retirement and confirmation in higher ranks more posts in the rank of S.Is became available for confirmation of SIs. Accordingly 307 S.Is were made permanent w.e.f.22.5.1974 which includes S.Is appointed/promoted in the year 1968 to 1971 ".

In view of this averment, it is clear that the posts were available against which these temporary Sub Inspectors should have been confirmed. Even in the year 1974, they had confirmed several other Sub Inspectors who were junior to the applicants. There was, therefore, no impediment in confirming the applicants with effect from 22.5.1974. Respondents have confirmed Narender Kumar with effect from 3.7.1976 and Krishan Kumar with effect from 1.4.1975 which is neither legal nor fair. It is also averred in the counter that when the case of Narender Kumar came up for confirmation in 1974 " it was found that he had been passed over from quasi permanency due to unsatisfactory record of service. Therefore no final decision was taken for want of certain clarification from S.P. Central Distt. in this regard, Finally due to his unsatisfactory record of service, he was passed over from confirmation".

4. From Annexure 'F' to the application(OA No.302/86) it would appear that the confirmation of Shri Narender Kumar was deferred because his conduct was under inquiry and the case of Shri Krishan Kumar was deferred because his ACR for the period 1.4.75 to 17.10.75 was awaited. So far as Krishan Kumar is concerned, as and when his ACR was received he should have been given the same date of confirmation as his juniors were given. So

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also in the case of Narender Kumar, if the only reason for deferring his confirmation was that his conduct was under inquiry when it was completed and it was ultimately found that he could have been confirmed, there is no reason why he should have been confirmed with effect from 3.7.1976 and not from 22.5.1974 especially when some of his juniors whose conduct was also under inquiry were confirmed by a subsequent order with effect from 22.5.1974. Shri Narender Kumar specifically asserted in his application that in the case of SI Ishwar Sing D/862 whose case for confirmation was deferred on the same date, that is 22.5.74 for the reason that his conduct was under inquiry, was confirmed with effect from 22.5.1974. SI Ishwar Singh was awarded 3 censures in the year 1973-74 and remained under suspension for putting up a false case against some persons of Moti Nagar. He too was confirmed with effect from 22.5.1974. In reply to this averment, what all is stated is that Ishwar Singh was declared quasi permanent with effect from 18.10.72. The fact that he was awarded censure for his lapse is admitted. It is also admitted that when he was considered for confirmation a departmental enquiry was pending against him and that upon the enquiry being dropped, he was confirmed with effect from 22.5.1974. While stating these facts it was stressed that the case of Narender Kumar was taken up and was passed over on 28.4.1973 and 20.9.1973 for making him quasi permanent. He was made quasi permanent with effect from 27.10.74 and, therefore, he could not be confirmed from 22.5.1974. However, this could not be a valid reason. Even in paragraph G of the counter is

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to the Application No. 302/86, the Respondents have firmly stated that " quasi permanency is not a bar in deciding confirmation of temporary Government servants". No Rule has been referred to us which prohibits confirmation of a Sub Inspector from the date when a permanent and clear vacancy is available especially with effect from the date when his juniors are confirmed . As admitted by the Respondents themselves the fact that Narender Kumar was made quasi permanent with effect from 27.10.74, would not stand in the way of his being confirmed with effect from 22.5.1974. If unsatisfactory record of service did not stand in the way of the juniors to the applicants being confirmed with effect from 22.5.74, it cannot stand in the way of the applicants who have certainly a better record of service than some others from being confirmed with effect from that date. Equally the fact that Narender Kumar was passed over from quasi permanency on two occasions cannot be a relevant ground for not confirming him from 22.5.1974 especially in view of the statement of the Respondents incorporated in paragraph'G' of the counter that " quasi permanency is not bar in deciding confirmation of temporary Government Servants". Learned counsel for the applicants has, however, stated at the Bar that while the case of Narender Kumar was recommended for confirmation (paragraph G of the Application No.302/86) but he was not confirmed because of the note put up by the Secretary Home that he cannot be confirmed from 22.5.74 because he was declared quasi permanent on 24.10.1974. But it is established from the record that he was made quasi permanent by order dated 15.11.74 with effect from 27.10.74 declaring him fit to be appointed in a quasi permanent capacity. If he was found to be suitable on the basis of qualification, work and character for making him quasi permanent, how could he be held not suitable for confirmation so soon thereafter when there was nothing adverse in between. Only on 18.11.74, it was observed by the A.I.G. Delhi that

he was passed over for confirmation on account of his unsatisfactory record of service and his case along with that of two otherswill be reviewed on receipt of their A.C.Rs for the years 1974-75. A few more instances were also mentioned in paragraph'G' of the Application (OA No.302/86). Of these one is S.I. Jaipal Singh,who was junior to Narender Kumar, was also awarded major punishment of forfeiture of his service in 1972 but he was confirmed with effect from 22.5.74. So also S.I. Rajender Singh, S.I. Harbans Singh and S.I. Bhag Singh though not confirmed on the due dates on account of their indifferent service records were later confirmed with effect from 22.5.74. One S.I. Hukam Singh who was enlisted in the year 1969 was not found fit till 1983 due to 'C' reports and other punishments. However in 1984 he too was confirmed with effect from 22.5.74. These averments are not denied by the Respondents in their reply. No explanation whatsoever is offered for adopting a different criteria in regard to the confirmation of the applicants and other Sub Inspectors selected in the same year when sufficient number of posts were available against which confirmation could be ordered. In any case when juniors to the applicants were sought to be confirmed with effect from 22.5.1974, the applicants xxx also ought to have been confirmed from that date. In fact, while the S.P. Central Distt. had recommended the case of Narender Kumar for confirmation it would appear only because his conduct was under enquiry he was not confirmed. He, therefore, ought to have been confirmed with effect from 22.5.1974 after he was cleared. We find no justification for not xxx confirming him with effect from 22.5.1974 when his juniors were confirmed. Narender Kumar made representation against his confirmation with effect from 3.7.1976; but that representation was rejected on

27.3.1986. Reasons for rejection of this representation now stated in the counter are not mentioned in the order itself. The reason stated is that he was made quasi permanent on 27.10.74 and therefore he could not be confirmed as Sub Inspector from a date anterior to 27.10.74. It is also stated that when Narender Kumar was considered first time in 1974 it was found that he had been passed over for quasi permanency due to unsatisfactory record of service. As discussed above, that could not be a valid ground for not confirming him.

5. So far as the case of Krishan Kumar is concerned, it stands on a much stronger footings. As already noticed above, he was senior to Narender Kumar as he was placed at Sl.No.49 in the merit list. In the departmental enquiry which was pending against him, he was exonerated. At least thereafter he should have been confirmed with effect from 22.5.1974 when his juniors were confirmed. As in the case of Narender Kumar he too is entitled to be confirmed with effect from 22.5.1974.

6. In view of the above discussion, these two applications are allowed. The applicants will be deemed to have been confirmed with effect from 22.5.1974 as Sub Inspectors. The seniority list of Sub Inspectors of Police shall be rearranged in the light of this direction and their further promotion shall be considered on the basis of the seniority list so arranged. The case of the applicants shall be considered in the light of this judgement within a period of two months from the date of receipt of the order. They would be entitled to all consequential benefits. There will be no order as to costs.

(Kaushal Kumar)
Member 7.1.1987

(K. Madhava Reddy)
Chairman 7.1.87