

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA-545/85

Date of decision: 7.8.1992

Shri Shiv Dhan Applicant

Versus

Union of India & Ors. Respondents

For the Applicant Shri Umesh Mishra, Counsel

For the Respondents Smt. Avnish Ahlawat, Advocate

CORAM:

The Hon'ble Mr.P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr.B.N. Dhoundiyal, 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*

JUDGMENT

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

We have gone through the records of the case and have heard the learned counsel for both the parties.

The applicant, who is working as Sub-Inspector in the Delhi Police on the ministerial side, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for a direction to the respondents to give him the same benefit as was given to Shri Bal Kishan by letter dated 26.6.1985 regarding seniority and promotion. *A*

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2. The applicant was appointed in the Delhi Police in 1955 as Constable. Thereafter, he was promoted as Head Constable (Ministerial) on 1.2.1964, as A.S.I. on 25.2.1970, and as Sub-Inspector on 31.12.1985. Shri Bal Kishan, his immediate junior, on the basis of judgement dated 25.9.1984 in Civil Writ No. 686/75 filed in the Delhi High Court, was given ante-dated seniority and he became senior to the applicant in all the three ranks, Head Constable, A.S.I. and Sub-Inspector. The applicant is seeking the same benefit on the basis of the same judgement.

3. On the basis of a representation filed before the respondents by persons junior to Bal Kishan, like the applicant, the matter was reconsidered and it was found that Bal Kishan was wrongly shown senior to the applicant and many others and consequently, his promotion as A.S.I. and S.I. much before his juniors, was also wrong. Accordingly, a show-cause notice was given to him (Bal Kishan) to withdraw those orders and seniority re-fixed. Bal Kishan filed OA-1677/88 in this Tribunal which was dismissed by judgement dated 11.11.1988. Thereafter, Bal Kishan and the present applicant filed review applications in the Tribunal (RA-139/88 and RA-142/88) which were also dismissed by a common judgement dated 9.1.1989. S.L.P. filed by Bal Kishan was disposed of by the Supreme Court by judgement dated 6.10.1989. The Supreme Court upheld the judgement dated 11.11.1988. The Supreme Court has observed as

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under:-

"There is no dispute that as a result of implementation of the order of the High Court, the appellant has marched over his seniors in every cadre. When the appellant was promoted from cadre to cadre, his seniors were not considered for such promotions. Counsel for the appellant did not dispute this fact. He, however, urged that the seniors who were not confirmed within the prescribed time or before confirmation of the appellant were not entitled to retain their seniority above the appellant. On this aspect of the matter we asked Mr. Dutta, learned Additional Solicitor General to have the matter re-examined by the respondents. Upon re-examination of cases of the appellant and his seniors in the light of the judgement of the High Court and the relevant rules of promotion, counsel has produced before us the list showing the particulars of all those Head Constables whose names were brought in list 'D' (Promotional list) for promotion to the rank of ASI w.e.f. 21 December 1966 and thereafter upto 18 February, 1970. He has also produced another list showing the particulars of ASIs (Min) for promotion to the rank of SIs drawn on 21 July 1978 and thereafter upto 14 August 1985.

We have perused the lists and gave our anxious consideration to the question urged. We fail to understand how the appellant could be ranked above his seniors and how he could get flyover promotions in every cadre. The High Court while directing confirmation of the appellant with reference to a particular date did not say that he should be ranked above even to those who were appointed earlier to him. There was also no direction that he should be ranked above those who were liable to be confirmed before him. Indeed, it was not the intention of the High Court and it could not have been intended too, since his seniors were not parties to the writ petition. But the faulty implementation of the order of the High Court has resulted in that undesirable consequence. It has resulted in supersession of appellant's seniors. In fact, the appellant has overtaken 21 SIs who were senior to him. That was totally unjustified and arbitrary.

In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralising effect in service apart from being contrary to Article 16(1) of the Constitution.

It is not shown that the seniors were not eligible for confirmation when the appellant was

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confirmed. Nor it is shown that the seniors were not suitable for promotion when the appellant was promoted. The appellant, therefore, could not complain against the corrective action taken by the respondents.

In the result, we dismiss the appeal, but without an order as to costs."

4. In the light of the foregoing, we see no merit in the present application. The applicant is, in fact, reagitating before us the very same issues which were agitated before us by Bal Kishan in OA-1677/88 and RA-139/88 and by the applicant in RA-142/88, mentioned above. In view of the final orders passed by the Supreme Court, the applicant cannot be granted any reliefs sought by him. The application is, accordingly, dismissed. There will be no order as to costs.

B. N. Dhundiyal
(B. N. Dhundiyal) 918152
Administrative Member

7/8/92
(P. K. Kartha)
Vice-Chairman (Judl.)