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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A.No.894/86

Date of decision: 17-9-1990

SHUGAN CHAND GAUR

....APPLICANT

VERSUS

DELHI ADMINISTRATION & OTHERS

....RESPONDENTS

ADVOCATES:

Shri O.P. Tyagi

..for the applicant.

Shri M.M. Sudan

...for the respondents

CORAM:

THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

J U D G E M E N T

(DELIVERED BY HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

A question of fixation of seniority arises in this Original Application.

Shri S.C. Gaur the applicant, was appointed a Naib Tehsildar in Delhi Administration on 8-3-1968 on ad hoc basis in the pay scale of Rs.150-300/-. His appointment was regularised on the basis of the recommendations of the Departmental Promotion Committee (DPC) held on 8-6-1971 against ex-cadre post vide order dated 28th August, 1971 (alongwith 17 others). The applicant is at serial No.9 of the list of appointees. In the meantime, the Delhi Administration promulgated Delhi Administration Subordinate Ministerial/Executive Service Rules, 1967 on 10-2-1967 (DASS Rules) and decided to constitute a unified service, to be known as Delhi Administration Subordinate Ministerial/Executive Service (DASS).

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After the enforcement of the DASS Rules, 1967, Grade-II (Executive) service was initially constituted with 167 officials including 43 Naib Tehsildars vide memorandum No.F-10(10)/67-S(C)(1) dated 23-1-1968. These 43 Naib Tehsildars were occupying the posts, which were filled in accordance with Recruitment Rules framed vide notification No.F-2/3-65-Appointments-B dated 23rd July, 1965 (R-7 at page 131 of the paper book).

The Lieutenant Governor(LG) of Delhi vide his order dated 10th June, 1975 appointed 9 Naib Tehsildars, who were holding ex-cadre post in relaxation of Rules 6 & 12 of Delhi Administration Subordinate Service Rules, 1967 (for short 'DASS Rules) in Grade-II(Executive) of the aforesaid cadre in officiating capacity with immediate effect vide notification No.F.9(3)/68.S-II(ii) dated 10th June, 1975. The notification further provided that:

"the aforesaid officials shall be placed enblock junior to the persons already inducted into the cadre against 43 posts of Naib Tehsildars, as they exist in Schedule I, under heading Grade II (Executive) to the Delhi Administration Subordinate Service Rules, 1967, as originally framed, but they shall retain their existing inter-se-seniority."

The Naib Tehsildars so encadred in DASS Cadre are listed in paragraph-1 of the said notification in the following orders:-

1. Shri Partap Singh,
2. Shri K.L. Bhatia,
3. Shri K.B. Ahuja,

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4. Shri N.M. Anand,	7. Shri Bhoop Chand
5. Shri Karam Singh,	8. Shri Dhara Singh
6. Shri N.D. Jain	9. Shri S.C. Gaur.

The prime contention of the applicant who is at serial No.9 above, in the Application, filed under Section 19 of the Administrative Tribunals Act, 1985 is that the seniority of the 9 Naib Tehsildars encadred vide L.G.'s notification dated 10th June, 1975 should be fixed enbloc immediately below the name of the last of the 43 Naib Tehsildars, who were initially included in the service when it was constituted. The last incumbent in the list of 43 Naib Tehsildars who were encadred initially in the service is Shri Shiv Narain. His name appears at serial No.235 in the seniority list of 9-7-1976. Since then Shri Shiv Narain has retired and the name of Shri D.R. Tomer person immediately above him is no more in the seniority list and therefore the names of the 9 Naib Tehsildars should be placed immediately below that of Shri D.K. Khanna at serial No.233. The applicant's grievance is that the respondents have not assigned him the seniority due to him, in accordance with the notification on 10-6-1975 issued by the L.G., Delhi.

The second contention of the applicant is that the seniority of the applicant should have been fixed from the date of appointment to the grade, duly taking into account the long service rendered in officiating capacity in the grade of Naib Tehsildar. He draws support for his case from:-

- i) G.S. Lamba & Others Vs. Union of India - AIR - 1985-SC-1019.
- ii) Narender Chadha & Others Vs. Union of India - AIR - 1986 - SC- 638.



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iii) G.K. Dudani & Others Vs. S.D. Sharma & Others-
AIR - 1986 - SC - 1455.

All the above cases deal with fixation of seniority where recruitment is from more than one source and system of quota rota is involved. In the above judicial pronouncements their Lordships of the Supreme Court have held that:-

"seniority is normally measured by length or continuous officiating service - the actual is easily accepted as illegal. This however, does not preclude a different prescription, constitutionality test being satisfied."

In the case before us the claim of the seniority is not based on the failure of the quota-rota system. The facts of the case are thus distinguishable from the cases cited by the applicant.

The respondents have not disputed the facts of the case in the written statement filed by them. It is however averred that Shri S.C. Gaur was placed at serial No.653 in the tentative seniority list of grade-II Executive officials appointed during the period 10-2-1967 to December 3, 1980 with his date of appointment in the grade as 10th June, 1975.

The respondents have further submitted that representations made by the applicant against the seniority assigned to him were considered carefully and were rejected. For instance, his representation dated 30-1-1986 was duly examined and was rejected on the file No. 4(1)/85-JSC, for the reasons, that the applicant who is one of the 9 Naib Tehsildars working against an ex-cadre post was brought in the DASS Cadre vide notification dated 10th June, 1975. These officials were to be placed enbloc Junior to the persons already inducted into the cadre against 43 posts of Naib Tehsildars



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as they exist in Schedule-I to the DASS Rules, 1967 but they shall retain their inter-se-seniority. This means that the date of appointment in Grade-II(E) will be counted in respect of the 9 Naib Tehsildars who were inducted on 10th June, 1975^{from that date} and seniority has been accordingly assigned to them in the unified cadre.

The respondents have urged that the notification issued by the L.G., Delhi does not envisage that 9 Naib Tehsildars, including the applicant are to be assigned seniority immediately below the 43 Naib Tehsildars included in the initial constitution of the service.

2. Shri M.M. Sudan, learned counsel appearing for the respondents submitted that the last of the 43 Naib Tehsildars who were inducted in the initial constitution of service is placed at serial No.149 in the order of seniority in accordance with their date of regular appointment in the grade (from the different dates) as indicated against the name of each. It was urged by Shri Sudan, that the notification issued by the Lt. Governor on 10th June, 1975 nowhere states that the 9 Naib Tehsildars including the applicant would be placed immediately below the 43 officials encadred in June, 1968. The only provision regarding the seniority is that they will be placed enblock junior to the persons already inducted into the service. Once they are inducted into the service, their seniority has to be regulated in accordance with the specific provisions dealing with the seniority contained in Rule 26 of the DASS Rules 1967.

3. Shri O.P. Tyagi, learned counsel appearing for the applicant, however, urged that the intent and spirit of the L.G.'s order dated 10-6-1975

is absolutely clear and that there could be no other interpretation except that the 9 Naib Tehsildars encadred in June, 1975 should be placed immediately below the 43 officials who were encadred in the initial constitution of the service.

4. We have considered the submissions made by the learned counsel of both the parties and perused the record before us, carefully. Rule-6 of DASS Recruitment Rules, 1967 envisages that:-

50 per cent of the vacancies in Grade-II Executive will be filled by direct recruitment on the basis of competitive examination; 25 per cent by promotion of officers of Grade-III having at least three years service in that grade on the basis of seniority, subject to rejection of unfit on the recommendations of the Departmental Promotion Committee; 25 per cent by promotion of officers of Grade-III having at least three years service in the Grade and/or in the posts included in this grade on the basis of merit, to be determined through competitive examination.

The 9 Naib Tehsildars, including the applicant, however, were not recruited to the DASS Service in accordance with the provisions made in Rule-6 of the DASS Rules, 1967. They were inducted in the service in relaxation of Rule-6 and Rule-12 of the DASS Rules, 1967. The specific seniority rule as provided in the DASS Recruitment Rules, 1967 would have regulated their seniority having regard to the provisions made in the notification dated 10-6-1975 if they had been recruited in accordance with Rule-6. But this is not so as their recruitment to the service is in relaxation of the Rule-6 & Rule 12 of the DASS Rules, 1967. The applicant who is one

of the 9 Naib Tehsildars encadred vide L.G.'s order of 10-6-1975 was appointed as Naib Tehsildar on ad hoc basis on 7-3-1968. He was, later selected for regular appointment as Naib Tehsildar on the basis of the recommendations of the Departmental Promotion Committee held on 8-6-1971 vide order dated 8th August, 1971 and inducted along with 8 others into DASS Cadre on 10-6-1975 in relaxtion of the Rules 6 & 12 of the DASS Rules, 1967. Rule 26 of DASS Rules, 1967 relating to the seniority, as said earlier would not be applicable in this case. The case of induction of these 9 Naib Tehsildars in relaxation of Rules 6 & 12 of the DASS Rules 1967 is a special case, and falls outside the purview of the DASS Rules, 1967. This special case is similar in certain respects or analogous to the case of 43 officials who were inducted in the DASS at the time of initial constitution. The seniority of the officers who were inducted intially in the service has been regulated in accordance with Rule 5(2) of DASS Rules, 1967. The said Rule reads as under:-

" 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."

We are of the view that the seniority of the applicant who is one of the 9 Naib Tehsildars inducted into DASS on 10-6-1975 should be regulated in the same manner as was done in the case of 43 officials encadred earlier. The seniority of the applicant and the 8 other Naib Tehsildars should therefore be assigned in accordance with Rule 5(2)

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of the DASS Rules, 1967, keeping in view the provision that they will be placed enbloc junior to the 43 Naib Tehsildars already encadred. In other words, this would mean that the applicant shall be entitled to the seniority from the date he was appointed to the post of Naib Tehsildar on regular basis and in accordance with the recommendations of the Departmental Promotion Committee, as this is the date on which he was appointed as Naib Tehsildar in accordance with the Rules then prevalent for the ex-cadre post. The claim for reckoning seniority from the date the applicant was appointed on adhoc basis cannot be accepted, as the initial appointment was purely temporary and made as a stop-gap arrangement.

In the facts and circumstances of the case, we order and direct that the respondents shall assign seniority to the applicant, taking into account his service rendered on regular basis as Naib Tehsildar in the grade w.e.f. 28.8.1971 without disturbing the inter-se-seniority. All the 9 Naib Tehsildars including the applicant, however, shall be enbloc junior to the 43 officials earlier inducted in DASS Cadre at the stage of initial constitution of the service. The claim for fixing seniority immediately below the 43 officials earlier inducted is not maintainable, as no such meaning can be derived from the written text of the LG's notification dated 10.6.1975. His further promotion etc. shall be

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regulated in accordance with the seniority assigned as per the above directions.

The OA is disposed of with the above directions and in the circumstances of the case, with no orders as to the costs.

Sh. Singh
(I.K. RASGOTRA)
MEMBER(A) 12/9/90

AMITAV BANERJI
17.4.90
(AMITAV BANERJI)
CHAIRMAN