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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.OA 1007/1986

Date of decision: 13.07.1993

Shri K. Shukhar

...Petitioner

Versus

Union of India & Others

....Respondents

For the Petitioner

...Smt. Indu Malini Anantachani, Counsel

For the Respondents ...Shri M.L. Verma, Counsel for respondent No.1.

Shri Madhav Panikar, Counsel for respondents Nos. 3 & 5.

...Shri E.X. Joseph, Counsel for respondent No.4.

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. B.N. DHOUNDIYAL, ADMINISTRATIVE MEMBER

1. To be referred to the Reporters or not? *yes*

JUDGMENT (CFID)

(of the Bench delivered by Hon'ble Mr.
Justice S.K. Dhaon, Vice-Chairman)

The petitioner, ^{who} is a Sub-Inspector (Technical) in the Directorate of Coordination for Police Computers (DCPC), had approached this Tribunal by means of this OA. The principal prayer is that he may be assigned seniority over S/Shri Bhim Sain, K.L. Madan and Hari Prasad respondents Nos. 4, 5 and 6 respectively in this application.

2. A reply has been filed on behalf of the Union of India and also on behalf of Shri K.L. Madan. Counsel for the parties have been heard.

3. During the pendency of this application, Shri Bhim Sain and Shri Hari Prasad retired from service. We are now, therefore, concerned with the cases of the petitioner and Shri K.L. Madan.

4. The petitioner was holding the post of a Head Constable (RM) in BSF on temporary basis with effect from 3.3.1973. His services were drafted on the basis of deputation as Sub-Inspector (Technical), DCPC with effect from 1.1.1977. Shri K.L. Madan was

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holding the permanent post of JIO-I(WT) in IB. He was promoted as ACIO-II equivalent to the rank of Sub-Inspector in the IB with effect from 10.04.1980. He was brought on deputation in the DCPC as Sub-Inspector with effect from 8.6.1978.

5. It is the common case of the parties that at the relevant time there were no statutory rules to be applied for determining the seniority inter-se of Sub-Inspectors (Technical) in the DCPC, who had been brought in by transfer on deputation. It is to be remembered that on 2.4.1982, the petitioner and Shri K.L. Madan were absorbed in the DCPC on deputation on transfer. Thus, it is clear that both of them were absorbed on the same day. It appears that there were no definite guidelines issued under the executive instructions for determining the inter-se seniority of those absorbed on deputation by transfer.

6. Admittedly, on 29.03.1982 a Selection Committee considered the cases of the petitioner, Shri K.L. Madan and S/Shri Bhim Sain and Hari Prasad. The relevant portion of the findings of the Selection Committee may be extracted:-

" In the case of Shri K.L. Madan, Sub-Inspector(Technical) in DCPC it was seen that he was holding the post of Sub-Inspector in IB with effect from 4th April, 1980. In view of this, he was allowed to enjoy seniority over and above mentioned officers. Thus the seniority given in the rank of sub-Inspector(Technical or Non-Technical), which is the common cadre, in DCPC was fixed as under:-

- (1) Shri K.L. Madan
- (2) Shri Hari Prasad
- (3) Shri Bhim Sain
- (4) Shri K. Shekhar

The Director, DCPC on 29.03.1982 made the following note:

The above principle was followed in the discussions in the Selection Committee and the inter-se seniority fixed accordingly."

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7. It is not the petitioner's case that if he had continued in his parent department viz. BSF, he would have been given the rank of Sub-Inspector on or before 10.04.1980. In the application, the affidavits filed or other documents produced by and on behalf of the petitioner, there is not even a whisper as to whether the petitioner would have been promoted to the rank of Sub-Inspector in his parent department and if so, when? We must remember that on 1.1.1977 when he was drafted on deputation to the DCPC, he was holding the post of Head Constable on temporary basis. On the material on record, there can be no two opinions that if the petitioner and Shri K.L. Madan had continued to remain in their respective parent departments, Shri K.L. Madan would have been promoted to the rank of Sub-Inspector long before the petitioner.

8. In the absence of any statutory rule or executive instructions or any guidelines, the inter-se seniority between the petitioner and Shri Madan should have been determined on the principle of justice, equity and good conscientiousness. In our opinion, that was what the Selection Committee precisely did. It ^{would have} acted inequitably if it had ignored the fact that Shri Madan stood promoted as Sub-Inspector in his parent department with effect from 10.04.80 and considered the date on which he and the petitioner came on deputation to the DCPC as a crucial date for determining their seniority inter-se. The Selection Committee would have acted arbitrarily if it had adopted the sole criterion, namely, the date on which the petitioner and Shri Madan were brought on deputation to the DCPC for determining their seniority inter-se. A temporary Head constable could not be equated with the duly appointed Sub-Inspector. The practical effect of such an equation would have been that unequals were treated as equals thereby infringing Article 14 of the Constitution.

9. Reliance is placed by the learned counsel for the petitioner upon an Office Memorandum dated 30.12.1985 issued by the Director Incharge, DCPC. According to this Memorandum, consultation took place with the Ministry of Home Affairs, the Department of Personnel & Training. Thereafter, a decision was taken that seniority of Sub-Inspectors appointed in the Directorate on transfer basis had been determined in the order in which they were initially appointed

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on transfer on deputation basis. A copy of the seniority list of Sub-Inspectors so prepared and adopted as final was circulated. A perusal of that list, undoubtedly, shows that the petitioner was shown senior to Shri K.L. Madan as his date of appointment as Sub-Inspector was shown as 3.1.1977 while that of Shri K.L. Madan as 8.6.1978. This Memorandum, however, was not allowed to hold the field for long.

10. On 12.11.1986 another Office Memorandum was issued under the signatures of Deputy Director (Computers). In it, it is recited that after carefully considering the representations, taking into account all the relevant factors and on the basis of the final advice of the Department of Personnel & Training, it has been finally decided by the Government that the seniority list of Sub-Inspectors should be in accordance with the order in which their names were arranged in the minutes of the Selection Committee which considered their suitability for appointment on transfer basis on the terms of the order on the subject. The inter-se seniority of the first four transferees, namely, S/Shri K.L. Madan, Hari Prasad, Bhim Sain and K. Shekhar has been accordingly determined by the Government in the following order:-

- (1) Shri K.L. Madan
- (2) Shri Hari Prasad
- (3) Shri Bhim Sain
- (4) Shri K. Shekhar

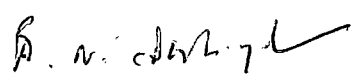
In paragraph 2 of the said Memorandum it is stated that the final decision of the Government in the matter is that the revised seniority list of Sub-Inspectors in the DCPC's Office Memorandum of even number dated 30.12.1985 be treated as null and void.

11. It is also decided that the Office Memorandum dated 30.12.85 and the seniority list circulated therewith are accordingly hereby cancelled. The seniority list attached to the said Memorandum shows that Shri K.L. Madan was placed at the top (Serial No.1) whereas the petitioner was given the 4th place.

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12. It is vehemently argued that the Selection Committee could not be constituted for determining the seniority inter-se of the petitioner and others as neither any rule or guideline or any circular envisages such a Selection Committee. Be that as it may, the final decision of the Government as conveyed by the Office Memorandum dated 12.11.1986 will hold the field unless it is held that the decision of the Government is illegal or arbitrary. We are satisfied that the said decision of the Government does not suffer from any illegality. It is not arbitrary. On the contrary, in our opinion, it is just and fair.

13. This application has no substance and is accordingly dismissed. There shall be no order as to costs.


(B.N. DHOUNDIYAL)
MEMBER (A)


(S.K. DHAON)
VICE CHAIRMAN

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