

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. Nos. OA 1046/88, OA 778/87, Date of decisions: 17-11-89
OA 182/88, OA 439/87
✓ OA 1864/87, OA 721/88 and
OA 1550/87

OA 1046/88

Shri Mohan Lal

....Applicant

Vs.

Delhi Administration

....Respondents

For the Applicant

...Shri Shyam Babu, Counsel

For the Respondents

...Shri J.S. Bali, Counsel

OA 778/87

Shri Shyam Lal

....Applicant

Vs.

Delhi Administration

....Respondents

For the Applicant

...Shri Mukul Talwar,
Counsel

For the Respondents

...Shri J.S. Bali, Counsel

OA 182/88, OA 439/87 and OA 1864/87

Shri Sardar Singh

...Applicant (1)

Vs.

Delhi Administration

...Respondents

Shri Satpal Kapoor

...Applicant (2)

Vs.

Delhi Administration

...Respondents

Shri Rajbir Singh

...Applicant (3)

Vs.

Delhi Administration

...Respondents

For the applicants

...Shri Mukul Talwar, Counsel
for the applicants in the
above mentioned three cases

For the respondents

...Shri M.M. Sudan, Counsel
for the respondents in the
above mentioned three cases

OA 721/88

Shri Sarup Singh

...Applicant

Vs.

Delhi Administration

..Respondents

For the Applicant

...Shri J.K. Nayyar, Counsel

For the Respondents

...Shri G.C. Lalwani, Counsel

OA 1550/87

Shri Narender Kumar Gulati

..Applicant

Vs.

Delhi Administration

...Respondents

For the Applicant

...Shri Mukul Talwar, Counsel

For the Respondents

...Shri G.C. Lalwani, Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. I.K. RASGOTRA, 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? *yes*

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

The applicants in these applications who are Sub-Inspectors in the Delhi Police have sought their confirmation as Sub-Inspectors with effect from the date from which some of their batchmates ^{were} confirmed and for consequential benefits.

They have also challenged the vires of Rule 12.2(3) of the Punjab Police Rules which inter alia provides that seniority shall be determined by the date of confirmation. They have relied upon the judgments of this Tribunal dated 7.1.1987 in the applications filed by Shri Narender Kumar and Shri Krishan Kumar (OA Nos. 302/86 and 392/86) and dated 27th August, 1987 in the case of Shri Devender Kumar Sharma (OA 96/86) and have contended that the benefit of the aforesaid judgments should also be extended to them as they are similarly situated persons. As common questions of law are involved, it is proposed to dispose of all the applications by a common judgment.

2. We have gone through the records of these applications carefully and have heard the learned counsel of both parties. We may, at the outset, briefly refer to the judgments relied upon by the applicants.

3. Narender Kumar and Krishan Kumar had been appointed as Sub-Inspectors in 1969. Narender Kumar was confirmed with effect from 3.7.76 while Krishan Kumar was confirmed with effect from 1.4.1975. The contention of the applicants was that most of those who were selected along with them and

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appointed in 1969 had been confirmed with effect from 22.5.74 including even some of their juniors. They had, therefore, contended that they should also be confirmed with effect from 1974 and accorded their due seniority on that basis. The case of the respondents was that seniority should be based on the date of confirmation in view of the provisions of Rule 12.2(3) of the Punjab Police Rules. Confirmation of Shri Narender Kumar was deferred because his conduct was under inquiry while that of Shri Krishan Kumar was deferred because his ACR for the period 1.4.75 to 17.10.75 was awaited. They had, however, asserted that in the case of some of their juniors whose conduct was also under inquiry, confirmation had been ordered from earlier dates.

4. The Tribunal held that Shri Narender Kumar and Shri Krishan Kumar will be deemed to have been confirmed with effect from 22.5.1974 as Sub-Inspectors and that the seniority list of Sub-Inspectors shall be rearranged accordingly. It was also directed that their further promotion shall be considered on the basis of the seniority list so arranged. In arriving at this conclusion, the Tribunal observed that "if the only reasons for deferring the 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 3.7.76 and not 22.5.74 especially when some of his

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 juniors whose conduct was also under inquiry were confirmed by a subsequent order with effect from 22.5.1974". It was further observed that "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."

Furthermore "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".

5. The Tribunal, however, did not express any opinion

on the contention of the applicants as regards the vires

of Rule 12.2(3) of the Punjab Police Rules. It was,

however, observed that "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".

6. The ratio in Narender Kumar's case and Krishan

Kumar's case was followed in the Judgment of the Tribunal

in the case of Devender Kumar.

7. The questions arising for consideration in these

applications are the following:-

(1) whether the above mentioned cases declare the law

as regards the date of confirmation and, if so, whether the

applicants are entitled to claim similar benefits?

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(ii) whether the benefit of the above mentioned judgment could be extended to them regardless of the bar of limitation; and

(iii) whether Rule 12.2(3) of the Punjab Police Rules is legally sustainable?

8. With regard to the first question, the legal position

is well settled. The Supreme Court has observed that when

a citizen aggrieved by the action of the Government

department has approached the Court and obtained a declaration

of law in his favour, others, in like circumstances, should be

able to rely on the sense of responsibility of the Department

concerned and to expect that they will be given the benefit of

this declaration without the need to take their grievances

to the Court (vide Amrit Lal Berry Vs. Collector of Central

Excise and Other, 1975(1) SLR (SC) 153 at 169). When a

principle of law is decided in a case, there is no valid reason

for not extending the same to those who are similarly situated

without driving them to a Court for seeking redress. In A.K.

Khanna & Others Vs. U.O.I. and Others, ATR 1988(2) CAT 518 at

519, this Tribunal has observed that not extending similar

benefit to persons similarly situated would amount itself to a

discrimination violative of Articles 14 and 16 of the

Constitution. Justice, fairness and equity demand that when the

principle decided in one case has become final and binding on

the respondents, similar benefit should be extended to persons

belonging to the same category and who are similarly placed

(vide Thakar Das Sapra Vs. Lt. Governor, 1987(3) ATC 849 at

853).

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9. In John Lucas Vs. Additional Chief Mechanical Engineer, 1987(3) ATC 328 at 335 a Full Bench of this Tribunal has considered the question whether the judgments of the Tribunal would be judgments in rem or judgments in personam. The following observations are pertinent:-

" In "service matters" any judgment rendered, except perhaps in disciplinary proceedings, will affect someone or the other member of the service. The interpretation of Rules governing a service by the Tribunal, while it may benefit one class of employees, may adversely affect another class. So also upholding the claim of seniority or promotion of one may infringe or affect the right of another. The judgments of the Tribunal may not, in that sense be strictly judgments in personam affecting only the parties to that petition; they would be judgments in rem. Most judgments of the Tribunal would be judgments in rem and the same authorities impleaded as respondents both in the earlier and the later applications would have to implement the judgments*.

10. In Dharam Pal & Others Vs. Union of India, 1988(6)

ATC 396 at 402, this Tribunal observed that the cases of employees similarly situated should be examined by the Government suo motu, without driving them to seek redress in a Court of law. There are numerous other authorities on the subject*.

11. In the light of the aforesaid judicial pronouncements we are of the opinion that the decisions in Narender Kumar's

Judgments of the High Courts:

(i) Piara Lal Vs. State of Punjab & Others, 1983(2) SLR 786 and (ii) Ashok Kumar Sehgal Vs. The Punjab State Electricity Board, 1989(2) SLJ 143.

Judgments of the Tribunal

(i) T.K. Pandarish & Others Vs. The Regional Director, ESIC, 1989(2) SLJ CAT 59 and (ii) Parmod Kumar Vs. U.O.I. & Others, 1989(2) SLJ CAT 510.

Decisions of the Supreme Court:

(i) Inderpal Yadav & Others Vs. U.O.I. & Others, 1985 SCC (L&S) 526; (ii) M/s Star Diamond Company India Vs. U.O.I. & Others, AIR 1987 SC 179 and (iii) Professor C.D. Tase Vs. University of Bombay & Others, JT 1989(1) SC 364.

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case, Krishan Kumar's case would be applicable to the instant case and the applicants before us would also be entitled to the benefit of the judgments given in those cases.

12. The judgments of the Tribunal in Narendra Kumar's case and Krishan Kumar's case are declaratory of the law on the issue of date of confirmation.

That being so, ^{by} these decisions gave the applicants a fresh cause of action as they were also similarly situated. They were delivered in 1987 and the applications were filed in the Tribunal on varied dates soon

thereafter. In the facts and circumstances of the case, we reject the contention of the respondents that these applications are barred by limitation.

13. The third question relates to the validity of P.P. Rule 12.2(3) of the Punjab Police Rules mentioned above. In this context, the learned counsel of the applicants relied upon the decision of the Supreme Court in S.B. Patwardhan Vs. State of Maharashtra, 1977 SC (12S) 391. In that case, the Supreme Court

struck down a rule according to which right of seniority would depend upon the mere accident of confirmation.

It was observed that that was impermissible under Articles 14 and 16 of the Constitution. The Supreme Court also made the following significant observation

regarding the arbitrariness of the Rule of confirmation:-

• Confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. A glaring instance widely known in a part of our country is of a distinguished member of the judiciary who was confirmed as a District Judge years after he was confirmed as a Judge of the High Court*.

14. The aforesaid observations in Patwardhan's case was followed by the Supreme Court in Shiv Kumar Sharma Vs. Haryana State Electricity Board, AIR 1988 SC 1673.

15. In the light of the foregoing, we are unable to uphold the validity of Rule 12.2(3) of the Punjab Police Rules or the corresponding rules made under the Delhi Police Act, 1978. We do not, however, propose to strike down the Rule but would commend to the authorities concerned to revise the Rules in conformity with the latest instructions issued by the Department of Personnel in regard to confirmation (vide OM dated 9.3.88*).

16. We may now come to the question of relief to which the applicants would be entitled to, keeping in view the facts of each of these applications as discussed below.

* OM No.18011/1/86-Estt.(D) dated 28.3.1988 issued by the Department of Personnel and Training, Vide Swamy's Complete Manual on Establishment and Administration for Central Government Offices, 2nd Edition, pp.309-311.

GA-1046/88

17% The applicant was appointed as temporary Sub-Inspector on 16.10.1969 in the Delhi Police. He was confirmed with effect from 1.4.1977 while some of his batchmates were confirmed with effect from 22.5.1974. In 1972 while he was posted as Sub-Inspector in Police Station, Jama Masjid, Delhi, he was implicated in a case of bribery. He was arrested and thereafter placed under suspension. On 27.3.1974, the Criminal Court acquitted him of the charges levelled against him whereupon the suspension was revoked with effect from the same date. However, on the same charges the respondents ordered a departmental inquiry against him. The Inquiry Officer came to the conclusion that the allegations against him stood proved only to the extent of delaying the case diaries. On 7.10.1976, the disciplinary authority imposed the penalty of censure on him. The Superintendent of Police by an order dated 14.1.1977 also gave a warning to him for his alleged negligence in investigation of a case under Section 380/411 IPC. Thus, barring one censure and a warning, there was nothing on record against him before the date of his confirmation. He has alleged that a number of his juniors who had worse service records than him, were confirmed with effect from 22.5.1974. This has not been denied in the counter-affidavit filed by the respondents.

DA-778/87

18. The applicant in this case was appointed as Sub-Inspector in 1970. He was confirmed only on 22.1.1976 while some of his batchmates were confirmed w.e.f. 22.5.1974. His case for confirmation was deferred because of his suspension pending criminal proceedings against him w.e.f. 16.12.1974 for the alleged offence under Sections 308/340 I.P.C. read with Section 5(2) of the Prevention of Corruption Act. He was, however, reinstated on 10.12.1974. He was acquitted in the criminal case on 11.2.1975 on account of lack of evidence. His period of suspension was treated as on duty by order dated 6.8.1975.

19. The penalty of censure was imposed on him thrice during the period from 1973 to 1975. There was also adverse remark in his confidential report for the period from 1.4.1972 to 31.3.1973 which was partly expunged later. The applicant has alleged that some of his colleagues had been confirmed w.e.f. earlier dates in spite of the fact that they had very bad records of service. This has not been denied by the respondents in the counter-affidavit filed by them.

DA-182/88

20. The applicant was appointed as Sub-Inspector in 1969. His post was made permanent before 27.10.1972. He was confirmed only w.e.f. 22.5.1975. Some persons who were appointed from 1969-70 batch, were confirmed w.e.f. 22.5.1974. His case was not considered for confirmation since a departmental inquiry was pending against him. The penalty of censure was imposed on him on 2.1.1975.

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An adverse remark in his confidential report for the period 1.4.1974 to 8.10.1974 was communicated to him on 25.10.1975. In 1976, two other departmental inquiries which were conducted against him, were dropped and he was fully exonerated of all the charges. On 22.3.1977, he was passed over for confirmation on the ground that his annual confidential report for 1975-76 was awaited.

The applicant has alleged that some of his colleagues had been confirmed from earlier dates in spite of the fact that they had very bad records of service or had initially been passed over for confirmation. The respondents have not controverted this assertion made by him.

DA-439/87

21. The applicant was appointed as Sub-Inspector in 1969. His post was made permanent before 27th October, 1972. His batchmates were confirmed w.e.f. 22.5.1974 while he was confirmed only on 4.2.1977.

For the year 1974-75, he was awarded two censures and a 'C' Report. He did not make any representation against the same. He has also alleged that some others had been confirmed from earlier dates in spite of the fact that they had very bad records of service. This assertion has not been controverted by the respondents.

DA-1864/87

22. The applicant was appointed as Sub-Inspector in 1972. While his batchmates were confirmed w.e.f. 10.3.1976, he was confirmed only w.e.f. 3.7.1976.

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23. The applicant was not confirmed along with his batchmates on account of his alleged unsatisfactory record of service. There was, On a departmental inquiry being conducted against him which was, however, dropped by the order dated 10.2.1977 with the direction that the penalty of censure may be imposed on him separately. He has alleged that some others ~~was~~ had been confirmed from earlier dates, in spite of the fact that they had very bad records of service. This has not been controverted by the respondents.

DA-721/88

24. The applicant was appointed as Sub-Inspector of Police in a temporary post in 1969 which was made permanent in 1972. Though his batchmates were confirmed w.a.f. 22.5.1974, he was confirmed only w.a.f. 26.7.1977. He was considered for confirmation in April/May, 1974 but the same was deferred on the ground that his conduct was under inquiry. In the A.C.R. for the period from 1.4.1973 to 15.10.1973, he was graded as an average type of officer and it was stated that his detective work was not satisfactory. These remarks were also conveyed to him. He was dismissed from the Force w.a.f. 11.11.1975 but was reinstated thereafter and the period spent out of employment was treated as leave of the kind due. However, his five years' approved service was forfeited permanently for wrongful detention of an individual. He has alleged that some others On had been confirmed earlier although they had bad records of service and this has not been controverted by the respondents.

DA-1550/87

25. The applicant was appointed as Sub-Inspector of Police in 1970. The post held by him was made permanent On

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in 1972. His batchmates were confirmed as Sub-Inspectors w.e.f. 22.5.1974, but he was confirmed only w.e.f. 26.7.1977. He had been placed under suspension w.e.f. 24.3.1973 for beating a person arrested in a case, but was reinstated by order dated 27.4.1973 without prejudice to the holding of an inquiry. His confidential report for the period from 1.4.1972 to 31.3.1973 was adverse and the same was communicated to him. His confirmation along with his counterparts was taken up in May, 1974 but it was decided to defer the same as his conduct was under inquiry. In the said inquiry, his one year's approved service was forfeited temporarily for a period of one year. His A.C.R. for the period from 8.5.1973 to 31.3.1974 was also adverse. This also had been conveyed to him. On finalisation of the departmental inquiry, his case for confirmation was again considered but he was passed over for confirmation on account of his unsatisfactory record of service. On 24.12.1975, the penalty of censure was imposed on him. His A.C.R. for the period from 16.7.1975 to 31.3.1976 was adverse and the same was conveyed to him. His case for confirmation was reviewed on the receipt of his A.C.R. for the year 1976-77. Thereafter, he was confirmed. He has alleged that some of the persons had been confirmed from earlier dates in spite of the fact that they had very bad records of service.

Findings and Directions

26. Following the decision of this Tribunal in cases of Narendra Kumar, Krishan Kumar, and Davender Kumar, we direct the respondents to review and reconsider the confirmation of the applicants in DA Nos. 1046/88, 778/87, 182/88, 439/87, 721/88 and 1550/87. In case their batchmates having more or less similar records prior to confirmation, have been confirmed w.e.f. 22.5.1974, the

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applicants should also be given the benefit of confirmation as Sub-Inspectors from the said date. Similarly, the case of the applicant in OA-1864/87 should also be reviewed and reconsidered for the purpose of confirmation. In case his batchmates having more or less similar records prior to confirmation have been confirmed u.e.f. 10.3.1976, the applicant should also be given the benefit of confirmation as Sub-Inspector from the said date.

27. Subject to the aforesaid observations, the impugned seniority list of Sub-Inspectors dated 5th December, 1984, shall be re-arranged and the further promotion of the above mentioned applicants shall be considered on the basis of the seniority list so revised. The case of the applicants shall be reconsidered as directed above within a period of three months from the date of receipt of this order. The applicants would be entitled to all consequential benefits. There will be no order as to costs.

Let a copy of this order be placed in the case files of OA Nos. 1046/88, 778/87, 182/88, 439/87, 721/88, 1550/87 and 1864/87.

(Sd/-) K. Wasgotra 17/11/87
Administrative Member

(Sd/-) P.K. Kartha
Vice-Chairman(Judl.)