CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OAs No.808/90, 812/90, 881/90, and 1936/90

New Delhi, this 28th day of May, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri S.P. Biswas, Member(A)

Shri Gurmej Singh (No.937/L)
s/o Shri Bachan Singh
Qr.No.1, PS Model Town, Delhi .. Applicant in OA 808/90

Shri Sheodhan Singh (1039/SD)
s/o Shri Puran Singh
Qr.No.9, Police Post S.IV
R.K.Puram, New Delhi .. Applicant in OA 812/90

Shri Mohinder Singh (344/Cr)
s/o Shri Prahlad Singh
WZ 725/6, Palam Village,Delhi.. Applicant in OA 881/90

Shri Inder Singh
s/o Shri Hari Singh
68B, Nehru Enclave
Alipur, Delhi .. Applicant in OA 1936/90

(By Advocate Shri Shyam Babu)

versus

1. Chief Secretary
   Govt. of NCT of Delhi
   5, Shamnath Marg, Delhi

2. Commissioner of Police
   Police Hqrs., IP Estate, New Delhi

3. Dy. Commissioner of Police(Hqrs.I)
   Police Hqrs., IP Estate, New Delhi .. Respondents

(By Advocates Mrs. Avnish Ahlawat & Shri Rajinder Pandita)

ORDER

Hon'ble Shri S.P. Biswas

The Table hereunder would indicate that the facts of these cases, reliefs sought for and the legal issues involved are identical and hence they are being disposed of by a common order. The facts as submitted in OA 1936/90 have been referred to herein to appreciate the facts and circumstances of these cases.

T A B L E

Applicants in OAs	Position of confirmation* in parent cadre, i.e. grade and date. Date of intl. apptt. in bracket	Initial apptt. in Delhi Police on deputation basis & rank	Permanent absorption in Delhi Police i.e. grade & date	Reliefs sought for i.e. date from which the benefit of past service is being claimed	Date of rejection of claim
1	2	3	4	5	6
1936/90	Constable (Driver)/BSF 1.1.75 (27.4.71)	3.9.82(AA) Constable (Driver)	Constable (Driver) 31.10.83	1.1.75 to 31.10.83	21.8.90
881/90	Constable (Driver)CRPF 8.2.82 (14.7.70)	28.6.86 Constable (Driver)	Constable (Driver) 8.6.87	8.2.82 to 8.6.87	9.3.90
812/90	Constable (Driver) 26.9.81 (24.5.76)	14.8.86 Constable (Driver)	8.6.87 Constable (Driver)	29.9.81 to 8.6.87	9.3.90
808/90	Constable (Driver)/BSF 1.1.70 (5.12.66)	1.5.85	8.4.87	1.1.70 to 8.4.87	9.3.90

(*substantive post)

2. Upon rejection of their representations for reliefs, as shown in Col.5 of the Table hereinabove, by the respondents on different dates as indicated in Col.No.6, the applicants are before us with the following prayer:

(i) Direct the respondents to count their services as shown in Col.No.5 of the Table rendered in the parent organisations in the capacity as shown on regular basis while fixing seniority in Delhi Police for further promotion;

(ii) Declare the OM dated 29.12.69, as amended by Memo dated 29.5.86, (Annexure A) as unconstitutional and ultra-vires.

3. The claims of the applicants are based on the following grounds: That the applicants gave their consent for permanent absorption in Delhi Police and were given assurance

by the respondents that the services rendered by them in their parent cadres in the equivalent grade on substantive basis will be counted in Delhi Police for the purpose of fixing seniority.

4. The applicants would submit that there have been no breaks-in-service at all in the period between the service rendered by them in their original cadre (after confirmation) and their subsequent absorption in Delhi Police which was in public interest. Since the applicants were working on regular basis in the equivalent grade, as shown against the names of each in the aforesaid Table and since they were confirmed in their respective grades in the parent organisations, they are entitled to count their services rendered in the organisation of BSF/CRPF for the purpose of seniority after final absorption.

5. So far as the principle of law is concerned, the learned counsel for applicants relied on the judgement of the Supreme Court in the case of K. Madhavan and Anr. Vs. UOI & Ors. AIR 1987 SC 2291. The relevant discussion in para 21 of the judgement makes it clear that full credit must be given to the applicants for the services rendered by them on a substantive basis in the BSF/CRPF. He contends that the applicants should be given seniority taking the date of their initial appointment or in the alternative their seniority may be counted with effect from the date they were appointed on substantive basis in the BSF/CRPF.

6. Section 17 of Delhi Police Rules empowers the Commissioner of Police to allow an official to be absorbed when taken on transfer or transfer-on-deputation basis. Since the applicants were appointed in the equivalent grade

in their parent organisations on regular basis and confirmed in the respective grades, they are entitled to count their earlier services when they got absorbed permanently in Delhi Police.

7. To lace his contentions further, the learned counsel submitted that if the respondents had made it clear at the time of such absorption that their service in BSF/CRPF etc. would not be counted for the purpose of fixing seniority, the applicants would not have even given consent for final absorption. The respondents failed to appreciate that the Recruitment Rules for the post of Constable (Driver) in Delhi Police duly authorise recruitment by transfer and deputation. Since they were appointed to Delhi Police by "Transfer on deputation" basis the applicants would be entitled to count their seniority of service in the BSF/CRPF in the grade of Constble (Driver) for the purpose of seniority.

8. In the counter Mrs. Avnish Ahlawat and Shri Rajinder Pandita, the learned counsel respondents argued that when an officer initially comes on deputation and subsequently gets absorbed, the governing principe is that seniority should be counted from the date of such absorption. However, the officials have already been holding, on the date of absorption, the same or equivalent grade on regular basis in their parent departments, it would be equitable and fair that such regular services in the grade should also be taken into account in determining their seniority subject only to the condition that it would be only from the date of deputation in the grade in which absorption is being made. The principles that would govern counting seniority in such

cases, as per respondents, are available in the OM dated 25.5.86 (Annexure F) issued by the Department of Personnel and Training. The relevant portion is reproduced below:

> "(iv) In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for "Trannfer on deputation/Transfer"), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis inhis parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from the date he has been holding the post on deputation, or the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department, whichever is later.
>
> "The fixation of seniority of a transferee in accordance with the above principle will not, however, affect any regular promotions to the next higher grade prior to the date of such absorption. In other words, it will be operative only in filling up of vacancies in higher grade takinjg place after such absorption.
>
> "In case in which transfers are not strictly in public interest, the transferred officers will be placed below all officers appointed regularly to the grade on the date of absorption."

9. The learned counsel for the respondents would further contend, on the strength of decisions of this Tribunal in OA 2032/89 (decided on 19.8.94) and OAs 1414 & 1415/94 (decided on 28.10.94), that unless otherwise provided in these or any other rules framed under the Delhi Police Act, 1978, each member of subordinate rank shall earn promotion in his/her cadre in accordance with the rules applicable to that cadre. The only correct interpretation of these rules would be that the seniority of the applicants in the Delhi Police could be reckoned from the date of their absorption in that cadre.

10. Respondents voiced their objections in that those who have taken their berths in the cadre earlier than of those absorbtees who are necessary parties have not been impleaded

as such and, therefore, mandatory provisions of CrPC as enunciated in proviso added to Rule 9 of order 1 of CPC by amendment of 1976 will make these applications liable for rejection. That apart, the Constable/Drivers while joining Delhi Police were granted higher scale than the scales meant for these very officials in their parent departments both in the pre-revised and revised scales. In other words, applicants have not been taken on analogous posts on deputation in Delhi Police. The latter has its own cadre of Constable/Driver and makes promotion/direct recruitment to these posts and people coming on deputation from other central police organisations will have to count their seniority from the date of their absorption and those already in the cadre will rank senior to the deputationists. Those outsiders of the cadre cannot steal a march over the insiders. The principle that would determine the seniority of officials coming on deputation and subsequently got absorbed has been stipulated by the Department of Personnel & Training in its OM No.20070/9/60-Estt(D) dated 29.5.86. Normally the principle lays down that seniority should count from the date of absorption. There are, however, cases where it was found that prior to coming on deputation a person was holding the same or equivalent grade on regular basis in his parent department and therefore it was felt that such regular service in the grade should also be taken into account in determining the seniority subject only to the condition that at best, it would be only from the date of deputation to the cadre in which absorbtion is being made.

11. As per respondents' counsel, their stand on the subject is well supported by the judgements of Hon'ble Supreme Court in the case of Ashok Gulati Vs. B.S. Jain, AIR 1987 SC 424, wherein it was laid down that according to cannons of

accepted service jurisprudence seniority of a person appointed must be reckoned from the date he/she became member of that service. One cannot have seniority in a cadre unless he becomes a member of that cadre. The applicants herein became members of the service only from the date of their absorption and that becomes crucial to the counting of seniority in the cadre.

12. Placing reliance on the decision of this Tribunal in OAs 1414 and 1415/94 (decided on 28.12.94)in favour of the respondent Delhi Administration, the counsel for the respondents argued that since the judgement in the case of Antony Mathew was on wrong appreciation of facts and also is not in conformity with the various judgements of the Hon'ble Supreme Court cited above (case of Ashok Gulati and others), it would be difficult to treat it as a binding precedent.

13. The question, therefore is: What happens to the seniority of a deputationist who gets permanently absorbed in a post (in the borrowing department) to which or to the equivalent of which he had earlier obtained regularisation and substantive status? In other words, whether the applicants, in the facts and circumstances of the case on hand are entitled to count seniority from the date of regularisation in a substantive post in parent cadre or the date of initial appointment on deputation or from the date when they got permanently absorbed in the equivalent substantive post is the question that falls for determination.

14. We find that although no assurance with regard to fixation of seniority from date of absorption was given and yet as per communication dated 10.11.83 allowing permanent

absorption, respondents did not lay any specific condition that the date of permanent absorption will be taken as the crucial date for determination of seniority in Delhi Police.

15. We also find that the issues raised herein are no more res integra, having been examined in a large number of OAs in this Tribunal. Amongst them, the most important ones having a close bearing with the fate of these cases and also referred to during the course of the pleadings are: OA 560/92 decided on 24.2.93, OA 470/91 decided on 2.3.93, OA 3023/89 decided on 19.8.94, OAs 1414/94 and 1415/94 decided on 28.10.94 and OA 327/90 decided on 13.12.94. All these cases have been decided, by and large, on the basis of binding precedents arising out of previous decisions either of the Apex Court or by various Benches of this Tribunal. We also notice that the Hon'ble Supreme Court has also been distinguishing the facts of various cases and their judicial pronouncements vary based on facts and circumstances of each case. Examples of such varying judgements are available in Direct Class-II Engineers Association Vs. State of Maharashtra 1950 2 SCC 715, State of West Bengal Vs. Aghornath Dey 1993(3) SCC 371, Dhan Singh Vs.State of Haryana 1991 Suppl. 2 SCC 1990, UOI Vs. Dr. S.Krishnamurthy 1989 (4) SCC 689, Narendra Nath Pandey Vs. State of UP 1988 3 SCC p.527.

16. Respondent No.1 Delhi Administration, on being aggrieved by the decision in OA 470/91 (decided in favour of the petitioner Antony Mathew therein) filed a revision application. That was dismissed by this Tribunal on merits on 30.4.93. Respondents then took up the matter in SLP with the Hon'ble Supreme Court and that was dismissed on 22.4.94. Thereafter the Learned Solicitor General appearing before the

Apex Court on 9.6.95 submitted that although it is unfotunate that anomalous situation has been created by giving Antony Mathew, the seniority, who is admittedly junior to the petitioner (in OA 470/91), but such anomoly is the result of the decision of CAT and the dismissal of Special Leave Petition filed by the respondent. He had submitted that the respondent will file a Review Petition before this Court against the dismissal of the SLP in the case of Antony Mathew so that this Court may take into consideration that decision and also the impugned decision of the CAT in this case, so that an uniformity is maintained and all the conflicts are resolved. The proposed Review Petition was to be filed within a period of 3 weeks from 9.8.95.

17. When the proposed review petition (1949-50 of 1995) by the respondent-Delhi Administration came up for hearing on 1.2.96, the Apex Court ordered as under:

> "Apart from the fact that the petitions are delayed by 444 days, even on merits we see no reason to entertain these petitions. Hence the reviesw petitions are dismissed."

It is thus be wrong to say that Antony Mathew's case was decided on wrong appreciation of facts.

18. It is worthwhile for us to mention that the applicants herein have been taken on deputation basis on analogous posts in Delhi Police and it was certified at the appropriate level that absorptions were in public interest. Equivalance of posts were declared later on and not denied by the respondents. It is true that the pay scales of the constable/drivers between the lending and borrowing departments were different but the pay protection was

guaranteed by the respondents Delhi Police vide letter No.5150/SIP(D-IV)(XIV/1/KW/40/85 dated 28.3.95 even before the deputation started.

19. Very recently, the Apex Court examined the case of seniority of a Havildar in Indo-Tibetan Border Police (ITPB) who came on deputation to Intelligence Bureau (IB) and got permanently absorbed in IB. In this case, R.S. Rawat Vs. UOI & Anr. 1996 SCC (L&S) 1245 decided on 19.4.96, it was held that:

> "His substantive rank held in the parent department i.e. ITBP would be the criterion for absorption in the equivalent post in IB"

although on the date of absorption the said Havildar was officiating in a higher rank.

20. In the present cases, protections in terms of pay and rank were provided before the applicants joined Delhi Police. Initial appointments were for one year, extendable from year to year, on general terms and conditions for deputationists as stipulated vide office order dated 4.2.86 (Annexure R-1). Orders of permanent absorptions did not precede exercising of any options as was in R.S. Rawat's case (supra). Nor was any undertaking taken from applicants for accepting bottom seniority as it normally happens when an employee is transferred from one unit to another. Even in such case with acceptance of bottom seniority, benefits of past services (employed on regular basis) rendered at the place from where an employee has been transferred were allowed to be counted by the apex court as necessary experience for the purpose of eligibility for promotion at the different place where the employee has been transferred (see Civil Appeal 1221/87, CA No.529/89 and CA No.2320/95 decided by the Hon'ble Supreme

Court on 5.12.95 : 1996(1) ATJ 265). The ratio arrived at in the above case is in conformity with that in Madhavan's (supra) case. Under these circumstances, it is just, fair and equitable that services rendered in a substantive capacity is reckoned for the purpose of seniority when appointed, following due process, in that very capacity but in a differemt organisation.

21. Based on reasons aforequoted and the law laid down by the Hon'ble Supreme Court, these OAs deserve to be allowed and we do so accordingly, with the following directions:

(i) Respondents shall count the services rendered by the applicants in BSF/CRPF as Constable Driver on regular basis shown in Column 5 of the Table, and refix their seniority in Delhi Police in the grade of Constable Driver.

(ii) Promote the applicants to the next higher ranks flowing from redetermination of seniority in terms of (i) above subject to other conditions being fulfilled. This shall be done within six months from the date of receipt of a copy of this order.

(iii) No arrears of pay shall be allowed as they have not really shouldered higher responsibilities.

(iv) OM dated 29.5.86 is bad in the eyes of law.

21. There shall be no order as to costs in the facts and circumstances of the case.

(S.P. Biswas)
Member(A)

(Dr. Jose P. Verghese)
Vice-Chairman(J)

/gtv/

Attested
30/5/97
CO/C-II