

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2340/90

NEW DELHI THIS THE 6TH DAY OF DECEMBER, 1994.

MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
MR.B.N.DHOUNDIYAL, MEMBER(A)

Shri Manoj Kumar Sharma
S/o Shri Ashok Kumar
R/o 308/1, Karkar Dooma
Delhi-110092.

APPLICANT

BY ADVOCATE SHRI SHYAM BABU.

Vs.

1. Delhi Administration, Delhi
through its Chief Secretary
5, Shyam Nath Marg
Delhi.
2. Deputy Commissioner of Police
H.Q.I
Police Head Quarter
I.P.Estate
New Delhi.
3. Commissioner of Police, Delhi
Police Headquarter,
I.P.Estate
New Delhi.

... RESPONDENTS

BY ADVOCATE SHRI O.N.TRISHAL.

ORDER(ORAL)

The applicant, a Stenographer in the Delhi Police, has come up to this Tribunal with the grievance that he is being denied his due seniority.

2. The applicant was appointed as an Assistant Sub Inspector(Stenographer) on 11.10.1982 on ad hoc basis. His ad hoc service continued till 31.7.1986. On 1.8.1986, he was given a substantive appointment and on 1.8.1988, he was confirmed in service.

3. Shri Shyam Babu, learned counsel for the applicant, submits that he now confines his submissions to the claim of the applicant for being given seniority from 1.8.1986, the date on which he was substantively appointed as Stenographer. The learned counsel has urged that the conception that seniority

would depend upon confirmation is now a mere myth.

4. A counter-affidavit has been filed on behalf of the respondents. The stand taken is that the seniority of the applicant would be determined from 1.8.1988, the date on which he was confirmed in service.

5. Shri O.N.Trishal, learned counsel for the respondents, has placed reliance upon Rule 18(i) of the Delhi Police(Promotion and Confirmation)Rules, 1980 and Rule 22 of the Delhi Police(Appointment & Recruitment) Rules, 1980.

6. Rule 18(i) of the Delhi Police(Promotion and Confirmation) Rules, 1980, inter-alia, states that confirmation in all ranks shall be strictly on the basis of seniority when permanent posts become available. This rule has no relevance at all to the present controversy. It only talks of the stage at which confirmation shall be considered. Obviously, no confirmation can take place so long as a post on which a person is appointed is made permanent.

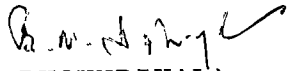
7. Rule 22 of the Delhi Police(Appointment & Recruitment) Rules, 1980 as enforced by the notification dated 15.11.1985, as material, provides that seniority in the case of upper and lower subordinate shall be initially reckoned from the date of first appointment, and officer of subordinate rank promoted from a lower rank being considered senior, to a person appointed direct to the same rank on the same day, till seniority is finally settled by confirmation. This part of the rule can be broken up at least in two parts. The first is that the time from which seniority has to be computed is the date of first appointment.


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The 'first appointment' obviously does not mean ad hoc appointment. It clearly refers to the substantive appointment. In the second part, it is implicit that if a direct recruit and an officer of subordinate rank is promoted on the same day, then for the purpose of determining their seniority inter se, confirmation in service would be a determining factor. We fail to understand how Rule 22 advances the case of the respondents. Here, the respondents have taken a bald plea that the date of confirmation alone would be the deciding factor for the purpose of determining the seniority. Such a rule runs contrary to the view taken by their Lordships of the Supreme Court in the case of **S.B.PATWARDHAN & ANR.Vs. STATE OF MAHARASHTRA & OTHERS(AIR 1977 SC 2051)** and **THE DIRECT RECRUIT CLASS-II ENGINEERS OFFICERS' ASSOCIATION AND OTHERS Vs.STATE OF MAHARASHTRA & OTHERS(1990(2) SLJ 40).**

8. In view of the aforesaid discussion, the stand taken by the respondents is untenable. We, therefore, direct them to determine the seniority of the applicant from the date of his substantive appointment i.e. 1.8.1986 and give him all consequential benefits arising therefrom.

9. With these directions, this OA is disposed of finally but without any order as to costs.


(B.N.DHOUNDIYAL)
MEMBER(A)


(S.K.DHAON)
VICE-CHAIRMAN(J)

sns