

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI.

R.A. 104/93, R.A. 195/93 and O.A. 2089/90.

R.A. 169/93 and O.A. 856/90.

O.A. 591/93.

4th day of November, 1993.

SHRI JUSTICE V.S. MALIMATH, CHAIRMAN.

SHRI S.R. ADIGE, MEMBER (A).

O.A. 2089/90.

Baljit Singh Bamel,
Quater No.37, Police Post
New Friends Colony,
NEW DELHI-110065.

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Petitioner.

(By Advocate Shri Bishram Singh)

Vs.

1. The Union of India,
Through its Secretary,
Ministry of Home Affairs,
North Block, New Delhi-110001.

Respondents.

2. The Lt. Governor,
The Union Territory of Delhi,
Raj Niwas, Delhi-110054.

3. The Commissioner of Police,
Delhi Police Headquarters,
M.S.D. Building, I.P. Estate,
New Delhi-110002.

4. Shri Harbans Singh Saini,
No.D/2862, Sub-Inspector(M),
Delhi Police.

5. Shri Ram Kishan, No.D/2866,
Sub-Inspector(M),
Delhi Police.

Added as additional
respondents as per
order in R.A. 104/93

6. Shri Chandra Mouli, No.D/2860,
Sub-Inspector(M),
Delhi Police.

7. Shri Risal Singh, No.D/2861,
Sub-Inspector(M),
Delhi Police.

8. Shri Sadhu Ram, No.D/2864,
Sub-Inspector(M),
Delhi Police.

9. Shri Furqan Ali, No.D/2863,
Sub-Inspector(M),
Delhi Police.

✓ 10. Shri Mal Dev, No.D/
Inspector, Delhi Police.

11. Shri Dharam Pal No.D/
Sub-Inspector(M),
Delhi Police.
12. Shri Ishwar Singh, No.D/
Sub-Inspector(M),
Delhi Police.
13. Shri Makhan Lal, No.D/2869,
Sub-Inspector(M),
Delhi Police.
14. Shri Husan Singh,
327, Police Colony,
Ashok Vihar,
Delhi-52
(In person)

Added as additional
respondent as per
order in R.A.195/93.

(By Advocates S/Shri Mukesh K. Giri, Bhuvnesh Prashad and
Mrs. Avnish Ahlawat).

O.A. 856/90.

Shri Rai Singh Dabas,
R/D RZ-108, Lokesh Park,
Najafgarh,
Delhi-110043.

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Petitioner.

(By Advocate Shri Mukesh K. Giri)

Vs.

1. Union of India, through
Secretary (Home Affairs),
Ministry of Home Affairs,
North Block, New Delhi.
2. Lt. Governor,
Union Territory of Delhi,
Raj Niwas, Delhi.
3. Commissioner of Police,
Delhi Police,
M.S.O. Building, I.P.Estate,
New Delhi.
4. Shri Harbans Singh Saini,
No.D/2862, Sub-Inspector(M),
Delhi Police.
5. Shri Ram Kishan, No.D/2866,
Sub-Inspector(M),
Delhi Police.
6. Shri Chandra Mouli,
Sub-Inspector (M), D/2860,
Delhi Police.
7. Shri Risal Singh, No.D/2861,
Sub-Inspector(M),
Delhi Police.
8. Shri Sadhu Ram No.D/2864,
Sub-Inspector(M),
Delhi Police.

Respondents.

Added as additional
respondents as per
order in R.A.169/93.

9. Shri Furqan Ali, No.D/10,
Sub-Inspector(M),
Delhi Police.
10. Shri Mal Dev, No.D/2852,
Inspector,
Delhi Police,
11. Shri Dharam Pal, No.D/2855,
Sub-Inspector(M),
Delhi Police.
12. Shri Ishwar Singh, No.D/2853,
Sub-Inspector(M),
Delhi Police.
13. Shri Makhan Lal, No.D/2869,
Sub-Inspector(M),
Delhi Police.
14. Shri N.V. Nair,
Sub-Inspector.
15. Shri Praveen Kumar
Son of
to be served through respondent No.3.
16. Shri A.N. Haridas,
Sub-Inspector, to be served
through respondent No.3.

Added as additional
respondents as per
order in RA 169/93

(By Advocates Shri T.V.S.R. Krishna Shastri, Shri Mukesh
Giri and Mrs. Avnish Ahlawat).

O.A. 591/1993.

Raj Kumar, Sub Inspector,
No.D/2861, PA to DCP (East Dist.)
Old Police Line, Delhi.

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Petitioner.

(Advocate: None for the petitioner).

Vs.

1. The Commissioner of Police,
Police Headquarters,
I.P. Estates, New Delhi.
2. The Deputy Commissioner of
Police (HQ)(I),
Police Headquarters, I.P.Estates,
New Delhi-110002.

Respondents.

(By Advocate Shri Bhuwanesh Prasad)

ORDER

✓ Shri Justice V.S. Malimath.

We are concerned in this batch of cases with the problem arising from the Sub-Inspectors (Stenographer) who were borne on the cadre of the Border Security Force (hereinafter referred to as 'the B.S.F.') having been absorbed in the Delhi Police as Sub-Inspectors (Steno). The petitioner in O.A. No.2089/90 is Shri Baljit Singh. He was a Sub-Inspector (Steno) in the B.S.F. He came on deputation to the Delhi Police on 5.2.1985 as Stenographer. He was in the scale of Rs.330-10-380-12-500-15-560. The order dated 15.4.1985 passed after the approval of the Commissioner of Police states that he is taken on deputation as ASI (Steno) if his pay is below Rs.416/- and SI (Steno) if his pay is above Rs.416/-. After couple of years, he was asked if he was willing to be absorbed on permanent basis in the Delhi Police. On his giving consent he was absorbed as Sub-Inspector (Steno) w.e.f. 9.3.1988 under Rule 17 of the Delhi Police (General Conditions of Service) (Amendment) Rules, 1983. The order makes it clear that his inter-se seniority in the rank of ASI (Steno) would be fixed later on. On 5.2.1985, when the petitioner came on deputation, he was drawing the pay of Rs.428/- in his parent department. He, therefore, came to be designated as SI (Steno) in the Delhi Police. By communication dated 7.9.1990 produced in his case as Annexure A-15 service particulars of the persons specified in the list were called for giving the impression that the list consists of Assistant Sub-Inspectors (Steno). The petitioner apprehended that his status as a Sub-Inspector is threatened by this action. It is in this background that he filed O.A.2089/90 before this Tribunal wherein he has prayed for quashing of Annexure A-15 to the petition in so far as it pertains to inclusion

of his name in the list of Assistant Sub-Inspectors (Steno) and for a direction to fix his inter-se seniority in the cadre of Sub-Inspectors (Ministerial) by taking into account his substantive service in the rank of Sub-Inspector (Steno) which ^{he} rendered in his parent department with effect from 5.1.1976 with all consequential benefits. There is also prayer for a direction to the respondents to consider him for promotion as Inspector (Ministerial) with effect from the date his next Junior Sub Inspector (Ministerial) was so promoted in Delhi Police. Union of India, the Delhi Administration and the Commissioner of Police who were the only respondents impleaded in this case opposed the claim of the petitioner. The Tribunal by its judgement dated 27.11.1992 allowed the application, quashed the Annexure A-15 dated 7.9.1990 to the extent it pertains to the inclusion of the name of the applicant in the list of Assistant Sub Inspectors (Steno) and directed the respondents to fix the inter se seniority of the applicant as Sub-Inspector (Ministerial) by taking into account his substantive service w.e.f. 5.1.1976, in his parent department, the B.S.F. There is also direction to consider his case for promotion to the post of Inspector (Ministerial) with effect from the date his next Junior Sub-Inspector (Ministerial) was so promoted in Delhi Police. The said decision was challenged by the respondents in the application before the Supreme Court in SLP No.13160 of 1993 and it was dismissed on 12.8.1993. The dismissal of the SLP being not by a reasoned order, it is obvious that the judgement of the Tribunal did not stand emerged in the order of the Supreme Court.

2. Shri Harbans Singh Saini and nine others filed in a representative capacity RA No.104/93 seeking review of the judgement of the Tribunal in O.A.2089/90, on the ground that the judgement of the Tribunal affects their rights in regard to their seniority and promotion and that, therefore, they were entitled to be heard before the adverse decision was rendered by the Tribunal affecting their interest. In response to the notice issued by the Tribunal, Shri Vikram Nair, Parveen Kumar and Hari Dass were also impleaded as Respondents 14, 15 and 16 respectively in R.A. 104/93. R.A. 195/93 is a similar review application filed by one Shri Husan Singh seeking review of the same judgement in O.A. No.2089/90 on the same grounds.

3. O.A. 856/90 was filed by Shri Rai Singh Dabas in which reliefs similar to the one granted in O.A. No.2089/90 were asked. Following the judgement in O.A. 2089/90, O.A. 856/90 was allowed by the Tribunal by its judgement dated 5.1.1993. The review of the said judgement is sought in R.A. 169/93 by Shri Harbans Singh and nine others on the same grounds on which they have sought review of the judgement in O.A. No.2089/90.

4. O.A. No.591/93 is by Shri Raj Kumar who has also sought reliefs similar to the ones asked in O.A. No.2089/90 and O.A. No.856/90. Raj Kumar was also a Sub-Inspector (Steno) in the B.S.F. who came on deputation and was later on absorbed on permanent basis by order dated 8.1.1985. He was also drawing the pay of more than Rs.416/- on the date on which he came on deputation to the Delhi Police. He has relied upon the judgement of the Tribunal in O.A. No.2089/90 and has prayed for similar reliefs.

5. As all the three review applications and the Original Application of Shri Raj Kumar raised identical questions, we heard them together and they are being disposed of by this common order.

6. As we are satisfied that the decision rendered in O.A. 2089/90 and O.A. 856/90 has the direct effect of affecting the seniority and right to consideration for promotion of the petitioners in the respective review applications. We allow the review application and set aside the orders in two O.A.s 2089/90 and 856/90. We heard them afresh giving an opportunity to all persons likely to be affected by our decision. As similar questions have been raised in O.A. 591/93, the said case was also directed to be clubbed and heard along with the connected other two cases. The review applicants are added as additional respondents in the respective OAs. We shall refer to the parties with reference to their ranking in the O.As hereafter.

7. We shall briefly summarise the undisputed facts before we embark upon consideration of the contested issues.

The petitioners in all the three O.As, as already stated, were holding the post of Sub-Inspectors (Steno) in the B.S.F. in the scale of Rs.330-560 before the scale was revised w.e.f. 1.1.1986 to Rs.1400-2300. All of them were drawing the pay of more than Rs.416/- in their parent department, the B.S.F., before they came on deputation to the Delhi Police between October, 1983 and February, 1985. On their coming on deputation to the Delhi Police, they were given the designation as Sub-Inspectors (Steno). Subsequently, all of them were permanently absorbed in the service of the Delhi Police invoking Rule 17 of the General Conditions of Service Rules. The three petitioners in this case, Sarvashri Baljit Singh Samel, Rai Singh Dabas and Raj Kumar were

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permanently absorbed as Sub-Inspectors (Steno). In the order of appointment of Shri Baljit Singh Bamel on deputation, it is stated that his appointment as Stenographer would be with a designation as ASI (Steno) if his pay was below Rs.416/- and SI (Steno) if his pay was more than Rs.416/- per month. It is not disputed that Shri Baljit Singh Bamel was drawing the pay of more than Rs.416/- on the date on which he came on deputation.

8. So far as Shri Rai Singh Dabas is concerned, the order appointing him as a Stenographer on deputation does not show that he would be taken as SI (Steno) if he was drawing the pay of Rs.416/- per month on the date of his coming on deputation. But it is not disputed that he was drawing the pay of more than Rs.416/- per month as on the date on which he came on deputation and that he was also permanently absorbed as Sub-Inspector (Steno) obviously taking into account the fact that he was drawing the pay of more than Rs.416/- as on ^{on} the date/which he came on deputation.

9. So far as Shri Raj Kumar is concerned, in the order appointing him on deputation there is an express stipulation to the effect that if his pay is below Rs.416/- per month, he would be taken as ASI (Steno) and as SI(Steno) if his pay is above Rs.416/-. He was permanently absorbed in service as SI (Steno). He was taken as SI (Steno) for the reason his pay was more than Rs.416/- per month on the date of his coming on deputation.

10. All the three petitioners in the three different O.As are similarly situate in every respect. They were holding the post of SI (Steno) in the parent department of B.S.F. drawing pay above Rs.416/- per month

on the dates on which they came on deputation to the Delhi Police. On their coming to the Delhi Police on deputation, they were taken as Sub-Inspectors (Steno) and absorbed as such on permanent basis. All the petitioners, therefore, enjoyed the status of Sub-Inspectors (Steno) in the new organisation to which they came, namely, the Delhi Police. It is when their status and rights were threatened as Sub-Inspectors (Steno) by the impugned circular treating them as Assistant Sub-Inspectors (Steno) they approached the Tribunal for appropriate relief. Their contention is that though they have been absorbed as Sub-Inspectors (Steno) they were really absorbed as Sub-Inspectors (Ministrial).

11. The principal stand taken by the respondents, the Delhi Administration as well as others who are opposing the application, is that the real status and position of the Sub-Inspectors (Steno) of B.S.F. when they were taken on deputation and later on permanently absorbed in Delhi Police is that of Assistant Sub-Inspectors (Steno). In other words, it is their contention that though the petitioners enjoyed the designation of Sub-Inspectors (Steno), they were in law and in substance Assistant Sub-Inspectors (Steno) in the Delhi Police.

The reasons put forward in support of this contention by them are that there are no sanctioned posts of Sub-Inspectors (Steno) in the Delhi Police and that the pay-scale in which the petitioners came from the B.S.F., namely, Rs.330-560, is the pay scale of the Assistant Sub-Inspectors (Steno) in the Delhi Police. They further

✓ maintain that an Assistant Sub-Inspector (Steno) can become

Inspectors with their consent for permanent absorption in Police forces of other States/Union territories or Central Police organisations, subject to the concurrence of the Head of the police force concerned. In the case of such permanent transfer of an Inspector of Delhi Police to any other State or vice-versa, the Commissioner of Police, shall obtain the prior sanction of the Administrator".

It is in accordance with the said provision that the petitioners have been permanently absorbed in service. It was faintly suggested on behalf of the respondents during the course of the arguments that absorption of the petitioners in service of the Delhi Police was not in public interest but on the request of the petitioners themselves. There is no material to support this contention. The material available indicates that the petitioners were experienced and competent stenographers and were very much in demand. It is for that reason they came to be absorbed in Delhi Police. The petitioners were asked to express their consent for absorption. This would not have been the position if the petitioners themselves had voluntarily made applications for their permanent absorption in the Delhi Police. On the materials available before us, we have no hesitation in holding that the absorption of the petitioners in the Delhi Police was in public interest invoking the provisions of Rule 17 of the General Conditions of Service Rules.

13. As the petitioners have come to the Delhi Police by the process of permanent absorption, what has to be ascertained next is as to which post or cadre they stood permanently absorbed in service. Whereas the petitioners

say that their permanent absorption by the order issued in their favour is to take them in the cadre of Sub-Inspectors describing as (Steno), the respondents maintain that their absorption does not have the effect of taking them in the cadre of Sub-Inspectors. We should first decide as to whether the petitioners came with the status of Sub-Inspectors or with a lower status as Assistant Sub-Inspectors. The orders of permanent absorption make it abundantly clear that they were absorbed with the status of Sub-Inspectors describing as (Steno). If the intention of the authorities was to permanently absorb the petitioners not with the status of Sub-Inspectors but in the lower status as Assistant Sub-Inspectors, nothing prevented the authorities from expressly stating so in the orders. It is not as though this escaped the attention of the authorities or that it was a mistake. The orders particularly those issued in favour of Sarvashri Baljit Singh Bamel and Raj Kumar when they were taken on deputation expressly state that they would be taken as Assistant Sub-Inspectors (Steno) if they were drawing the pay of less than Rs.416/- per month, and as Sub-Inspectors (Steno) if their pay was above Rs.416/- per month. This indicates conscious application of the mind of the authorities while taking a decision to take the petitioners on deputation as to whether they should be taken in the lower cadre of Assistant Sub-Inspectors or the higher cadre of Sub-Inspectors. It was decided to take them in the lower cadre of Assistant Sub-Inspectors if they were drawing the pay of less than Rs.416/- per month on the relevant date and to take them in the higher cadre of Sub-Inspectors (Steno) if they were drawing the pay

of more than Rs.416/- per month on the relevant date. In the opinion of the competent authority which decided to take the petitioners on deputation what was determinative as to whether the petitioners should be taken in the status of Assistant Sub-Inspectors or in the status of Sub-Inspectors was whether the pay which they were drawing at the relevant point of time was Rs.416/- or above. We are not concerned with the question as to whether the competent authority was wrong or right in taking in choosing this factor for determining equivalence. We are concerned with the question of factum of decision regarding equivalence which was taken by the authorities. We say so for the reason that none has challenged the orders of deputation of equivalence and absorption in the relevant posts in Delhi Police. We shall ascertain as to what can be regarded as the decision of the authorities in regard to taking of the petitioners on deputation and later permanently absorbing them in the service of the Delhi Police. What appears to have weighed with the authorities in treating the Sub-Inspectors (Steno) of the B.S.F. as equivalent to the Sub-Inspectors (Steno) in the Delhi Police is the pay which they were drawing at the relevant point of time. The pay one reaches at the particular point of time is normally indicative of the extent of number of years of services he has put in. In other words, it indicates the extent of experience he has gathered in a particular post. The decision taken by the authorities was that a person who has reached the pay of Rs.416/- per month in the scale of Rs.330-560 would^{have} acquired sufficient experience to be treated as equivalent to the cadre of Sub-Inspectors in the Delhi Police. It is not as though the authorities took such a decision for the first time. Before the new rules came into force under the Delhi Police Act, 1978,

there was the practice which was consistently followed of stenographers being designated as Sub-Inspectors after they reached a particular level of pay. Before the scales of pay were revised w.e.f. 1.1.1973, the pay scale attached to the post of Stenographers was Rs.130-5-160-8-200-280-10-290-10-300. A Stenographer who reached the pay of Rs.168/- was designated as Sub-Inspector, as is clear from Annexure 'C' in R.A. 195/93. It is stated therein:

"...The rank of Sub-Inspector shall be conferred on the Stenographers as and when their pay reaches the stage of Rs.168/- i.e. the minimum of Sub-Inspector's pay. Stenographers drawing pay less than Rs.168/- shall be in the rank of Assistant Sub-Inspector. The stenographers posted with the Inspector General of Police shall be in the rank of Sub-Inspector".

The scale of pay of Sub-Inspector at that time was Rs.168-240. When the scales of pay were revised on 1.1.73, so far as the Delhi Police is concerned, Rs.330-560 is the scale of pay that was accorded to the Assistant Sub-Inspectors. A decision was taken to designate those who had reached the pay of Rs.416/- per month as Sub-Inspectors. In this connection, it would be useful to advert to Annexure R-1 in R.A. 195/93 which reads:

"The following stenographers of Delhi Police in the pay scale of Rs.130-5-160-8-200-8-280-10-290-10-300 who have opted to be enrolled under the Police Act (Act No.V of 1861), on the conditions as laid down in the Government of India, Ministry of Home Affairs letter No.1/18/69-P.VI dated the 24th October, 1969, are hereby enrolled under the Police Act (Act No.V of 1861) in the ranks, as noted against their names in the existing pay scales plus usual allowances admissible to the officers of that rank, except special pay, with effect from the date of issue of this order".

The rank shown against their names is the rank of Sub-Inspectors. It is consistent with this practice that a decision was taken in regard to equivalence for the purpose of deputation and permanent absorption in the Delhi Police to treat those Sub-Inspectors (Steno) of the B.S.F. who had reached the pay of Rs.416/- on par with the Sub-Inspectors in the Delhi Police.

14. We must advert in this behalf also to the pattern of pay scale that existed before 1.1.1986 in the B.S.F. and the Delhi Police. In the B.S.F., the Sub-Inspectors (Executive) were in the pay-scale of Rs.380-560 whereas the Sub-Inspectors (Steno) were in the pay-scale of Rs.330-560. In the Delhi Police, Sub-Inspectors (Executive) were in the pay-scale of Rs.425-600 and the Sub-Inspectors (Ministerial) were also in the pay-scale of Rs.425-600. The assistant Sub-Inspectors (Ministerial) in the Delhi Police were in the scale of Rs.330-480. Thus, it is seen that the Sub-Inspectors in the B.S.F. were in a slightly higher scale than the Assistant Sub-Inspectors (Ministerial) in the Delhi Police. It is also seen that the Sub-Inspectors (Steno) in the B.S.F. had a slightly lower scale than the Sub-Inspectors (Executive) of the same organisation. So far as the Delhi Police is concerned, the Sub-Inspectors (Executive) and the Sub-Inspectors (Ministerial) both had the same scale of pay. It is having regard to this pattern of scales of pay that were existing at the relevant point of time that a decision was taken to regard the Sub-Inspectors of the BSF who had reached the pay of Rs.416/- as equivalent to the Sub-Inspectors in the Delhi Police. The authorities were competent while taking a decision in regard to permanent absorption as per Rule 17 of the General Conditions of Service Rules to examine all aspects such as qualification,

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jurisdiction, the duties and functions exercised and the scale of pay before arriving at a decision regarding equivalence. Though the pay-scale is a relevant consideration, it is the last and the least among the considerations. Hence, it is not right to focus entirely on the scale of pay for denouncing the decision regarding equivalence. As already stated, the decision was taken at the time of taking the petitioners on deputation and at the time of their permanent absorption which decision was accepted by the petitioners. None has come forward with an independent application of their own before the Tribunal challenging those decisions regarding equivalence. However we examined the decisions regarding equivalence and we find that it is a just, fair and reasonable decision taken after due application of mind. Hence, the decision regarding equivalence taken for the purpose of absorption under Rule 17 of the General Conditions of Service Rules is not capable of being interfered with.

15. The respondents, point out that absorption of the petitioners under Rule 17 of the General Conditions of Service Rules is not in the cadre of Sub-Inspectors (Ministerial) but in the cadre of Sub-Inspectors(Steno). It was maintained that there is no such cadre of Sub-Inspectors (Steno) contemplated by the statutory rules. Hence they maintain that they must be regarded as absorbed in ex-cadre posts. It was further maintained that whatever may be the status of the petitioners but they did not have the right to claim parity along with the other Sub-Inspectors (Ministerial). This contention is based largely on the fact that all the orders regarding permanent absorption of the petitioners expressly state that they have been absorbed as Sub-Inspectors (Steno) and not as Sub-Inspectors(Ministerial). The respondents are right in pointing out that under the relevant statutory

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rules, there is no cadre known as Sub-Inspectors (Steno). We may advert in this behalf to Rule 16(iii) of the Promotion and Confirmation Rules which reads:

"List-E (Ministerial) - Confirmed Assistant Sub-Inspectors (Ministerial) and Stenographers who put in a minimum of six years service in this rank shall be eligible. The selection shall be made on the recommendations of the departmental Promotion Committee. The names of selected candidates shall be brought on list-E (Ministerial) in order of their respective seniority, keeping in view the number of vacancies likely to occur in the rank of Sub-Inspector (Ministerial) in the following one year, and they shall be promoted to the rank of Sub-Inspector (Ministerial) as and when vacancies occur. Stenographers, thus promoted shall cease to have their lien as Stenographers on confirmation in the rank of Sub-Inspector (Ministerial)."

Rule 17(iii) deals with promotion of Sub-Inspectors (Ministerial) to the cadre of Inspectors (Ministerial). There is no reference, as rightly pointed out by the respondents, in the statutory rules either to the post of Sub-Inspector (Ministerial) or the cadre. The fact, however, remains that the petitioners were absorbed not as Sub-Inspectors (Ministerial) but as Sub-Inspectors (Steno). We have now to ascertain the effect of the designation given to the petitioners as Sub-Inspectors (Steno) on their permanent absorption in the Delhi Police. Our attention was drawn to the definition of the expression (ministerial) in Rule 4 of the Promotion and Confirmation Rules which says:

"Ministerial means a police employee of subordinate rank of and above the rank of Head Constable whose duties are entirely clerical"

✓ The above Rule 4 has been published in the book 'The

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Rules Framed Under the Delhi Police Act, 1978' printed by the Manager, Government of India Press, Coimbatore. The expression 'Ministerial duty' as given in Black's Law Dictionary, Fifth Edition, is "One regarding which nothing is left to discretion - a simple and definite duty, imposed by law, and arising under conditions admitted or proved to exist". The expression 'Ministerial Officer' as given in the same dictionary is "One whose duties are purely ministerial, as distinguished from executive, legislative, or judicial functions, requiring obedience to the mandates of superiors and not involving the exercise of judgement or discretion. Thus, one can reasonably say that the functions which are purely clerical are within the expression 'Ministerial'. Can it be said that the duties and functions of Stenographers are clerical? The stenographer has to act in accordance with the directions of his superiors without exercising his discretion. His functions are neither executive nor judicial. His functions are basically clerical in nature in that he takes down dictation and transcribes them. He does clerical work with the aid of additional skill he has acquired of taking down the dictation faster than others. The statutory definition is not in consistent with the ordinary meaning of the word 'Ministerial', which shows that the duties which are entirely clerical in character are ministerial. In that view of the matter, we have no hesitation in holding that the stenographers perform ministerial functions. They perform specialised kind of ministerial function, namely, that of stenographer. It is only to indicate that the particular functionary has the specialised skill of stenography that he is described as stenographer. As admittedly there is no sanctioned cadre of Sub-Inspectors (Steno), it is not reasonable to draw an

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inference that the competent authority decided to absorb the petitioners on permanent basis in a non-existent cadre. As there is only the cadre of Sub-Inspectors (Ministerial) and as promotion to that cadre is provided under the statutory rules from among the stenographers and ASI (Ministerial), we would be justified in drawing the inference that the absorption was in the existing cadre of Sub-Inspectors and not in a non-existent cadre. If the interpretation put forward by the respondents is accepted, it would lead to manifestly unreasonable results. Though these persons are appointed on permanent basis as Sub-Inspectors, they would have no future at all as there is no promotional avenue to the Sub-Inspectors (Steno) and have to remain in the same cadre for the rest of their career. This could not have been the intention of the authorities when they resorted to permanent absorption of persons like the petitioners who had skill in stenography. In our opinion, having regard to the circumstances, it is reasonable to draw an inference that the absorption of the petitioners in service was really as Sub-Inspectors (Ministerial). We, therefore, hold that though the description of the petitioners on their permanent absorption is as Sub-Inspector (Steno), they really stood absorbed in service of Delhi Police as Sub-Inspectors (Ministerial). This interpretation will not militate against the scheme of the rules for stenographers is one of the feeder categories for promotion to the cadre of Sub-Inspectors (Ministerial).

15. Now that we have held that the petitioners have been permanently absorbed in service under Rule 17 of

the General Condition of Service Rules as Sub-Inspectors (Ministerial), the question for examination is as to what is the relevant date to be taken into consideration for determination of their seniority in the cadre of Sub-Inspectors. Whereas the petitioners maintain that their seniority should reckon from the date on which they became Sub-Inspectors (Steno) in the B.S.F., the respondents maintain that their seniority should count from the dates they were permanently absorbed as Sub-Inspectors (Ministerial). Apart from the general principles governing such a situation for which we have the authorities of Supreme Court and this Tribunal, our attention was drawn to an executive order of the Administration in this behalf produced as Annexure 'D' in RA 104 of 1993. This ^{is} official memo dated 29.5.1986 on the subject of seniority of persons absorbed after being on deputation. For the sake of convenience, the same is extracted below:

"The undersigned is directed to say that the existing instructions on seniority of transferees contained in para 7 of annexure to this Department's O.M. No. 9/11/55-RPS dated the 22nd December, 1959 (copy enclosed) mainly deal with cases where persons are straightway appointed on transfer. It is, however, observed that most of the cases of permanent absorption are those where the officers were taken on deputation initially under the method of transfer on deputation/transfer contained in the relevant rules. This O.M. is intended to fill this gap in the existing instructions."

Even in the type of cases mentioned above, that is, where person initially comes on deputation and is subsequently absorbed, the normal principles that the seniority should be counted from the date of such absorption, should mainly apply. Where, however, the officer has already been holding on the date of absorption in the same or equivalent grade on regular basis in his parent department, it would be equitable and appropriate that such regular service in the grade should also be taken into account in determining his seniority subject only to the condition that the most it would be only from the date of deputation to the grade in which absorption is being made. It has also to be assured that the fixation of seniority of a transferee in accordance with the above principle will not effect any regular promotions made prior to the date of absorption. Accordingly, it has been decided to add the following sub-para (iv) to para 7 of general principles communicated vide O.M. dated 22nd December, 1959.

"(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 "Transfer 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 in his 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 made prior to the date of such absorption. In other words, it will be operative only in filling up of vacancies in higher grade taking 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.

3. All Ministries/departments are requested kindly to bring these instructions to the notice of all concerned in the ministries/departments and attached and subordinate officers under them for their guidance and to ensure their compliance.

4. These orders will not be applicable to transfers within the Indian Audit and Accounts Department which are governed by order issued by the C & A.G. from time to time.

Hindi version is attached.

Sd/-
(K.S.R. Krishna Rao)
Dy Secretary to the Govt. of India.

It is clear from this order that when a person is absorbed in the same or equivalent grade on regular basis, his seniority has to count from the date of absorption. If, however, the person was holding the same or equivalent post on regular basis in his parent department, such regular service in the grade has also to be taken into account for fixing the seniority subject to the condition that he will get his seniority fixed on the date of his absorption meaning thereby it would not have the effect of disturbing the promotions to the vacancies that occurred before his actual date of absorption in service. Hence, it is clear from this order that the previous service rendered by the petitioner in the department in the equivalent grade on regular basis has to count for the purpose of seniority in the Delhi Police. What has been incorporated in the O.M. dated 29.5.1986 is the well recognised general principle in service jurisprudence which has been laid down by the Supreme Court in AIR 1987 SC 2291, K. Madhavan Vs. Union of India, that if a Government servant holding a particular post is transferred on deputation.

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on absorption to the same or equivalent post in another department, the period of his service in the post before his transfer should be taken into account in computing his seniority in the transferred post. To the same effect is the judgement of the Principal Bench of the Tribunal in O.A. 1333/87 between P.S. Vincent Vs. Union of India, decided on 3.3.1993. In view of this clear position, we have no hesitation in holding that the previous service rendered by the petitioners in the parent department B.S.F. in the equivalent post on regular basis has to be taken into consideration in determining their seniority in the cadre of Sub-Inspectors (Ministerial) on their permanent absorption in the Delhi Police.

16. What is next to be examined in this case is as to what is the relevant date from which the petitioners' seniority in the cadre of Sub-Inspectors has to be taken into account. Is it the date from which the petitioners were appointed on regular basis as Sub-Inspectors (Steno) in the BSF or is it the date on which they came on deputation in the Delhi Police or is it the date on which they were permanently absorbed. In view of the law laid down by the Supreme Court, and this Tribunal as also the principle laid down by the O.M. dated 29.5.1986, what is relevant to determine is the regular service in the same or equivalent post. We have noticed that the respondents regarded only those Sub-Inspectors (Steno) of the B.S.F. who had reached the pay of Rs.416/- as being equivalent to the Sub-Inspectors in the Delhi Police. The clear effect of this decision is to take the view that the service rendered by the Sub-Inspectors (Steno) in the B. S. F. before they reached the pay of Rs.416/- cannot be regarded as service in the same or equivalent grade

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to that of Sub-Inspector (Ministerial) of the Delhi Police. That is clear from the specific stipulation in the two orders of deputation to which we have adverted to earlier wherein it is stated that the designation would be given to them as Sub-Inspectors (Steno) if they have reached the pay of Rs.416/- per month and the designation of Assistant Su-Inspector if their pay is below Rs.416/-. The clear effect of the decision of the Administration is, therefore, to treat the Sub-Inspectors of B.S.F. as equivalent to that of the Sub-Inspectors (Ministerial) after they have reached the pay of Rs.416/- per month. That being the position, it would not be right to count the service rendered by the petitioners right from the date of their appointment as Sub-Inspectors (Steno) in the parent department of B.S.F. We hold that for the purpose of seniority in the cadre of Sub-Inspectors (Ministerial), it is only that service which they had rendered in the parent department after they reached the pay of Rs.416/- per month that shall count and not the service rendered by them in that cadre before that date. No exercise appears to have been done to ascertain the precise dates on which the petitioners reached the pay of Rs.416/- per month. That has now to be done for the purpose of preparing the proper seniority list of Sub-Inspectors. We would like to make it clear that the persons who were promoted to the higher cadres in the vacancies that had occurred before the date of absorption of the respective petitioners are not liable to be disturbed. Though we have examined the specific cases of the three petitioners, namely, Sarvashri Baljit Singh Bamel, Rai Singh Dabas and Raj Kumar, we have found that there are two other persons

similarly situate, namely, Sarvashri Vikram Nair and Hari Dass, who are similarly situate. They will also be entitled to the same relief as the petitioners.

17. For the reasons stated above, Review Applications Nos 104/93, 195/93, and 189/93 are allowed and the O.A. Nos 2089/90, 856/90 and 591/93 are disposed of with the following directions:

- (1) The impugned circular dated 7.9.90 is quashed.
- (2) The petitioners and other Sub-Inspectors (Steno) similarly situate who have come from the B.S.F. on deputation and permanently absorbed in service as Sub-Inspectors (Steno) in the Delhi Police shall be deemed to have been permanently absorbed in the Delhi Police as Sub-Inspectors (Ministerial) with effect from the respective dates of their permanent absorption.
- (3) The seniority of the petitioners and other similarly situate shall be determined and a seniority list of Sub-Inspectors (Ministerial) prepared by counting the service of the petitioners and other similarly situate, in the parent department, as equivalent to that of the Sub-Inspectors (Ministerial) in the Delhi Police with effect from the respective dates on which they started drawing the pay of Rs. 416/- in their parent department of B.S.F. as regular Sub-Inspectors (Steno).
- (4) The review of promotions and consequential benefits flowing from the same shall be accorded in the light of the seniority determined as per the above directions.
- (5) The petitioners shall be entitled to all consequential benefits.

(6) These directions shall be complied with expeditiously preferably within a period of six months from the date of receipt of the order.

(7) There is no order as to costs.

S.R. Adige
(S.R. ADIGE)
MEMBER (A)

V.S. Malimath
(V.S. MALIMATH)
CHAIRMAN

CCP 181/93

In view of the above directions, this CCP does not survive. Hence dismissed.

S.R. Adige
(S.R. ADIGE)
MEMBER (A)

V.S. Malimath
(V.S. MALIMATH)
CHAIRMAN

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