

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 327 OF 1990

New Delhi this the 13th day of December 1994

Hon'ble Mr. C.J. Roy, Member (J)
Hon'ble Mr. S.R. Adiga, Member(A)

Ramesh Chander (610/L)
Son of Shri Ram Narain Sharma
Resident of 68, Police Station Civil Lines,
Delhi-110 054
working as Head Constable
(MT Operational) in Old Police Lines
Delhi

.....Applicant

(Advocate: Shri Shyam Babu)

Versus.

1. Delhi Administration, Delhi
through its Chief Secretary
5, Sham Nath, Delhi.

2. Commissioner of Police
Delhi (Headquarters)
Indraprasta Estate
New Delhi.

3. Dy. Commissioner of Police
Headquarters (I)
Indraprastha Estate
New Delhi

....Respondents

(Advocate: Mrs. Awnish Ahlawat)

J U D G E M E N T

Hon'ble Mr. S.R. Adiga, Member (A)

The main grievance of the applicant Shri Ramesh Chander, Head Constable (MT Operational), Delhi Police is with regard to his non-consideration for the post of ASI (MT Operational). He has impugned the order dated 19.6.89 (Annexure-F) rejecting consideration of his promotion to the post of ASI (MT Operational) which has been upheld by appellate order dated 7.2.90(Annexure-H.).

Am

2. Admittedly, promotion of a Head Constable (MT Operational) to that of ASI (MT Operational) is governed under Rule 17-Aⁱⁿ (SIIA) of the Delhi Police (Appointment & Recruitment) Rules, 1980 as amended in 1986, according to which the promotion is to be made from amongst confirmed Head Constables (MT Operational) with 5 years service in the grade. It is also admitted that the applicant was enlisted in the Delhi Police as a temporary constable (Executive) w.e.f. 12.1.1970 and was promoted as Assistant Wireless Operator (Head Constable) w.e.f. 18.6.1979. The respondents contend that while promoting him as Assistant Wireless Operator (AWO), a condition was attached that he would have no claim for promotion or seniority in the Executive Cadre. Be that as it may, he was confirmed in the rank of AWO (Head Constable) w.e.f. 1.2.84 and thereafter, having been selected to the post of Head Constable (MT Operational), he was absorbed in the MT Cadre as Head Constable w.e.f. 23.2.89. The respondents contend that as the applicant did not have 5 years service in the grade, he is not eligible for consideration as ASI (MT Operational). The applicant, on the other hand, contends that his term as Head Constable (MT Operational) ^{not} refers to the post and the grade. He contends that when the term 'Grade' is referred to, it means the grade of Head Constable and as he has more than 5 years service in the grade of Head Constable which includes his service as a confirmed Assistant Wireless Operator (Head Constable) w.e.f. 1.2.84, his exclusion from consideration for promotion as ASI (MT Operational) is arbitrary, discriminatory and illegal.

3. In this connection, the applicant placed reliance upon the judgement of the Hon'ble Supreme Court in the case of (i) K. Madhavan Vs. UOI AIR 1987 SC 2291, ^{and in} (ii) Vinita Verma Vs. UOI arising out of SLP (C) 8702/94 decided by the Hon'ble Supreme Court on 22.8.94.

4. We have heard Shri Shyam Babu for the applicant and Mrs. Avnish Ahlawat for the respondents. We have perused the material on record

and considered the matter carefully.

5. In this connection, our attention has been drawn to the Tribunal's judgement dated 19.8.94 in OA 2032/89 - Shri Chaman Singh Vs. Delhi Administration, in which ^{an} identical prayer was made. In fact, the present OA also refers to that case (Para. 4.iii). The Tribunal vide its judgement in the above ^{case} dismissed that OA, holding inter-alia,

" We have gone through the records of the case and heard the learned counsel for the parties. It is admitted that the applicant was a confirmed Head Constable of Delhi Police but had changed his cadre from Wireless Operator (HC) to MT Branch in 1984. Later, two vacancies of Head Constable (MT) were notified and he applied for that post. He was taken regularly in the cadre of Head Constable (MT) only w.e.f. 25.1.89. Rule 17-A (VIII) of the Delhi Police (Recruitment & Appointment) Rules, 1986 provides that appointment to the post of ASI/MT will be only through promotion from amongst confirmed HC (MT Operational) with 5 years service in the grade or confirmed HC (Driver) with five years service. Rule 6 of the Delhi Police (Promotion and Confirmation) Rules 1980 provides 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 applicant in the MT cadre could only be reckoned from 9.11.1989 i.e. the date of his absorption in that cadre. He belonged to a different cadre before this date.

In view of the aforesaid consideration, the application fails and is hereby dismissed. "

/

15

6. However, the rulings cited by Shri Shyam Babu do not appear to be applicable to the facts of the present case in view of the specific provisions contained in Rule 6 of Delhi Police (Promotion & Confirmation) Rules 1980, referred to in para 5 above.

7. Thus, in the light of the Tribunal's decision on 19.8.94 in Chaman Singh^{case} (Supra) which is on all fours with the present case, this application fails and is dismissed.

No costs.

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

13/12/94
(C. J. ROY)
MEMBER (J)