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In the Central Administrative Tribunal
Principal Bench, New Delhi.

Regn. No.: DA-1335/91

Date: 15-1-93 ²

Sub Inspector Rajinder Singh Applicant

Versus

Commissioner of Police
and Another

..... Respondents

For the Applicant

..... Smt. Avnish Ahlawat, Advocate

For the Respondents

..... Shri V.K. Rao, Proxy Counsel
for Shri Dinesh Kumar Agnani,
Advocate.

CORAM: Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Mr. B.N. Dhoundiyal, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the judgement? ^{Yes}
2. To be referred to the Reporter or not? ^{No}

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

We have gone through the records of the case and have heard the learned counsel for both the parties. The applicant, who has worked as Sub-Inspector in the Delhi Police, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

- (i) To direct the respondents to declare Punjab Police Rules 12.2(3) and Rule 22 of the Delhi Police (Appointment & Recruitment) Rules, 1980 which determines seniority of Sub-Inspectors in the Delhi Police from the date of confirmation as void and direct that the applicant's
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seniority should be refixed according to his date of appointment;

(ii) to direct the respondents that after assigning the due seniority to the applicant above his next below junior, he should be considered for promotion as Inspector to bring his name into List 'F';

(iii) to direct the respondents to consider the representation dated 3.7.1990 on merits and confirm the applicant from the due date.

2. The facts of the case are not disputed. Appointment to the post of Sub-Inspectors in Delhi Police is by direct recruitment and by promotion in the ratio of 1:1. The respondents issued an advertisement in 1973 for filling up of the posts of Sub-Inspector. The applicant qualified the interview, physical test, medical examination, etc., and was declared selected. Though the appointment was temporary, it was against sanctioned post and after following the required procedure for selection. The grievance of the applicant is that though all the temporary posts were made permanent before June, 1975, no orders confirming him were passed by the respondents. In August, 1977, after almost four years of regular service, the batchmates of the applicant were considered for confirmation and were confirmed w.e.f. 1.8.1977. The case of the applicant was

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deferred on the ground of unsatisfactory record vide order dated 4.8.1977. He was finally confirmed w.e.f. 8.6.1978 by order dated 21.4.1979. He claims that he should have been confirmed w.e.f. 1.8.1977.

3. On 8.6.1990, an integrated seniority list of Sub-Inspectors was issued by the respondents in which the applicant's name was shown as serial No.422. He claims that his name should have figured at serial No.373 below Sub-Inspector Babu Singh. Based on this seniority list, the applicant's name was forwarded in the list of eligible Sub-Inspectors who were being considered for selection for admission to Promotion List 'F' (Executive). His name figured at serial No.103 in the said list. According to him, it should have been at serial No.65. His name did not appear in the List 'F' as only the names of persons upto serial No.78 were brought in the List 'F' (Executive). The applicant has stated that on enquiry, he came to know that the seniority list published on 8.6.1990, was drawn up on the basis of the date of confirmation and not on the date of appointment. He made a representation on 3.7.1990 which was rejected by the respondents by their Memorandum dated 29.10.1990. He filed the present application thereafter on 3.6.1991. The learned counsel for the respondents argued that the application is barred by limitation. We are not impressed by this argument as the grievance of the applicant in the instant

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case relates to the seniority list which was published on 8.6.1990 against which he had made a representation which was in turn dismissed only on 29.10.1990.

4. There is also another ground on which the application is maintainable. The application is challenging the vires of Rule 22 of the Delhi Police (Appointment and Recruitment) Rules, 1980 which reads as follows:-

"Seniority in the case of upper and lower subordinates shall be initially reckoned from the date of first appointment, and officer of subordinate rank promoted from a lower rank being considered senior to persons appointed direct to the same rank on the same day, till seniority is finally settled by confirmation. The seniority of direct recruits in all ranks except Sub-Inspectors (Ex.) appointed as a result of some examination or selection shall be reckoned by the order of merit determined by the selection board and in case no order of merit is indicated, by the age of candidates, the eldest being placed seniormost and the youngest the juniormost. The inter-se seniority of directly recruited Sub-Inspectors (Ex.) shall be fixed, on the basis of total of marks obtained by them in the Staff Selection Commission Examination/Interview as well as in the final examination held at Police Training School/College."

5. The aforesaid rule corresponds to Rule 12.2(3) of the

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Punjab Police Rules, 1934 which reads as follows:-

"Seniority in the cadre of upper subordinates, will be reckoned in the first instance from the date of first appointment, officers promoted from lower rank being considered senior to persons appointed direct on the same date, and the seniority of officers appointed direct on the same date being reckoned according to age. Seniority shall, however, be finally settled by dates of confirmation, the seniority inter-se of several officers confirmed on the same date being that allotted to them on first appointment. Provided that any officer whose promotion or confirmation is delayed by reasons of his being on deputation outside his range or district shall, on being promoted or confirmed, regain the seniority which he originally held vis-a-vis, any officers promoted or confirmed before him during his deputation."

6. The applicant has relied upon the judgement of this Tribunal dated 7.1.1987 in OA-308/86 and connected matters (Shri Narendra Kumar & Another Vs. Delhi Admn. and Others). He is seeking the benefit of the same judgement wherein a similar question had been raised by the applicants. In that case, the applicants had been selected for appointment as Sub-Inspectors in 1969. Narendra Kumar was confirmed w.e.f. 3.7.1976 and Krishan Kumar, w.e.f. 1.4.1975. The applicants argued that they should have been confirmed w.e.f. 22.5.1974 and if so confirmed, they would have ranked

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higher in the seniority list. The respondents had relied upon the provisions contained in Rule 12.2(3) of the Punjab Police Rules, whereas the applicants had challenged the vires of the said rule on the ground of violation of Article 16 of the Constitution.

7. The records revealed that the confirmation of the applicants in the aforesaid case was deferred because of their unsatisfactory record. The applicants had argued that persons with worse records had been confirmed earlier w.e.f. 22.5.1974. The Tribunal observed that when juniors to the applicants were sought to be confirmed w.e.f. 22.5.1974, the applicants also ought to have been confirmed from that date. The Tribunal found no justification for not confirming them w.e.f. 22.5.1974, when their juniors were confirmed. The Tribunal did not go into the questions of vires of Rule 12.2(3) of the Punjab Police Rules as it had otherwise come to the conclusion that the applicants were entitled to succeed on the ground that there was no justification to deny confirmation to the applicants from the same date as that of their juniors who are having similar or worse records. In view of this, the Tribunal held that the applicants would be deemed to have been confirmed w.e.f. 22.5.1974 as Sub-Inspectors. It was further directed that the seniority list of Sub-Inspectors of Police shall be re-arranged in the light of the this direction and their further promotion shall be considered on the basis of the seniority list so arranged.

8. We reiterate the same view. For the purpose of the disposal of the present application, we do not consider it necessary to go into the vires of Rule 22 of the Delhi Police (Appointment and Recruitment) Rules, 1980 though the learned counsel for the applicant had vehemently argued that the said Rule is not legally sustainable having regard to the *decisions of the Supreme Court cited before us.

9. In the instant case, the A.C.R. of the applicant for the year 1974-75 was adverse. He was awarded minor punishment vide orders dated 27.9.1975 and 6.7.1976. He was also awarded major punishment vide order dated 12.8.76 and similarly, his A.C.R. for the period 1.4.1977 to 13.12.1977 was also adverse.

10. As against the above, the applicant has argued that some of the Sub-Inspectors who had worse records than him, were confirmed from their due dates. This included persons whose names were passed over for confirmation for a number of years, but when they were confirmed, it was done with retrospective effect, i.e., with effect from their due dates. He has enumerated the names of S.I. Bhagat Singh, S.I. Kirpa Shankar, S.I. Jaipal Singh, S.I. Mohinder Singh, S.I. Rajinder Singh, S.I. Hukam Singh, S.I. Daryao Singh and S.I. Satbir Singh at Ground 23 of the application. The reply of the respondents in this regard is that the contents

* Case law relied upon by the learned counsel for the applicant

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of the grounds mentioned are a matter of record and that the details of the same are of official nature. They have not controverted the version of the applicant that persons junior to him with worse service records, have been confirmed w.e.f. their due dates.

11. In the conspectus of the facts and circumstances of the case, we allow the application and dispose it of with the following orders and directions:-

(i) The applicant shall be deemed to have been confirmed w.e.f. 1.8.1977, when his batch-mates were so confirmed. He shall be assigned his due seniority above his next below junior and shall be considered for promotion as Inspector to bring his name into List 'F' in accordance with the seniority list so arranged. The respondents shall comply with these directions expeditiously and preferably within a period of three months from the date of communication of this order.

(ii) There will be no order as to costs.

B.N. Dhaundiyal
(B.N. Dhaundiyal) 15/1/73
Administrative Member

P.K. Kartha
15/1/73
(P.K. Kartha)
Vice-Chairman (Judl.)