

Central Administrative Tribunal

Principal Bench

CA-1856/91

New Delhi, the 19th February, 1996.

(a)

Hon'ble Justice Sh. B.C. Saksena, Vice-Chairman(J)
Hon'ble Shri R.K. Ahooja, Member (A)

Sh. Hari Ram Malik
r/o B-7, PS Sarai Rohilla,
Delhi. ..

Applicant

(Advocate: Sh. Shankar Raju)

versus

1. Commissioner of Police,
MSL Bld. IP Estate
New Delhi.
2. Additional Commissioner of Police
(Admn.), MSL Bld. IP Estate,
New Delhi.
3. Dy. Commissioner of Police,
MSL Bld. IP Estate,
New Delhi.

Respondents

(Advocate: Sh.B.S. Oberoi
Proxy for Sh. Anoop Bagai
counsel)

ORDER

Hon'ble Shri R.K. Ahooja, Member (A)

The applicant was appointed in
Delhi Police as a Sub-Inspector w.e.f.
15.10.81 in a temporary capacity. He was
declared quasi-permanent w.e.f. 15.10.84.
He was due for confirmation alongwith his

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juniors w.e.f. 1.6.85 but the same was done w.e.f. 4.6.86. The Seniority list of Sub-Inspectors was issued on 8.6.90 in which some of his juniors was shown above him. The applicant filed a representation but the same ^{was} rejected. Aggrieved by this order of rejection ^{and the order of} dt. 4.6.86 by which he was confirmed after his juniors, the applicant has come before this Tribunal.

2. Arguing before us Sh. Shankar Raju, 1d. counsel for the applicant submitted that confirmation of the applicant was due on 1.6.85 but had been delayed on the ground that he was awarded a penalty of censure on 6.6.85. He argued that a subsequent punishment awarded after the due date of confirmation could not stand in the way of the applicant's confirmation. The 1d. counsel also pointed out that there are ^a number of cases such as, SI Ranbir Singh, No.D-1717 who ^{were} also awarded the punishment of censure before his confirmation but was confirmed from the due date. The 1d. counsel also submitted that there were at least four other officers, such as, SI Avtar Singh D/445, SI Harbhajan Singh No.1306/D, SI Babbir Singh No.D/903, SI Bahadur Singh No.D/845 who had been confirmed from ~~du~~ date despite the fact

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that they had been awarded major punishment but the applicant ^{was} /in an act of discrimination penalised on the basis of ^a minor punishment of censure despite otherwise having ^{an} excellent records. In this connection, ld. counsel cited the decision of this Tribunal in OA 302/86 and OA 392/86 wherein in the similar circumstances, the Tribunal had allowed the applications.

3. The respondents have contested the claim of the applicant. The ld. counsel for the respondents submitted that penalty of censure was very much on record when the DPC was held and since the total record of the officer has to be considered, the penalty could not be over-looked while deciding the date of confirmation of the applicant. In this context he relied on the case of S.S. Gandhi vs. UOI - 1992(21)ATC 753 and 1992 ATJ 32 and also 1989 Swamy's case law page 79.

4. In an additional counter reply the respondents have given details regarding cases cited by the applicant where the confirmation was done on the due date despite the imposition of major penalty. The respondents have explained that ⁱⁿ the case of SI Avtar Singh D/445, the due date of confirmation was 25.7.69 but this was

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deferred to 1.9.72, in case of SI Harbhajan Singh No.1306/D there was no question of confirmation; In case of SI Balbir Singh No.D/903, the due date was 22.5.74 but confirmation was done on 3.7.75; In case of SI Bahadur Singh No.D/845 due date was 22.5.74 but the confirmation was given only from 22.6.77. Hence, according to the respondents no discriminatory treatment was meted out to the applicant.

5. Having considered the arguments of the ld. counsel of both sides and after perusing the records, we find that the applicant has no case. He has come against the impugned seniority list issued in 1990. However, the place of the applicant in the seniority list has been determined admittedly on the basis of his date of confirmation. Unless the order of confirmation itself is challenged, the seniority list cannot be impugned. The order of confirmation was passed on 4.8.1986 and the applicant is clearly ^{time} barred and it cannot be challenged after a period of four years. The ld. counsel for the applicant in this regard submitted that he could not come against the order of confirmation since the same was not intimated to him and it was only through the impugned seniority list ^{that} he came to know about his delayed confirmation.

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The 1d. counsel relied on the decision of the Tribunal in OA 302/86 and 392/86 and submitted that there too the order of confirmation was challenged on the basis of the seniority list and the application had been allowed by the Tribunal. We are unable to agree with the interpretation of the 1d. counsel in this regard. The order of confirmation as annexed by the applicant with his OA itself shows that it was circulated to all the DCPs with instructions to convey it to the concerned officials. It is difficult to imagine that the applicant over a long period of four years did not bother to make enquiries about his confirmation when he states ~~now~~ that many of his juniors had been confirmed earlier to him. The conclusion is inescapable that the applicant was aware of the order of confirmation and did not take any action to obtain relief if he was aggrieved by it. Once the fact of late confirmation is accepted then under rules his seniority was to be fixed accordingly. We do not agree that the ratio of the decision of this Tribunal in OA-302/86 and 392/86 applies ⁱⁿ the present case since the respondents have been able to clarify that in most of the cases cited by the applicant

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where punishment was awarded, the confirmation was also correspondingly delayed. In the case of SI Ranbir Singh mentioned by the applicant in his OA, it has been explained by the respondents that his order of confirmation preceded the date of imposition of penalty of censure while in ^{the} case of the applicant the penalty of censure had already come on record before his case for confirmation was considered.

6. In the above circumstances, we find that the application fails and is accordingly dismissed. No order as to costs.

R.K. Ahuja
(R.K. AHOOJA)
MEMBER(A)

B.C. SAKSENA
(B.C. SAKSENA)
VICE-CHAIRMAN(J)

/SCS/