

Central Administrative Tribunal
Principal Bench.

O.A. NO. 354/91

New Delhi this the 25th day of September, 1995.

Hon'ble Shri N.V. Krishnan, Acting Chairman.

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Bharat Bhushan,
(ASI Ministerial) (2201/D),
R/o K-78-A, Kalkaji,
New Delhi. ..Applicant.

By Advocate Shri Shyam Babu.

Versus

1. Delhi Administration,
through its Chief Secretary,
5, Sham Nath Marg,
Delhi.
2. Commissioner of Police, Delhi,
Police Headquarters,
I.P. Estate,
New Delhi.
3. Dy. Commissioner of Police (HQ)(I),
Police Headquarters,
I.P. Estate,
New Delhi. ..Respondents

By Advocate Shri Girish Kathpalia.

ORDER (ORAL)

Hon'ble Shri N.V. Krishnan.

The issue is whether the period for which the applicant worked on a temporary and ad hoc basis as ASI (Stenographer) from 26.8.1985 upto 2.3.1987 should count for the purpose of reckoning his seniority as ASI (Ministerial) to which post he was given proforma promotion from 3.3.1987.

2. The facts are undisputed. The applicant was appointed as a Head Constable (Ministerial) on 1.9.1978. He was confirmed on 31.8.1986.

U

3. The Head Constable (Ministerial) can normally be promoted as ASI (Ministerial) by having his name included in List 'D' under Rule 15 (iii) of the Delhi Police (Promotion and Confirmation) Rules, 1980 - Rules for short.

4. There is also a post of ASI Stenographer which in terms of pay is equivalent to ASI Ministerial. This post is entirely filled up only by direct recruitment. Head Constables (Ministerial), subject to certain conditions, are also eligible to participate in selection by direct recruitment as ASI (Stenographer). The applicant was appointed as a temporary ASI (Stenographer) on 26.8.1985. This appointment continued till 26.5.1987 when he was sent back to the parent cadre as ASI (Ministerial).

5. While he was working as ASI (Stenographer), a DPC was held on 20.10.1986 for preparing a List 'D' Ministerial under Rule 15(iii) i.e. list of Head Constable (Ministerial) found fit for promotion as ASI (Ministerial). The applicant was also given proforma promotion as ASI (Ministerial) on 3.3.1987.

6. Having been sent back to his parent cadre as ASI (Ministerial), the applicant made a representation that the period for which he worked as ASI (Stenographer) before 3.3.1987 when he was given proforma promotion as ASI (Ministerial), (i.e. 26.8.1985 to 2.3.1987) should be reckoned for fixation of his seniority as ASI (Ministerial). That representation has been rejected by the

Annexure 'E' order dated 9.1.1990, on the ground that he cannot be given such seniority as the cadre of Ministerial Stenographers are separate.

7. Hence, this O.A. has been filed for a direction to quash the Annexure 'E' order and direct the respondents to count the aforesaid period from 26.8.1985 to 2.3.1987 for fixing his seniority as ASI (Ministerial). The claim is resisted by the respondents.

8. We have heard the learned counsel for both the parties. The learned counsel for the applicant submits that it would be clear from Rule 16 (iii) that a combined seniority list of confirmed ASI (Ministerial) and ASI (Stenographers) has to be prepared for preparing the List 'E' (Ministerial), i.e. for promotion as SI (Ministerial). In other words, both ASI (Stenographers) and ASI (Ministerial) are eligible for promotion as SI (Ministerial). Hence, the service rendered as ASI (Stenographer) should count for fixation of seniority as ASI (Ministerial). The learned counsel, therefore, submits that in the rank of ASI (Ministerial), he should be given seniority from 26.8.1985, that is the date on which he was first appointed as ASI (Stenographer). Alternatively, he submits that, in any case, his name was admittedly included in the List 'D' (Ministerial) under Rule 15(iii) on 20.10.1986. He should be given seniority at least from this date.

V

9. The learned counsel for the respondents submits that these two cadres are different. Rule 6 states that the promotion can be opened only in the concerned cadre. The applicant appeared in the competitive examination for direct recruitment as ASI (Stenographer). He did not pass the examination. As vacancies existed and there was a need to fill up those posts, he was given only ad hoc appointment. Had he been regularly recruited as ASI (Stenographer), he could have claimed his seniority from 26.8.1985 as ASI (Stenographer) which would have given him an edge over his other Head Constables colleagues who might have been later promoted as ASI (Ministerial).

10. We find that until he was repatriated, the applicant did not qualify for regular appointment. No authority has been produced by the learned counsel for the applicant to show that, in the above circumstances, the service as ASI (Stenographer) should be counted for fixation of seniority as ASI (Ministerial). The two service are entirely different. They belong to different cadres. That does not admit of any dispute. In the circumstance, we are of the view that merely because the applicant worked for sometime as ad hoc ASI (Stenographer) immediately before he was promoted as ASI (Ministerial), that service cannot be tagged on to the service as ASI (Stenographer). Granting this prayer would amount to introduction of a new service Rule that knowledge of Stenography is desirable for ASI (Ministerial) and that, therefore, any service rendered as ASI (Stenographer) will be deemed to be service as ASI (Ministerial). This will be an injustice to seniors of the applicant who would be placed below the applicant in the seniority list, if this rule is implied.

V

11. In the circumstance, we do not find any merit in the O.A. It is liable to be dismissed.

12. The learned counsel for the applicant, however, submitted that in terms of Rule 16(iii) the service rendered by him as ASI (Stenographer) should be considered at the time of preparation of the List 'E' ~~xxx~~ for considering his eligibility for such a post. That is entirely a different matter. That issue is not covered by this O.A. and, therefore, we are not inclined to adjudicate on that issue.

13. We dismiss the O.A. with the above observations. No costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

N.V. Krishnan
(N.V. Krishnan)
Acting Chairman

'SRD'