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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.436/2004

This the 3rd day of January, 2005.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SMT. MEERA CHHIBBER, MEMBER (J)

Arun Kumar Pandey S/O Baban Pandey,
R/O 967/S-8, R.K.Puram,
New Delhi-110022.
Working as Staff Car Driver,
Department of Economic Affairs,
Ministry of Finance, North Block,
New Delhi.

... Applicant

(By Shri R.N.Singh, Advocate)

versus

1. Union of India through
Secretary, Ministry of Finance,
Department of Economic Affairs,
North Block, New Delhi-110001.
2. Ministry of Personnel, Public Grievances
& Pensions, Department of Personnel & Training,
North Block, New Delhi-110001.
(through Secretary).

... Respondents

(By Shri B.S.Jain, Advocate)

ORDER (ORAL)

Hon'ble Shri V.K.Majotra, Vice-Chairman (A) :

Applicant, who had joined the Border Security Force (BSF) as a Constable Driver on 22.5.1987 and come on deputation as Staff Car Driver on 23.12.1991, was absorbed as such on 2.3.1994 with respondent No.1 – Department of Economic Affairs. Vide Annexure A-1 dated 10.10.2003, respondents have rejected applicant's request for counting his service in the BSF for purposes of seniority in the grade of Staff Car Driver (Ordinary Grade) with respondent No.1

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on the ground that he was not holding an analogous post in the parent department and also that the provisions of DOP&T OM dated 27.3.2001 on the subject are applicable w.e.f. 14.12.1999 while applicant had been absorbed in the Department of Economic Affairs on 2.3.1994. Applicant has challenged Annexure A-1 as well as Annexure A-2 dated 27.3.2001 which are DOP&T instructions on the subject of seniority of persons on absorption issued after the Supreme Court's judgment dated December 14, 1999 in the case of *S.I. Roop Lal & Others v Lt. Governor through Chief Secretary, Delhi*, JT 1999 (9) SC 597. Applicant has assailed these instructions to the extent that they have been made applicable with prospective effect from 14.12.1999, i.e., the date of judgment of the Supreme Court. Applicant has sought that his past service as Constable Driver under the BSF be counted with consequential benefits.

2. At the outset, the learned counsel of respondents has raised objections as to the maintainability of the OA on the grounds of limitation and non-joinder of parties. The learned counsel stated that applicant has admitted in his representation dated 5.5.2003 that he had made an earlier representation seeking seniority from the date of joining on deputation with BSF which was rejected. He further stated that applicant's representation dated 5.5.2003 which was rejected by the impugned office memorandum dated 10.10.2003 (Annexure A-1) is also beyond limitation as in the light of the ratio in the case of *Ramnath sharma & Others*, 1996 (33) ATC 567, "in a democratic government, all communications received from its citizens are expected to be attended to and the reply sent thereto". Entertainment of such a representation for seeking a reply cannot remove the defect under law of limitation. The learned counsel further pointed out that if applicant's relief is allowed, he would become senior to several persons, namely, S/Shri Hari Om, Man Singh-II, Naresh Kumar and Vijay Singh, as per the seniority list at Annexure R-1. These persons have not been impleaded as

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parties and as such the present OA is not maintainable due to non-impleadment of parties.

3. The learned counsel of applicant stated that vide Annexure A-1 dated 10.10.2003, it is clear that respondents have considered applicant's later representation dated 5.5.2003, examined the same in consultation with the DOP&T and then rejected it on merit. As such respondents cannot raise any objection as to the OA being time-barred when they have themselves considered and rejected applicant's later representation. The learned counsel further relied on *Sanyukta Arjuna v Union of India & Others*, 2003 (1) Administrative Total Judgments 558, contending that both these objections raised on behalf of respondents have been considered and rejected in that case. It has been held therein that where counting of seniority is in breach of Articles 14 and 16 of the Constitution, it is a continuing wrong and law of limitation would not apply. Then it has further been held that when a principle of law is assailed, affected parties need not be made necessary parties; interest of necessary parties would be safeguarded by putting them to notice before refixing the seniority. Relying on the ratio in the case of *Sanyukta Arjuna* and also that respondents had themselves considered applicant's later representation and rejected the same vide the impugned Annexure A-1, the preliminary objections as to limitation and non-joinder of parties are rejected herewith.

4. The learned counsel of applicant contended that applicant had been holding an analogous post in the parent department in 1991 when he came on deputation to the Department of Economic Affairs as Staff Car Driver. He stated that the nature of duties of both posts, the responsibilities and powers exercised in both posts, the minimum qualifications for recruitment of both posts, and salary of both the posts are the same and as such these posts are analogous. The learned counsel relied upon the case of *SI Roop Lal* (supra). He further relied on the case

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of *Vice Chancellor, L.N. Mithila University v Dayanand Jha*, (1986) 3 SCC 7 = AIR 1986 SC 1200, wherein it was held that status and nature of responsibilities and duties attached to the two posts should be the same so as to treat these posts as equivalent. The learned counsel stated that even if the pay scale of the two posts, i.e., applicant's original post and the post on which he was deputed and later absorbed happen to be different, the Supreme Court has not attached any importance to this criterion for purposes of treating them as analogous.

5. On the other hand, the learned counsel of respondents stated that none of the factors relating to treating the original post and the deputation post on which an employee is ultimately absorbed as analogous have been met in the instant case. The present post is superior in all respects, such as pay scale, duties and responsibilities, status, qualification etc. The learned counsel particularly referred to applicant's representation dated 18.8.1998 (Annexure RA-1) contending that applicant had himself admitted that he was holding a Group 'D' post in the BSF. He was absorbed as Staff Car Driver relaxing the condition as he was not holding a Group 'C' post but was holding a Group 'D' post in the parent department. Thus, applicant did not have the same status or an equivalent post, i.e., a Group 'C' post in the parent department.

6. We have considered the respective contentions of parties.

7. In paragraph 4 (ii) of the OA, applicant has admitted that he had joined the BSF as Constable/Driver in the pay scale of Rs.825-1200. The pay scale of Staff Car Driver at that time with respondent No.1 was Rs.950-1500. Even if the factor of an identical pay scale may not be accorded importance in terms of the decision in the case of *SI Roop Lal* (supra), we have to examine the present case on the basis of the other criteria enunciated in that case. Paragraph 17 of the

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judgment in the case of *SI Roop Lal* is relevant in this connection and is reproduced below:

“17. In law, it is necessary that if the previous service of a transferred official is to be counted for seniority in the transferred post then the two posts should be equivalent. One of the objections raised by the respondents in this case as well as in the earlier case of Antony Mathew is that the post of Sub-Inspector in the BSF is not equivalent to the post of Sub-Inspector (Executive) in Delhi Police. This argument is solely based on the fact that the pay-scales of the two posts are not equal. Though the original Bench of the tribunal rejected this argument of the respondent, which was confirmed at the stage of SLP by this Court, this argument found favour with the subsequent Bench of the same tribunal whose order is in appeal before us in these cases. Hence, we will proceed to deal with this argument now. Equivalency of two posts is not judged by the sole fact of equal pay. While determining the equation of two posts many factors other than ‘Pay’ will have to be taken into consideration, like the nature of duties, responsibilities, minimum qualification etc. It is so held by this court as far back as in the year 1968 in the case of *Union of India vs. P.K.Roy* (1968) 2 SCR 186 : (AIR 1968 SC 850). In the said judgment, this Court accepted the factors laid down by the Committee of Chief Secretaries which was constituted for settling the disputes regarding equation of posts arising out of the States Reorganisation Act, 1956. These four factors (i) the nature and duties of a post; (ii) the responsibilities and powers exercised by the officer holding a post; the extent of territorial or other charge held or responsibilities discharged; (iii) the minimum qualifications, if any, prescribed for recruitment to the post; and (iv) the salary of the post. It is seen that the salary of a post for the purpose of finding out the equivalency of posts is the last criterion. If the earlier three criteria mentioned are fulfilled then the fact that the salaries of the two posts are different, would not in any way make the post ‘non equivalent’. In the instant case, it is not the case of the respondents that the first three criteria mentioned hereinabove are in any manner different between the two posts concerned. Therefore, it should be held that the view taken by the tribunal in the impugned order that the two posts of Sub-Inspector in the BSF and the Sub-Inspector (Executive) in Delhi Police are not equivalent merely on the ground that the two posts did not carry the same pay scale, is necessarily to be rejected. We are further supported in this view of ours by another judgment of this Court in

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the case of Vice Chancellor, L.N.Mithila University vs. Dayanand Jha (1986) 3 SCC 7 : (AIR 1986 SC 1200) wherein at para 8 of the judgment this Court held : "Learned counsel for the respondent is therefore right in contending that equivalence of the pay-scale is not the only factor in judging whether the post of Principal and that of Reader are equivalent posts. We are inclined to agree with him that the real criterion to adopt is whether they could be regarded of equal status and responsibility****. The true criterion for equivalence is the status and the nature and responsibility of the duties attached to the two posts."

8. The learned counsel of applicant stated that Annexure A-3 are the relevant recruitment rules relating to a Constable Driver in BSF. These are called, "Border Security Force General Duty Cadre (Non-Gazetted) Recruitment Rules, 2002". It is nowhere mentioned in these rules that they relate to the recruitment of a Driver in the BSF. However, these rules mention that a Constable should have the following qualifications:

- (i) 8th class pass;
- (ii) physical standards as mentioned in the scheme of recruitment for the post of Constable.

Annexure A-4 dated 10.7.1989 submitted on behalf of applicant himself are "Department of Economic Affairs, Staff Car Driver Group 'C', Recruitment Rules, 1989. These rules prescribe the scale of pay for the post of Staff Car Driver as Rs.950-1500 and classify the post as General Central Service Group 'C' non-gazetted, non-ministerial, and prescribe the following requirements:

"Essential: (i) possession of a valid driving licence for Motor Cars,

(ii) Knowledge of Motor Mechanism (The candidate should be able to remove minor defects in vehicles),

(iii) Experience of driving a Motor Car for at least 3 years.

Desirable: (i) A pass in the 8th standard,

(ii) 3 years service as Home Guards/Civil Volunteers."

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While Annexure A-3 does not state that the post of constable is the same post as that of a Driver, it also does not prescribe all the qualifications as prescribed for Staff Car Driver vide Annexure A-4. The present post of applicant is a Group 'C' post as per annexure A-4 and has superior pay scale as well as qualifications. Applicant has also admitted in Annexure RA-1 that he was holding a Group 'D' post in BSF on 22.4.1987 which became a Group 'C' post later on. Also that the condition for holding Group 'D' post was relaxed for purposes of absorption as Staff Car Driver by the DOP&T. Applicant's admission implies that he was holding a Group 'D' post at the time of his initial appointment on 22.5.1987 in BSF. It was not a Group 'C' post at that time. He was holding a lower pay scale of Rs.825-1200 vis-à-vis the scale of Rs.950-1500 as the pay scale of Staff Car Driver in the Department of Economic Affairs. The learned counsel of applicant was specifically asked to furnish proof to the effect that applicant was holding a Group 'C' post at the time of his appointment in 1987 in the BSF and also that the qualifications prescribed for the post in BSF are the same as that of the Staff Car Driver in the Department of Economic Affairs. The learned counsel was unable to furnish these proofs. He was also asked whether an affidavit could be filed on behalf of applicant in this regard. The learned counsel was not able to agree to this opportunity as well.

9. Basically, in our view, applicant has failed to establish that he fulfils the criteria enunciated in the case of *SI Roop Lal* (supra) for purposes of treating the original post in the parent department ~~and~~ ^{and by} the deputation post as analogous. Applicant has totally failed to establish that the status, nature of responsibilities and duties attached to the two posts, as also the qualifications prescribed are identical. In this view of the matter, it cannot be said that applicant enjoyed the same status of a Group 'C' post with same duties and responsibilities

as now at the time when he commenced his service as Constable Driver in the BSF.

10. As this OA must fail on the ground that applicant has failed to establish that his post as Constable Driver in BSF should be treated as analogous to the post of Staff Car Driver in the Department of Economic Affairs, we do not deem it necessary to dwell upon the other contentions of applicant.

11. In the facts and circumstances of the case as also the discussion made above, this OA is liable to be dismissed on merit. Ordered accordingly. No costs.



(Meera Chhibber)
Member (J)



(V. K. Majotra)
Vice-Chairman (A)

3.1.2005

/as/