

DA No. 204/93

New Delhi, this the 11th day of August, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J)
Hon'ble Shri N. Sahu, Member (A)

1. Head Constable Vijay Kumar Singh
No. 8178/DAP
2. Head Constable Onkar Nath,
No. 129/SD
3. Head Constable Pratap Singh,Applicant
No. 381/SD

C/o Mrs. Avnish Ahlawat
243, Lawyers' Chambers,
Delhi High Court, New Delhi.

(By Advocate: Mrs. Avnish Ahlawat)

-Versus-

1. Delhi Administration, through
Commissioner of Police, Delhi
Delhi Police Headquarters,
MSO Building, IP Estate,
New Delhi.
2. Deputy Commissioner of Police,
Headquarters - I,
Delhi Police Headquarters,
MSO Building, IP Estate,
New Delhi.Respondents

(By Advocate: Shri D. Mukherjee proxy for
Shri Anoop Bagai)

O R D E R (ORAL)
[Dr. Jose P. Verghese, Vice-Chairman (J)]

The petitioners in this case were Head Constable and were promoted on 11.10.1982. Thereafter all the three petitioners were confirmed in the post of Head Constable on 22.5.86, 22.5.1986 and 22.11.1986 respectively. The petitioners were initially appointed as Constable on 3.4.1972, 21.9.72 and 16.4.1970 respectively and were confirmed on 15.2.1976, 15.2.1976 and 1.7.1974 respectively as

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Constable. The main allegation of the petitioners in this case is that their juniors were confirmed on 22.11.1985 almost one year prior to that of the petitioners for the reason that they were awarded punishment of censure sometime in the month of July, 1985. The contention of the counsel for the petitioner is that since they were already confirmed as Constable, the one time confirmation rule is applicable and subsequent confirmation in the cadre of Head Constable is superfluous. Thereafter the seniority list fixed on the basis of the said subsequent confirmation is also superfluous and is seeking a relief in this case that their seniority may be fixed on the basis of date of promotion as Head Constable as it has been done in a number of cases including that of their colleagues.

Substantiating this position, the counsel for the petitioner has produced before us a decision of this court in OA 534/92 passed on 25.3.1994 wherein the same batchmates of the petitioners were confirmed one year later due to censure awarded in between and this court had given the relief of seniority not on the basis of confirmation but on the basis of date of promotion, for the reason that he was confirmed earlier in the cadre of Constable and principle of one time confirmation was given to him by way of interpreting rule 5(ii) of the Delhi Police (Promotion and Confirmation) Rules, 1980. On the basis of the said finding that the principle of one time confirmation is applicable, the petitioners therein were granted relief and the respondents were directed to confirm them w.e.f. 22.11.1985 on which their

batch mates were confirmed. The case of the petitioners is that the batchmate of the present petitioners as well were confirmed on 22.11.1985 and the same relief is also applicable to the petitioners and since the same was not granted to the petitioners, they have filed this OA.

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Respondents have filed their reply and stated that Rule 22 of the Delhi Police (Promotion and Confirmation) Rules, 1980 requires the second confirmation in the cadre of Head Constable even after promotion. It was stated that since the rule 22, on the relevant date, was still remained valid, respondents did not consider the seniority of the petitioners from the date of promotion rather from the date of confirmation which admittedly was delayed due to an intervening punishment of censure.

Counsel for the petitioner in this regard submitted that she has challenged the vires of rule 22 of the Delhi Police (Promotion and Confirmation) Rules, 1980 stating that the said rule has out-lived its utility and infact respondents have themselves now incorporated this principle in rule 18 but at the same time retained the rule 22 in the 1980 Rules. Counsel for the petitioner also has brought to our notice a decision of this court dated 17.11.1989 in OA No. 1046/88 wherein a similar issue arose and this court was considering an identical issue as it was available under Punjab Police Rules 12.2(3) which is "pari-materia" as that of the above stated rule 22 of the Delhi Police Rules, 1980. In the said decision, it was stated that the court therein was recording a

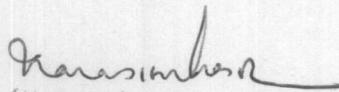
finding that they cannot uphold the validity of Rule 12.2(3) of the Pb. Police Rules or the corresponding Rules made under the Delhi Police Act, 1978. However, they did not propose to strike out the rule but recommended to the authorities concerned to revise the rules in conformity with the latest instructions issued by the Department of Personnel & Training (DOP&T) with regard to confirmation. It is stated that the said OM of DOP&T referred therein was the one dated 28.3.1988 wherein the principle of one time confirmation has been reiterated. It was stated by the counsel that the addition of rule 18 was with reference to these suggestions by this court, in the decision dated 17.11.1989 in OA No.1046/88. In view of this, rule 22 of the Delhi Police (Promotion and Confirmation) Rules, 1988 is to be understood as redundant and the respondents shall henceforth continue to apply the principle of one time confirmation as reiterated by the OM of DOP&T dated 28.3.1988. Respondents shall take appropriate steps to revise rule accordingly.

In view of the above decision that the rule 22 is no more applicable and in view of the decision of this court in the case of Azad Singh in OA 434/82 as well as the decision of this court in OA 899/92 given on 2.4.1993, we are of the opinion that the petitioners herein are also entitled to the same relief and count their seniority from the date of appointment, since they were already confirmed in their previous cadre of Constable and their seniority shall be reckoned from the date of promotion as Head

Constable, and the relief granted to their batchmates from 1985 shall also be given to these petitioners as well.

In view of our findings above, the respondents shall consider the petitioners in the appropriate places in the seniority, and in case the petitioners are otherwise found eligible for promotion but for their seniority position, the promotion to the next grade, namely Assistant Sub Inspector shall be given to them in accordance with the Rules, from the date their juniors were given the same relief, with all consequential benefits as it has been given to their juniors. It was suggested at para 4.7 that the seniority of the petitioners were at 555, 556 and 687 respectively in the tentative seniority list prepared by the seniority list then and the respondents in their reply stated that this is not the final seniority. In any case the suggestion at para 4.7 is that the seniority of the petitioners may be considered somewhere at sl. No. 160, 126 and 71 respectively and the respondents shall consider the seniority at these respective places, and incorporate/interpolate their names without disturbing the seniority of the rest of the personnels in the seniority list.

In these circumstances, this OA is allowed to the extent stated above. There shall be no order as to costs.


(N. Sahu)
Member (A)


(Dr. Jose P. Verghese)
Vice-Chairman (J)