

8

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2461/1993

New Delhi this the 14th Day of July 1999

Hon'ble Mr. V. Ramakrishnan, Vice Chairman (A)  
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

1. Vijay Kumar (578/I),  
son of Shri Ram Kumar,  
Resident of 564, Timarpur,  
Delhi.
2. Vijay Pal Singh (577/I)  
son of Shri Suraj Mal,  
Resident of Quarter No. 390,  
P.S. Welcome,  
Sealampur, Delhi.
3. Mohinder Pal (575/D),  
Son of Shri Braham Parkash,  
Resident of 477, Sanjay Enclave,  
Opposite G.T. K. Depot,  
Delhi - 110042.
4. Satyavir Singh  
son of Shri Pritam Singh,  
Resident of B-345,  
Bhajanpuram Delhi.

Applicants

(By Advocate: Shri Shyam Babu)

VERSUS

1. Commissioner of Police Delhi,  
Police Headquarters, I.P. Estate,  
New Delhi - 110 002.
2. Additional Commissioner of Police  
(Administration), Police Headquarters,  
I.P. Estate, New Delhi.
3. Deputy Commissioner of Police,  
HQ(I), Police Headquarters,  
I.P. Estate, New Delhi.

Respondents

(By Advocate: Shri Girish Kathpalia)

ORDER (Oral)

Hon'ble Mr. V. Ramakrishnan, Vice Chairman (A)

We have heard Mr. Shyam Babu, counsel for the  
applicant and Mr. Girish Kathpalia, counsel for the  
respondents.

2. The applicants are holding the post of Head Constables, who are directly recruited as Accident Service Technicians in Delhi Police and they are seeking promotion to the next higher post of Senior Accident Service Technician in terms of Rule 18A of Delhi Police (Appointment & Recruitment) Rules, 1980. The applicant No.3 was promoted to the higher level with effect from 29.8.88 in the vacancy arising out of death of ASI Shri Suresh Kumar who died on 29.5.88. The applicant No.4 was promoted to this level with effect from 18.11.88 on a vacancy which arose on the death of ASI Jiwan Ram. The applicants No.1 & 2 have been promoted with effect from 13.10.92 against vacancies which arose on the vacation of posts held by Shri Randhir Singh Bhardwaj and Shri Krishan Dutt when they were absorbed as Finger Print Bureau cadre in compliance <sup>with</sup> of the direction of the Tribunal in O.A.353/90 decided on 2.4.92. The Tribunal had then directed that the absorption of Shri Randhir Singh Bhardwaj and Shri Krishan Dutt shall be with effect from 31.12.87. The contention of the applicants is that the vacancies had arisen when Shri Krishan Dutt and Randhir Singh were absorbed in the cadre of Finger Print Bureau with effect from 31.12.87 and the applicants No. 3 & 4 should be shown against these vacancies with effect from 31.12.87. Applicant No. 1 and 2 should be deemed to have been promoted against vacancies which were initially given to Applicant No.3 and 4 in August 1988 and November 1988. The applicants had represented to the Delhi Police for such advancement of promotion which has been rejected by the Respondents by their order dated 24.5.93 and 2.8.93, as at Annexure L & M. They are aggrieved by this order and have filed the present O.A. -

3. Shri Shyam Babu for the applicant submits that vacancies occurred with effect from 31.12.87 on account of the permanent absorption of the other officials in the Finger Print Bureau and the applicants were required to be considered against such vacancies. He refers in this connection the decision of the Hon'ble Supreme Court in the case of Union of India & Ors. Vs. N.R.Banerjee, JT 1996(11) SC 605 particularly para 8 thereof where the Apex Court has observed that ~~the post~~<sup>panel</sup> have to be prepared yearwise. Mr. Shyam Babu concedes that as they did not work in the higher post, they will not be entitled to the higher pay and allowance but they should be given the benefit of seniority from the date on which the vacancies arose.

4. Shri Girish Kathpalia for the respondents resists the O.A. It is his stand that the two other officials were permanently absorbed in the post of Finger Print Bureau in compliance with the direction of the Tribunal. They were physically holding the posts of Senior AST till their repatriation by order dated 10.7.92. Even though they were permanently absorbed in the cadre of Finger Print Bureau from a retrospective date, the fact remains that there was no vacancy against which the applicants No.1 & 2 could be accommodated. He further says that the circumstances leading to the appointment of Applicant No. 3 & 4 are different from the grounds urged for antedating the promotion of Applicant No. 1 & 2.

5. We have considered the contentions of both sides. The stand of Shri Shyam Babu is that the applicants have a right to be considered for the posts from the date on which the vacancies arose. He says that ~~while~~ the applicants are not eligible to get the pay and

allowance, they have a right to be shown against the higher post with effect from the earlier date for the purpose of seniority and other attendant benefits.

We have gone through the observations of the Hon'ble Supreme Court in the case of Union of India Vs. N.R. Banerjee, particularly in para 8 which states that the panel has to be prepared yearwise. In otherwords when the DPC could not meet for a number of years and vacancies of more than one year have to be considered by the DPC, such vacancies cannot be clubbed together. It is for the purpose of determining the zone of consideration against yearwise vacancies. It does not lay down that the officials have an automatic right for promotion from the exact date on which the vacancies at the higher level actually occurred. We also find merit in the submission of the counsel for the respondents that the posts were not physically available against which the applicants could have been accommodated. It is true that the Tribunal in its order dated 2.4.92 in OA 353/90 had allowed the claim of Shri Randhir Singh & Shri Krishan Dutt and directed the respondents to absorb them permanently with effect from 31.12.87. The fact however remains that the order of this Tribunal was rendered only on 2.4.92 and the orders of the Administration to give effect to this direction were issued on 10.7.92 as is seen at Annexure 'H'. Applicant No. 1 & 2 were promoted and appointed against such vacancy within three months from the date of repatriation of Randhir Singh and Krishna Dutt. In such a situation even if Krishan Dutt and Randhir Singh were held to be regular officers of the Finger Print Bureau, they should be deemed to be technically on deputation to the post of the Senior Accident Service Technician till the date of

their repatriation. As such the vacancies were not available prior to 1992 and the applicants could not have been given the promotion prior to that date.

6. In the light of the foregoing discussion, we do not find any merit in the O.A. The O.A. is dismissed with no order as to costs.

Lakshmi Swaminathan

DR. V. Ramakrishnan

(Mrs. Lakshmi Swaminathan)  
Member(J)

(V. Ramakrishnan)  
Vice Chairman(A)

vtc.