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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No. 828 of 1987

J.S. Bhandari Applicant

Versus

Union of India & Jt. Secretary to the
Govt. of India, Ministry of Home
Affairs, New Delhi. Respondents

Hon.S.Zaheer Hasan, V.C.

Hon. D.S. Misra, A.M.

(By Hon.S.Zaheer Hasan, V.C.)

This application under Section 19 of the Administrative Tribunals Act XIII of 1985 has been transferred to this Bench by Hon'ble Chairman, Central Administrative Tribunal, Principal Bench, New Delhi.

2. The following officers were appointed in U.P. Police Service in the years indicated against their names which are mentioned in the order of seniority as detailed in the printed seniority list produced before us :-

1. Jodh Singh Bhandari	3.10.1953
2. Vijai Nath Singh	17.1.1956
3. Ghanshyam Krishna Shukla	12.2.1956
4. Bhupendra Singh	23.1.1956
5. Devendra Prasad	17.1.1956
6. Harish Kumar	4.1.1957
7. Sheo Raj Singh	2.1.1957
8. Indra Prakash Bhatnagar	8.2.1957
9. Shatrughan Prasad Misra	4.2.1957
10. Anand Prakash Sharma	4.2.1957
11. Kailash Pati Rai	4.2.1957
12. Ravi Bhushan Misra	3.2.1957
13. Navin Chandra Joshi	4.2.1957
14. Jagmohan Saxena	12.2.1957
15. Brijendra Kumar Singh	5.2.1957

3. 12 officers i.e. V.N.Singh, Bhupendra Singh,

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Harish Kumar, Sheo Raj Singh, I.P. Bhatnagar, S.P. Misra, A.P. Sharma, K.P. Rai, R.B. Misra, N.C. Joshi, Nagmohan Saxena and B.K. Singh filed application No. 583 of 1986 in the Tribunal and in the Full Bench decision dated 22.4.1987 the seniority list dated 1.7.86 was quashed and the Union of India was directed to assign the seniority to these 12 officers from the respective dates of their continuous officiation in a senior post. G.K. Shukla filed a separate application No. 660 of 1986 and in this application it was prayed that his seniority in the I.P.S. cadre may be fixed in accordance with the decision in O.A. No. 583 of 1986. It was ^{ordered} by the Bench concerned on 3.2.1987 that the Full Bench decision was expected. ~~So~~ the Govt. of India was directed to fix the seniority of G.K. Shukla according to the direction given in their order. Accordingly on 11.6.1987 Govt. of India fixed the seniority of the aforesaid 13 persons and of Jodh Singh Bhandari and Devendra Prasad as below :-

1. Harish Kumar
2. S.P. Misra
3. V.N. Singh
4. I.P. Bhatnagar
5. Bhupendra Singh
6. A.P. Sharma
7. K.P. Rai
8. R.B. Misra
9. N.C. Joshi
10. B.K. Singh
11. G.K. Shukla
12. J.S. Bhandari
13. Devendra Prasad
14. J.M. Saxena
15. S.R. Singh

The year of allotment given to G.K. Shukla, J.S. Bhandari

and Devendra Prasad was 1970. Jagmohan Saxena and S.R. Singh were allotted 1972. B.K. Singh was allotted 1967 and the rest of the 9 persons were allotted 1966. Jagmohan Saxena was shown in this order to have continuously officiated from 1977, B.K. Singh from 1971, G.K. Shukla from 1974 and S.R. Singh from 1974. The remaining officers were shown to have continuously officiated from 1970. Jagmohan Saxena moved a Miscellaneous application No. 99 of 1987 for the execution and correct implementation of order passed in O.A. No. 583 of 1986 on 22.4.1987. It was held by a Bench of this Tribunal consisting of Hon'ble D.S. Misra and G.S. Sharma that the allegation of the 12 officers was that they were continuously officiating from 1970 and in the copy of the special writ petition No. 6066 of 1987 filed before Supreme Court against our judgement dated 22.4.1987, the Union of India did not take any plea to the effect that they were not continuously officiating from 1970 but from any other subsequent date. On the other hand they mentioned that the 12 petitioners were working as Superintendent of Police on adhoc basis in the year 1970 and since then they were continuously working on this post. Ultimately the two Hon'ble Members held that the Union of India has not implemented the direction of the Tribunal as regards B.K. Singh and Jagmohan Saxena. They did not touch upon the case of Sheo Raj Singh because he had filed

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a separate application. In short the respondent No.1 was directed to correct their order dated 11.6.87 so as to assign proper year of allotment to Jagmohan Saxena and B.K. Singh. On the basis of this order, on 4.12.87 the Govt. of India fixed the seniority of Jagmohan Saxena below B.K. Singh who is shown below the name of N.C. Joshi. J.S. Bhandari and Devendra Prasad were not the party to the case decided by us on 22.4.1987. Now both these persons have moved separate applications for assigning their seniority and year of allotment on the basis of our judgement dated 22.4.1987 with the plea that they are similarly situated.

4. The case of J.S. Bhandari is that he was appointed in U.P. Police Service on 3.10.1953 and he was senior to the aforesaid 12 petitioners whose case was decided by us on 22.4.1987. From 8.12.64 to 17.1.70 he worked as Area Organizer, SSB Division, Govt. of India and he was promoted on adhoc basis as S.P. in the senior scale of Indian Police Service. From 17.1.70 to 1973 he worked as Superintendent of Police in U.P. From 1973 to 1982 he was again sent on deputation to Govt. of India. From 1982 onwards he worked in U.P. as PAC Commandant etc. His case is that since he is continuously officiating on a senior post from 8.12.64 so his seniority should be fixed taking the aforesaid date into account and since he is similarly situated to the aforesaid 12 petitioners he should also be given the same benefit and the Govt.

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of India be directed to fix his seniority and year of allotment taking his continuous officiation from 8.12.64 into account. In the alternate his prayer is that he should be granted seniority from the date his junior Harish Kumar was granted seniority and year of allotment under Next Below Rule. It was further contended that ordinarily in the absence of any misconduct, inefficiency etc. it is reasonable to presume that a civil servant would have risen in his parent department to the same position reached by the officer junior to him. Shri Bhandari has also stated that his record is unblemished and he has received several awards. This contention has not been contested by the respondents.

5. The contention of the respondents is that the promotion matter is decided by U.P. Govt. so the petitioner should have made the U.P. Govt. a party, that he should have challenged the seniority fixed by the Department before rushing to this Tribunal; that his case is not similar to the case of the aforesaid 12 petitioners; that because he was on deputation to the Govt. of India and was not holding a senior post from 8.12.64, so that period cannot be taken into account; that the petitioner has been given the benefit of continuous officiation from 1.10.74; that his name was put on select list on 20.4.1974 only.

6. We have considered the matter and we find that the petitioner was appointed as Area Organizer

on 8.12.64 and promoted on adhoc basis to the rank of S.P. in the senior scale of I.P.S. but not to a post in the I.P.S. cadre. In case he is given seniority with reference to his continuous officiation from 8.12.64, it might affect some officers senior to him in the U.P. Police Service and they are not made party to this petition. He is senior to the aforesaid 12 petitioners in the U.P. Police Service seniority list. His 9 juniors started continuous officiation as Superintendent of Police in 1970. The petitioner returned from deputation on 17.1.70 to U.P. and since then he ~~is~~ ^{has} been working on a senior post ^{till 1973}. His name was put in select list on 20.4.74. There is no allegation that he was not selected earlier due to bad work, misconduct etc. The only contention is that his seniority cannot be counted as prayed because he was not holding a senior post while on deputation. It is however contended that he returned from deputation to U.P. on 17.1.70 and thereafter started working here as Superintendent of Police. He was again sent on deputation to Govt. of India from 1973 to 1982 where he worked on a senior post and from 1982 onwards he has again been working as PAC Commandant etc. in U.P. Under the circumstances mentioned above, the second period of deputation between 1973 and 1982 should be treated as period of continuous officiation. He cannot be penalized for being on deputation between 1973 and 1982. His name was put on select list on 20.4.74 and there is no

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allegation that he was not put on select list earlier due to misconduct etc. Under the circumstances of the case it can be assumed that the requirement of Explanation 1 to Rule 3(3)(b) of Indian Police Service (Regulation of Seniority) Rules have been relaxed. I have given in my judgement dated 21.4.87 in case No. 583 of 1986 Bhupendra Singh & Others Vs. Union of India & Others detailed reasons which need not be repeated here. However we would like to clarify that we are deciding this case on its own fact. The petitioner returned to U.P. on 17.1.70 and started working as Superintendent of Police. So his continuous officiation should be taken into account from 17.1.70 and his seniority be fixed accordingly.

7. The application has already been admitted. Under the circumstances of the case it is immaterial that the petitioner rushed to this Tribunal without making a representation against the seniority fixed by the Govt. of India on the basis of the judgement in Bhupendra Singh's case. The petitioner is claiming seniority and year of allotment which can be done by Govt. of India. He has not claimed any relief against the U.P. Govt.

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So to our mind U.P. Govt. is not a necessary party. In view of all the above, we direct

the respondent No.1 to fix the seniority of the petitioner taking into consideration his continuous officiation from 17.1.1970 and not from 1.10.1974. Under the circumstances the parties to bear their own costs.

Within a period of two months from the date of receipt of the order of

Sharma
12.1.88.
Member (A)

Sharma
12.1.88
Vice Chairman

Dated the 12/1 Jan., 1988

RKM

All communications should
be addressed to the Registrar,
Supreme Court, by designation,
NOT by name.
Telegraphic address :—
"SUPREMECO"

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No. D.No. 989/88/XI.
**SUPREME COURT
INDIA**

Sup. C.—75

FROM

Seal
The Assistant Registrar,
Supreme Court of India,
New Delhi.

TO

✓ The Deputy Registrar,
Central Administrative,
Tribunal, 23-A, Thornhill Road,
Allahabad (UP) Dated New Delhi, the... 8th August, 1988.

CIVIL APPEAL NO. 1805 OF 1988.
(Registration OA No. 828 of 1987)

Union of India & Anr.

.. Appellants.

Versus

J.S. Bhandari

.. Respondent.

Sir,

50(4) / 30.8.88
I am directed to forward herewith for your information and
record a certified copy of the Petition for Special Leave to Appeal
filed by the Appellant above named in this Registry on 26th
February, 1988 and taken on record as Petition of Appeal
pursuant to this Court's order dated 9th May, 1988 (Certified
copy of Court's Proceedings is enclosed) granting Special Leave to
Appeal to the Appellant above named from the Judgment and order
dated 12th January, 1988 of the Central Administrative Tribunal
at Allahabad in Regn. OA No. 828 of 1987).

*Noted in
S.L. Registry
Sl. No. 38
30.8.88*
The sole Respondent is represented by M/s. Suresh A. Shroff,
& Co., Advocates. They have been served directly with the Notice
under Rule 11 of Order XV, S.C.R. 1966.

DR(T)
I am to inform you that this Court by its Order dated the
9th May, 1988 has been pleased to dispensed with preparation
of the Appeal Record and filing Statements of case by the
parties herein and has directed that the Appeal above