

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA 869 OF 1997 WITH MA 142 OF 2000

Present : Hon'ble Mr. D.Purkayastha, Member(J)

Honn'ble Mr. L.R.K.Prasad, Member(A)

Narendra Roy Chaudhuri
Constable, Central Detective
Training School, Bureau of
Police Research & Development
M/o Home Affairs, Govt. of India,
30, Gorachand Road,
Calcutta-700 014

VS

1. Union of India through the
Secretary, M/o Home Affairs,
Central Secretariat,
New Delhi-110 011
2. Director, Bureau of Police
Research & Development,
M/o Home Affairs,
Block No. II, 3/4 floors,
CGO Complex, Lodhi Road,
New Delhi- 110 003
3. Principal, Central Detective
Training School, Bureau of
Police Research & Development,
30, Gorachand Road,
Calcutta-700 014
4. Shri R. K.Mondal,
Head Constable,
Bureau of Police Research
and Development, Block-II, 3/4 floor,
CGO Complex, Lodhi Road,
New Delhi-110 003

..... respondents

For the applicant : Mr. P.K.Munshi, Counsel

For the respondents 1 to 3 : Mr. S.K.Dutta, Counsel

Heard on : 23.7.2001 & 24.7.2001

Order on : 27.4.2001

O R D E R

D.Purkayastha, J.M.:

In this OA, the applicant has essentially challenged the seniority of respondent No. 4 (Shri R.K.Mondal) as Constable and has prayed for fixation of his seniority vis-a-vis respondent No. 4 on the basis of date of deputation as per rules as also for his promotion as Head Constable w.e.f. 1.1.86 and for further promotion as ASI etc.

after refixation of appropriate seniority.

2. Briefly stated the facts of the case is that the applicant was initially appointed as Constable in the Calcutta Police under the Govt. of West Bengal on 1.7.1977. He joined the Bureau of Police Research & Development under the M/o Home Affairs, Govt. of India, on deputation in the same post on 13.12.1977 and posted in the Central Detective Training School, Calcutta. The respondents issued a circular dated 18.1.84 (annexure-A) asking options from deputationists working as Constable for permanent absorption. The applicant gave his option and he was permanently absorbed under the respondent authorities w.e.f. 6.3.85 as per annexure-B. A seniority list of Constables was published on 30.8.88 containing 27 names out of whom 2 were direct recruits and the rests were absorbees and the applicant found that his name was shown at Sl. No. 14 and it appears that this list was prepared taking the date of absorption as the basis for fixation of inter se seniority. This list is shown at annexure-C. It is alleged that after publication of this list there was discontents amongst the employees as it was found that those came on deputation earlier were placed below those who came on deputation later. The matter was discussed at various levels and several recommendations were also made to the concerned higher authorities for refixation of seniority on the basis of DOPT OM dated 29.5.86 which postulates that date of deputation should be the criteria for determination of seniority of absorbees. Thereafter a draft seniority list of Constables was circulated vide order dt. 24.11.93 in which the also the position of the applicant was shown at serial No. 14 whereas the name of the respondent No. 4 was shown at Sl. No. 4 although he joined the respondent Deptt. on deputation after the applicant. The applicant made representation which was rejected and a final seniority list was published on 16.5.94. The principle on which the said list was published was stated to be that those who were absorbed on the same date prior to 1986, in their case, the length of service in the same grade was taken into account as per DOPT circular dt. 29.5.86

(annexure-M). It is alleged that the representation of the applicant was rejected as per letter dt. 7.6.94 (annexure-N) without assigning any reason. In the meanwhile, the respondent No. 4 was regularly promoted as Head Constable which benefit was not given to the applicant and he has been stagnating in the same post even though he was given training in various disciplines and was also placed on deputation in higher posts. According to the applicant, if the date of deputation is taken as the basis for determination of seniority as per the aforesaid OM, he would become senior to respondent No. 4 and thus would be eligible for regular promotion as Head Constable from 1.1.86 and further promotion as per rules. It is also stated although the scope of promotion in Calcutta Office is very limited, the respondent authorities transferred the respondent No. 4 from Hyderabad at his own request and thereby the chance of promotion of the applicant has further been jeopardized. This fact was brought on record by filing MA 142 of 2000. Although the applicant has mentioned other facts but it appears, mainly on the above mentioned grounds, he has challenged the seniority of respondent NO. 4 and has prayed for recast of seniority on the basis of DOPT OM dt. 29.5.86. The applicant has also filed a supplementary application on 13.4.98 regarding option as per revision of pay rules.

3. The official respondents have contested the application by filing a reply in which it is stated that the posts of Constable as per recruitment rules then in force were to be filled up 25% by direct recruitment and 75% by deputation. Accordingly, the seniority is fixed in the ratio of 1 : 3, that is to say, the direct recruit is placed first followed by 3 absorbees. It is stated that after March 1985 there was no direct recruitment and all the posts were filled up by deputationists who were subsequently absorbed as per their option. It is further stated that the seniority list was prepared on the basis of the principle as was prevalent as per DOPT OM dt. 22.12.59 i.e. on the basis of date of absorption. It is further stated that the respondent No. 4 was absorbed w.e.f. 6.4.84 whereas the applicant

was absorbed w.e.f. 6.3.85. Therefore, the applicant cannot claim to be senior to the respondents No. 4. It is, however, admitted that the applicant came on deputation earlier than respondent No. 4. But according to the respondents, the O.M. dt. 29.5.86 cannot have retrospective operation and both the applicant and respondent No. 4 having been absorbed prior to 29.5.86, their seniority is to be determined on the basis of Govt. orders prevalent at that time. The respondents have also raised the question of limitation.

4. We have heard the learned counsel for both parties at length and have gone through the records.

5. It appears that about facts there is no dispute. It is undisputed that the applicant joined the respondent Deptt. initially on deputation on 13.12.78 in the post of Constable and absorbed as such w.e.f. 6.3.85. It is also not in dispute that in his parent Deptt. i.e. Calcutta Police under the Govt. of West Bengal, the applicant was holding the same post of Constable on regular basis w.e.f. 1.7.77. It is also not disputed that respondent No. 4 was initially appointed in the BSF as Constable on 6.1.75 and he came on deputation in the same post under the respondent Deptt. w.e.f. 20.5.81 i.e. after the applicant. But it appears that respondent No. 4 was absorbed w.e.f. 6.4.84 i.e. prior to the applicant. While preparing the seniority list, the respondents determined the seniority on the basis of date of absorption and on that basis the respondent No. 4 was placed above the applicant even though the applicant joined the respondent Deptt. earlier than the respondent No. 4 on deputation.

6. Learned counsel for the applicant mainly relies on the DOPT OM dated 29.5.86 which relates to the mode of fixation of seniority of persons absorbed after being on deputation. The relevant portion of the circular dt. 29.5.86 runs as follows :-

"2. Even in the type of cases mentioned above, that is, where an officer initially comes on deputation and is subsequently absorbed, the normal principle that the seniority should be counted from the date of such absorption, should mainly apply. Where, however, the officer has already been

holding on the date of absorption in the same or equivalent grade on regular basis in his parent department, it would be equitable and appropriate that such regular service in the grade should also be taken into account in determining his seniority subject only to the condition that at the most it would be only from the date of deputation to the grade in which absorption is being made. It has also to be ensured that the fixation of seniority of a transferee in accordance with the above principle will not affect any regular promotions made prior to the date of absorption. Accordingly, it has been decided to add the following sub-para (iv) to para 7 of general principles communicated vide OM dated 22nd December, 1959 :-

(iv) In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for Transfer on deputation/transfer) his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent Deptt., such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from

the date he has been holding the post on deputation, or

the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department,

whichever is later.

7.. It is contended by the ld. counsel for the applicant that since the applicant had joined prior to respondent No. 4 on deputation and then absorbed, the date of deputation should be the criteria for determining the inter se seniority. This contention is disputed by the ld. counsel for the respondents by stating that even though the applicant came on deputation earlier, he was absorbed later than respondent No. 4 and therefore he cannot claim seniority over respondent No. 4.

8. Mr. S.K.Dutta, ld. counsel for the respondents has submitted before us that the aforesaid OM dated 29.5.86 on which the ld. counsel for the applicant mainly relies in support of his case that date of deputation should be the criteria for determining seniority, came to be considered before the Hon'ble Supreme Court in the case of Sub-Inspector Rooplal & Anr -vs- Lt. Governor, Delhi etc. reported in (2000) 1 SCC 644 wherein it was held that expression "whichever is

"later" is unreasonable and offends article 14. It is held that past service in the same or equivalent grade cannot be ignored for determining seniority of deputationists who have been absorbed in the borrowing deptt. It is contended by Mr. Dutta that admittedly the respondent No. 4 was senior to applicant by taking into consideration their past service and on this account also the applicant cannot claim seniority over respondent No. 4. However, the ld. counsel for the applicant has contended that this ruling of the Hon'ble Supreme Court is prospective only and it cannot affect the case of the applicant.

9. Mr. Dutta has also relied on another decision of the Hon'ble Supreme Court in the case M. Ramchandran -vs- Govind Ballabh & Ors reported in (1999) 8 SCC 592 wherein also the aforesaid OM dated 29.5.86 or OM dt. 3.7.86 containing the same provision. It was observed as follows :-

" The interpretation put on the said para centres around the words "whichever is later" occurring as its end. It is contended that the seniority must be determined from the date a person is holding the post on deputation or the date from which he had been appointed on a regular basis to the same or equivalent grade in its parent department "whichever is later", meaning thereby if a persons gets himself deputed earlier to the service, he would be entitled to seniority notwithstanding the length of service or earlier holding of the equivalent post of grade by a person who incidentally happens to be sent on deputation at a later date. Such a contention, if accepted, would be against the settled principles of service jurisprudence. We also feel that as the rules hold the field, the office memorandum has to give way in the matter of determination of inter se seniority of persons recruited to the service on the same date.

10. The legal position, as it stands now, is quite clear. Normally, the inter se seniority of deputationist is to be counted from the date of absorption. However, if a person is initially

appointed on deputation and then gets absorbed, his seniority is to be counted from the date of holding the same or equivalent grade/post on regular basis in the parent department notwithstanding the date of deputation which in all probably may be fortuitous. In other words, normally the date of absorption is the main criteria for determining the seniority of absorbees. But if it happens that more than one persons are absorbed on the same date, then in that event, their inter se seniority is to be fixed by taking into account their past regular service in the same or equivalent grade without affecting others interest.

11. It cannot be said that even if a person is absorbed earlier, he would be placed junior to a person absorbed later because in his (later absorbee) parent department he was holding the same or equivalent grade on regular basis from an earlier date than the earlier absorbee. In that event, there will be total chaos and seniority position cannot be settled finally. Deputation is a continuing process in any Govt. service and if a person coming on deputation at a much later date gets absorbed and claim seniority over earlier absorbees, who may be junior with reference to the total length of service by taking into account the service rendered in the parent department in the same grade, then it will go against all principles of all service jurisprudence. The interest of the earlier absorbee has always to be protected. Even the OM dated 29.5.86 has categorically mentioned that the normal principle of determining seniority should be the date of absorption. Only when more than one persons are absorbed on the same date, then only the principle laid down in the aforesaid OM should apply with the modification as laid down by the Hon'ble Supreme Court in Ruplal's case. In Ramchandran's case, all the deputationists were absorbed on the same date i.e. 1.11.89 and in that context the aforesaid decision was rendered. By no stretch of imagination it can be said that a person who has been absorbed earlier will become junior to a person who has been absorbed later. This is an absurd proposition. It may be noted that so long a

person remains on deputation, he is not a regular employee of the borrowing department. His lien is maintained in his parent department and a deputationist has also no right to continue or for absorption. Till a deputationist is absorbed, the question of fixation of his seniority in the new department does not arise. Therefore, date of absorption is the most vital factor for determining seniority and other service benefits in the new Deptt. But, only because of absorption in the new department, one's past service in the same or equivalent grade does not wipe out and it is taken into account for all purposes as has been held by the Hon'ble Apex Court time and again. In the OM dt. 29.5.86 it is clearly stated that it will be operative only in filling up of vacancies in higher grade taking place after such absorption.


12. In the instant case, we find that by a memo dated 18.1.84, the Joint Assistant Director invited options from all deputationists for being absorbed as Constable on the conditions mentioned therein. It appears that the applicant gave his option on 25.1.84 in reply thereto. But he was absorbed only w.e.f. 6.3.85. It is curious to note that respondent No. 4, who came on deputation in 1981 i.e. much later than the applicant, was absorbed w.e.f. 6.4.84. The applicant has not challenged his belated absorption. It is because of this delayed absorption that the applicant's seniority has been lowered down in comparison to respondent No. 4. Neither party has clarified this fact before us.

13. We further find from the seniority list which is also mentioned in the reply that there were two direct recruits viz. Shri A. Some and Shri A.Saha, who were directly recruited on 18.3.85 and 22.3.85 respectively. It is stated by the ld. counsel for the respondents that as per the then recruitment rules, 25% posts of Constable were reserved for direct recruitment and the seniority list has been prepared on 1:3 basis. However, it is found that both the applicant and respondent No. 4 along with others were absorbed prior to 18.3.85 i.e. prior to Shri Som, who has been placed at serial No.

1, was directly recruited to the service. This is quite unjustified. It has already been held by the Hon'ble Supreme Court on a number of occasions that a direct recruit cannot be given seniority from an anterior date prior to his entry into the cadre. A direct recruit gets his seniority from the date of joining on regular basis. The deputationists are a different class because they have a past service. Even then a direct recruit cannot get from a date when he was not even appointed. Here both the applicant and respondent No. 4 were absorbed i.e. became regular employee of the new Deptt. prior to the appointment of these direct recruits. Therefore, they cannot be deprived of their seniority accordingly, particularly when the quota for direct recruitment failed. The direct recruits will get their seniority from the date of their entry into the service only and not from any prior date. However, since these two direct recruits are not parties before us, we are unable to pass any adverse order against them for recasting of their seniority appropriately.

14. Be that as it may, it remains undisputed that in the parent service, the respondent No. 4 is senior to the applicant. He was also absorbed earlier than the applicant for whatever reason. On that ground also, he is senior to the applicant. The applicant has not challenged his belated absorption at appropriate time before any court of law. The contention of the applicant that date of deputation should be the determining factor as per OM dated 29.5.86 cannot be accepted in view of clear decision of the Hon'ble Supreme Court referred to above.

15. For the reasons stated above, we are unable to grant any relief to the applicant. The OA is accordingly dismissed. The MA also stands dismissed without any order as to costs.


(L.R.K. PRASAD)

MEMBER(A)


(D. PURKAYASTHA)

MEMBER(J)