

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No.1848/2004

**Reserved On:08.03.2017
Pronounced On:15.03.2017**

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)

Manoj Kumar Sharma
R/o HC-12,
PS Tilak Marg Complex,
New Delhi-1.

.....Applicant

(By Advocate: Shri Naresh Kaushik)

Versus

1. Union of India through
Ministry of Home Affairs,
North Block, New Delhi.
 2. Commissioner of Police
Police Head Quarter,
I.P. Estate, New Delhi.
 3. Special Commissioner of Police
Administration, PHQ
IP Estate, New Delhi.
 4. Deputy Commissioner of Police,
HDQRS (I), PHQ,
I.P. Estate,
New Delhi.
- ..Respondents

(By Advocate:Ms. Alka Sharma)

ORDER

By Hon'ble Mr. P.K. Basu, Member (A)

This Original Application (OA) along with other OAs 2523/2003,
244/2002 & 2299/1997 were heard by this Tribunal together and

disposed of vide order dated 24.11.2006. Findings of the Tribunal on OA No.1848/2004 were as follows:-

“50. As far as the claim laid in OA No. 1848 of 2004 is concerned, we are of the concerned opinion that there is no substance & justification in the relief prayed for. So far as claim counting ad-hoc service from 11.10.82 to 1.8.1986 towards seniority is concerned, we find that it is not the applicant's case that his initial appointment in 1982 was in accordance with statutory rules of 1980. On the other hand, it is his specific case that he was appointed in 1982 only on “ad-hoc basis”. Perusal of appointment letter dated 19.10.1982(annexure R-1) also established that he was indeed appointed only on “purely temporary and ad-hoc basis, for a period of 3 months in the first instance”. However, he continued to serve till he was appointed in accordance with rules vide order dated 11.8.1986. Validity of said order has not been challenged either in present or any other proceedings. In view of the dicta laid down by Apex Court in State of West Bengal V/s Aghore Nath Dey, 1993 (3) SCC 371, the adhoc period could be counted towards seniority only when the incumbent of the post was initially appointed according to the rules”. Applicant's claim is based only on account of conferring such benefits to other persons. Merely because an administrative order is passed in favour of other person, is not a ground to issue a command or direction to respondents to treat him similarly. In (1995) 1 SCC 745 Chandigarh Administration vs Jagjit Singh & Another, it was observed that the claim laid that another person similarly situated had been granted such a relief and non-grant of such relief to the person would lead to discrimination, has to be decided by investigating the facts before it could be directed to be followed in case of the petitioner. It was observed therein that:

“The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order.”

51. Similarly in I.C.A.R & Anr v T.K.Surayanarayan & Ors. JT 1997 (7)SC 437 it was observed that incorrect promotion either given erroneously by the department by misreading the said service rule or such promotion given pursuant to judicial orders contrary to service rules cannot be a ground to claim erroneous promotion by perpetuating infringement of statutory Service rules. The statutory Service Rules must be applied strictly.

52. On examination & analysis of facts as well as law, we do not find justification in the contention raised by applicant for counting his adhoc service towards seniority. Similarly, prayer to grant him the rank of Sub-Inspector when he reached the pay of Rs.416/- in pay scale of Rs.330-560/- is unfounded and untenable inasmuch as on the date when he was regularized i.e. 01.8.1986, the aforesaid pay scale stood revised and had become defunct. Therefore, OA 1848/2004 fails & is dismissed”.

2. The applicant approached the Hon’ble High Court in Civil Writ Petition No.5450/2007. On behalf of the applicant in OA No.1848/2004, the learned counsel for the applicant raised the issue that none of the grounds raised by the applicant were dealt with by the Tribunal. Based on this submission of the learned counsel, the Hon’ble High Court passed the following order on 15.11.2016:-

“2. Mr. Naresh Kaushik, learned counsel for the petitioner has drawn the attention of the Court to the impugned order. He submits that by the impugned order while deciding the OA filed by the petitioner, three other OAs were also taken up for consideration. He submits that reading of the impugned order would show that none of the grounds raised by the petitioner were dealt with by the Tribunal. The Tribunal has only dismissed the OA on the ground that the case of the petitioner is not similar to the case of other three persons as stated by the petitioner. He also submits that the finding reached by the Tribunal is contrary to the record. Mr. Kaushik submits that assuming for the sake of argument that the Tribunal has reached such a conclusion, the other grounds should have also been decided.

3. In these circumstances, with the consent of the counsel for the parties, we set aside the impugned order dated 24.05.2006 with regard to the petitioner alone and remand

the matter back to the Tribunal to decide on the existing pleadings. Parties to appear before the Tribunal on 25.11.2016. The matter would be decided by the Tribunal as expeditiously as possible preferably within three months from today”.

3. The present OA is, therefore, being heard again.

4. The applicant was appointed as Assistant Sub Inspector (ASI) (Steno) in the pay scale of Rs.330-560 in Delhi Police on ad hoc basis with effect from 11.10.1982. He was appointed as an ASI on regular basis with effect from 01.08.1986. Initially the Stenographers in Delhi Police used to be appointed as Civilian employees. This practice continued till 1969. On the recommendation of Khosla Commission, the Government of India vide their letter No.1/18/69-P.VI dated 24.10.1969 decided to enrol the Stenographers under the Police Act as ASI in the pay scale of Rs.130-300. It was further decided that these Stenographers shall notionally hold the rank of Sub-Inspector (SI) in the same pay scale of Rs.130-300 on reaching of their pay at Rs.168/- i.e. minimum of pay of SI. Consequent upon enrolment of Stenographers under the Police Act, an amendment in the year 1970 was made in Rule 12.3 of Punjab Police Rules, 1934 to regulate the promotions of Clerical Staff as well as Stenographers. Accordingly, Rule 12.3 (D) was added in the P.P.R. This practice continued till the year 1980 i.e. before the enactment of Delhi Police (Promotion & Confirmation) Rules, 1980. However, in the new rules which came into existence on 29.12.1980, the Stenographers were allowed promotional avenues in Ministerial Cadre as SI (Ministerial) under Rule 16(iii) of

Delhi Police (Promotion & Confirmation) Rules, 1980. Later on, the ASIs scale was revised to Rs.330-560 and instead of Rs.168/- Stenographer who reached the stage of Rs.416/- in the pay scale of Rs.330-560 were to automatically notionally hold the rank of SI in the same scale of Rs.330-560.

5. Applicant was drawing pay in this scale on ad hoc basis with effect from 11.10.1982 and thereafter on regular basis with effect from 01.08.1986. After the 4th Pay Commission's Report, pay scales were revised with effect from 01.01.1986 and the pay scale of ASI (Steno) of Rs.330-560 was revised to Rs.1400-2300 with effect from 01.01.1986.

6. The applicant filed a representation on 20.01.2004 that he should also be notionally granted the rank of SI in the same pay scale from the date that he would deemed to have reached the stage of Rs.416/- and also to count his ad hoc service as ASI towards fixation of seniority. The respondents rejected this vide letter dated 22.03.2004, which reads as follows:-

“Confidential

Sub: Representation against the integrated seniority list of SIs (Min) of Delhi Police – fixation of seniority.

Reference your office u.o. No.119/P.Sec/Jt.CP/Crime dated 21.01.2004 on the above subject.

The representation of SI (Min.)Manoj Kumar No.D-896 regarding grant of seniority as SI (Min.) on reaching his pay at stage of Rs.416/- in the pay scale of Rs.330-560 of ASI (Steno.) has been considered in this Hdqrs. Applicant SI (Min.) Manoj Kumar No.D-896 has joined Delhi Police as ASI (Steno) on 11.10.1982 on purely temporary and ad hoc basis for the period

of 3 months basis. He was appointed as temporary Assistant. Sub-Inspector (Stenographer) on 01.08.1986 and as such confirmed in his appointment w.e.f. 01.08.1988. The pay scale of Rs.330-560 had already revised into the pay scale of Rs.1400-2300 w.e.f. 01.01.1986. As such, taking into account of his regular appointment w.e.f. 01.08.1986, the case of the applicant treating as SI (Min.) on reaching his pay Rs.416/- in the pay scale of Rs.330-560 as ASI (Steno) does not come under the zone of consideration.

The applicant may be informed accordingly”.

7. The applicant has challenged this action of the respondents on the following grounds:-

(i) That he was continuously serving as ASI (Steno) since 11.10.1982 and also granted increments in the scale before he received his substantive appointment as ASI on 01.08.1986. Therefore, those increments should be counted and then at the stage he is deemed to have reached Rs.416/-, he should be notionally treated as SI; and

(ii) The respondents have granted the deemed benefit to Inspector Sardari Lal, Inspector Ashok Kumar, Inspector Mohan Singh, SI Praveen Kumar and SI Sharvan Kumar.

8. This OA has been filed seeking the following specific reliefs:

“(i) Respondents may be directed to grant promotion to the applicant as Sub Inspector when he reached the pay of Rs.416/- in the scale of Rs.330-560, as granted to others.

(ii) The ad hoc service may also be directed to be counted towards fixation of applicant’s seniority.

(iii) The applicant may be given all the consequential benefits.

(iv) Any other relief which the Hon’ble Tribunal may deem fit and proper and circumstances of the case”.

9. The applicant has relied on the following judgments:-

(i) **RA No.104/93, RA No.195/93 In OA No.2089/1990 - Baljit Singh Bamel Vs. U.O.I. & Others** decided by the Tribunal on 04.01.1993.

(ii) **Appeal (Civil) No.8705-10/1994 - U.O.I. & Others Vs. Baljit Singh Bamel and Others** decided by the Hon'ble Supreme Court in decided on 30.08.1994.

(iii) **OA No.1378/1995 - Shri R.C. Sharma and Others Vs. Government of NCT and Others** decided by this Tribunal on 06.02.1997.

(iv) **Civil Appeal No.5362 of 1997 - Baljit Singh Bamel etc. Vs. U.O.I. & Others** decided by the Hon'ble Supreme Court on 11.01.2000.

(v) **OA No.2299/1997 - J.K. Jain and Others Vs. Govt of NCT of Delhi and Others** decided by this Tribunal on 23.05.2000.

All the judgments were dealt with by the Tribunal in the order dated 24.06.2006 passed in OA No.2523/2003 and connected cases.

10. In their replies, the respondents have stated that Inspector Sardari Lal was appointed as a temporary ad hoc Stenographer Grade-III in the pay scale of Rs.130-280 with effect from 17.07.1973 in the Ministry of Defence. On the implementation of the 3rd CPC, his pay scale was Rs.330-560. He was appointed as Stenographer Grade-III in the Department of Personnel & AR (General Manager Delhi Telephone)

with effect from 01.07.1977. He joined Delhi Police as ASI (Stenographer) w.e.f. 01.11.1977 in the same pay scale. His previous service was counted towards Civil Pension under FR 27.

11. Inspector Ashok Kumar Mahana also followed the same route and joined Delhi Police as ASI (Stenographer) on the same date, I.e. 01.11.1977 in the same pay scale and like Mr. Sardari Lal, his previous service was counted towards Civil Pension.

12. Inspector Mohan Singh was appointed as a temporary Stenographer (ASI) in Delhi Police on purely ad hoc and temporary basis for a period of one year with effect from 27.06.1981 in the pay scale of Rs.330-560. He was finally posted as Stenographer (ASI) on regular basis with effect from 22.04.1982.

13. Shri Parveen Kumar came on deputation from BSF as ASI (Stenographer) and was absorbed as ASI (Stenographer) with effect from 05.05.1988. His pay was considered to be deemed to have reached the stage of Rs.416/- with effect from 01.05.1986 and in view of Tribunal's order dated 23.05.2000 in OA No.2300/1997, the seniority of Shri Parveen Kumar and Shri Sarwan Kumar was fixed in the rank of SI (Ministerial) on their pay reaching Rs.416/-.

14. Respondents have further stated that there is no provision under the statutory rules for fixation of seniority in the rank of SI (Ministerial) on reaching the pay at stage of Rs.416/- in the pay scale of Rs.330-560.

15. We have heard the learned counsel and gone through the pleadings.

16. The applicant has in the OA stated that on 01.10.1990, he would be deemed to have reached the stage of Rs.416/- in the pay scale of Rs.330-560 and, therefore, has claimed that he is entitled to become SI with effect from 01.10.1990. However, the respondents in their reply have stated that he is not entitled for the rank of SI with effect from 01.10.1990 as he would have not reached the pay scale of Rs.330-560 as the same has not been drawn by him as he was given regular appointment as ASI with effect from 01.08.1986 in the pay scale of Rs.330-560 which was revised into Rs.1400-2300 with effect from 01.10.1986 much earlier to his appointment on regular basis. However, he has been granted promotion to the rank of SI (Ministerial) along with his counter-parts in his turn. The question, therefore, is whether the applicant can be deemed to have reached the stage of Rs.416/- on 01.10.1990 and considered notionally to have become SI and granted seniority accordingly. The facts of the case clearly show that as far as Sardari Lal, Ashok Kumar Mahana and Mohan Singh are concerned, they have all become ASI (Stenographer) prior to 01.01.1986, so their cases cannot be compared with the applicant's case. However, in the

case of Parveen Kumar and Sarwan Kumar, they were both absorbed as ASI in Delhi Police with effect from 05.05.1988, i.e. even after the applicant but in the case of these two officials, the respondents considered them to be deemed to have reached the stage of Rs.416/- with effect from 01.05.1986. Therefore, in case this is not allowed to the applicant, there is certainly a question of discrimination which would be violative of Articles 14 & 16 of the Constitution of India.

17. As a result, we allow this OA and direct the respondents to treat the applicant notionally to hold the rank of SI (Stenographer) with effect from the date he is deemed to have reached the stage of Rs.416/-, i.e., with effect from 01.10.1990 as granted to others and his seniority as SI would count from that date, namely, 01.10.1990. These directions may be complied with, within a period of 2 months from the date of receipt of a certified copy of this order. No costs.

(P.K. BASU)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

Rakesh