

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. No.3314/2012

With

O.A. No.3849/2012

Order Reserved on: 13.07.2016

Order Pronounced on: 02.08.2016

Hon'ble Mr. Justice Permod Kohli, Chairman

Hon'ble Mr. V. Ajay Kumar, Member (J)

Hon'ble Dr. Birendra Kumar Sinha, Member (A)

OA No.3314/2012

Alok Kumar S/o Late Shri Harish Chandra,
R/o C-605, Rajhans Apartments,
Indira Puram,
Ghaziabad-201014.

...Applicant

(By Advocate: Shri Pradeep Dahiya)

Versus

1. Union of India through Secretary
Department of Personnel and Training
Ministry of Personnel, Public Grievance and Pensions,
North Block, New Delhi-110001.
2. The Director,
Central Bureau of Investigation,
Block No.5B, CGO Complex,
Lodhi Road, New Delhi-110003.
3. Union Public Service Commission,
Through the Secretary,
Shahjahan Road, New Delhi.
4. B.M. Pandit,
Inspector, CBI, EO-I,
New Delhi.
5. K. Subbian,
Inspector, CBI, ACB,
Chennai.
6. Ajay Kumar Pandey,
Inspector, CBI, EO-III,
New Delhi.

7. S.K. Sharma,
Inspector, CBI, AC-III,
New Delhi.
8. T.V. Joy,
Inspector, CBI, ACB,
Bangalore.
9. C.B. Ramadevan,
Inspector, CBI, ACB,
Cochin.
10. R.K. Bhattacharjee,
Inspector, CBI, SCB,
Kolkata.
11. M. Sundaravel,
Inspector, CBI, SU,
Chennai.
12. P. Chakraborty,
Inspector, CBI, ACB,
Patna.

Respondent No.4-12 through The Director,
Central Bureau of Investigation,
Block No.5B, CGO Complex,
Lodhi Road, New Delhi-110003.

...Respondents

(By Advocate : Shri R.N. Singh, Shri Amit Anand & Shri R. V.
Sinha)

OA No.3849/2012

Samar Pal Rana S/o Late Shri Krishan Pal Rana,
Dy. S.P. CBI, E-II, 4th Floor, 5B, CGO Complex,
New Delhi.

...Applicant

(By Advocate: Shri Pradeep Dahiya)

Versus

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Ministry of Personnel,
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11. P. Chakraborty,
Inspector, CBI,
Patna.

Respondent No.4-11 through
Director, Central Bureau of Investigation,
Block No.5B, CGO Complex,
Lodhi Road, New Delhi-110003.

...Respondents

(By Advocate : Shri R.N. Singh, Shri Amit Anand & Shri R. V.
Sinha)

ORDER

Hon'ble Mr. Justice Permod Kohli, Chairman:

These two Original Applications have been placed before the
Full Bench pursuant to a reference order dated 22.07.2014 passed

by a Division Bench of this Tribunal. The reference Bench observed that there has been conflict of opinion between the judgment dated 18.01.2011 passed in OA No.3245/2009 – **D. M. Sharma v Union of India and others** and judgment dated 31.08.2004 passed in OA No.101/2004 – **D. S. Dagar and others v Union of India and others**. The reference Bench accordingly referred the question of conflict of opinion in above mentioned two judgments to the Full Bench with the following observations:

“62. In view of the aforementioned, we are of the considered opinion that it needs to be determined as to which of the two views taken in the aforementioned two judgments, i.e., in **D.M. Sharma vs. Union of India** in OA No.3245/2009 dated 18.01.2011, and in **D.S. Dagar & 4 Ors. vs. Union of India & Ors.** in OA No.101/2004 dated 31.08.2004, is correct, and for that the present case needs to be referred to Hon’ble Chairman. In the circumstances, let the aforementioned question be placed before the Hon’ble Chairman u/s 26 of the Administrative Tribunals Act, 1985, read with the judgment of the Hon’ble Supreme Court in **SI Roop Lal and another Vs. Lt. Governor through Chief Secretary, Delhi & Others** (supra).”

It is pertinent to note that while referring the matter to the Full Bench, the reference Bench also referred to judgment of the Hon’ble Supreme Court in **SI Rooplal & another v Lt. Governor through Chief Secretary, Delhi & others** [(2000) 1 SCC 644].

2. With a view to appropriately understand the controversy and the conflict of opinion in two above referred judgments, it is deemed necessary to notice the relevant observations in **D. S. Dagar** and **D. M. Sharma**’s cases (supra). In **D. M. Sharma**’s case

(OA No.3245/2009, decided on 18.01.2011), the Bench observed as under:

“26. Accordingly, it would be seen that two posts would be treated as equivalent if they have equal status and responsibility. While determining equivalence the qualification and the pay scales for the two posts in question too will have to be given due consideration. In the ultimate analysis, what is to be seen is the status and responsibility of the two posts and the pay scales of the two posts by itself would not be decisive of the issue especially when the other facts, having regard to the facts mentioned by the Hon’ble Supreme Court as aforesaid, justify such equivalence. The learned counsel for the respondents was unable to point out if these facts were given any consideration by the respondents while holding the two posts as not equivalent. He also did not put forth any material as to the nature of duties, responsibilities, powers, and the minimum qualification for the two posts which would negate the equation between two posts. Besides the fact that the respondents themselves have already granted the benefits sought by the applicant herein to the persons joining their services from CRPF in the post of Inspectors clinches the issue as the same cannot be denied to the applicant mainly for the reason that the equivalence between the two posts has already been established by the respondents’ own conduct as such. If the person joining the respondents’ services from the cadre of Inspector in CRPF after 14.12.1999 can be given benefit of equivalence, there is no reason why such benefits cannot be given to the applicant only for the reason he joined the respondents’ services prior to this date, especially when all other things remaining the same”.

Similarly, the Bench who decided OA No.101/2004 vide order dated 31.08.2004 – **D. S. Dagar** (supra) made the following observations:

“11. Admittedly, the applicants were in CISF. They came on deputation with C.B.I. It cannot be believed that nature of duties of both the posts are same. The nature of duties of an Inspector in CISF is basically security while in the C.B.I. it is the investigation of important matters, which is the main duty of such a

person. The Inspector in Central Police Organizations performs duties like security, patrolling, Maintenance of law and order, vigilance and collection of intelligence etc., which may be different from the duties and responsibilities of an Inspectors in the CBI”.

3. The factual background and the issues of law in both the OAs being common in nature, both these OAs are being disposed of by this common judgment. The applicants in both the OAs are working in Central Bureau of Investigation (CBI). Both the applicants were appointed as Sub Inspectors in CBI on 08.08.1993 and were promoted as Inspectors in the year 1999 with seniority w.e.f. 21.07.1997. Applicant Samar Pal Rana in OA No.3849/2012 was also promoted as Deputy Superintendent of Police vide office order No.02672/2010 dated 24.12.2010.

4. The dispute, however, relates to the seniority of the applicants *qua* the deputationists/absorbees from Central Industrial Security Force (CISF). It is deemed appropriate to notice the factual background of the *inter se* seniority dispute. As noticed hereinabove, applicant Alok Kumar was initially recruited as Sub Inspector in CBI and later on promoted as Inspector with retrospective effect. Various seniority lists of Inspectors of Police in CBI were issued from time to time. Details of these seniority lists *qua* the seniority position of the applicants are as under:

Sl. No.	Date of seniority list	Serial number in seniority list	
		Alok Kumar (OA-3314/10)	Samar Pal Rana (OA-3849/12)
1.	01.06.2007	140	136
2.	31.12.2008	134	130
3.	04.01.2010 (seniority as	103	99

	on 01.01.10)		
4.	14.01.2011 (seniority as on 01.01.11)	16	-

It is stated that the applicants were above the private respondents in all these seniority lists.

5. A revised proposed seniority list of Inspectors of Police in CBI as on 01.01.2010 was issued on 09/12.09.2011 on the basis of judgments of the Tribunal dated 18.01.2011 and 25.01.2011 in OA No.3245/2009 [**D. M. Sharma's** case (supra)] and OA No.1021/2010 – **Sunil Dutt v Union of India**, respectively. The applicant Alok Kumar was shown at serial no.107 in the said seniority list, and applicant Samar Pal Rana at serial no.103 in this seniority list. Both ranked below the private respondents. It is alleged that number of representations were made by the affected Inspectors and Deputy Superintendents of Police against the proposed seniority list of Inspectors as on 01.01.2010. On account of various representations, the proposed seniority list was withdrawn vide order dated 08.12.2011 (Annexure A-9). However, on account of the judgment in **D. M. Sharma's** case, it was decided to alter the seniority list re-fixing the seniority of D. M. Sharma. As is evident from the circular dated 08.12.2011, the proposal for revised seniority list had been withdrawn by the said circular.

6. Some of the deputationists who had come from CISF to CBI and later on absorbed, filed OA No.1543/2012 – **Sandeep Kumar Sharma and others v Union of India and others**,

claiming seniority from the dates of their promotion as regular Inspectors in their parent organization. They challenged the order dated 08.12.2011 as also the seniority list of Inspectors in CBI issued on 04.01.2010 reflecting seniority as on 01.01.2010. The applicant Alok Kumar filed a miscellaneous application, MA No.2022/2012 in OA No.1543/2012 for his impleadment as party respondent, as his seniority position was likely to be affected in the event of success of the applicants of the aforesaid OA. During the pendency of the said OA, the official respondents issued letter dated 25.07.2012 issuing a revised seniority list of Inspectors in CBI as on 01.01.2010, and the applicants in OA No.1543/2012 were granted seniority from the dates they were promoted as regular Inspectors in their parent organization. Consequently, vide order dated 26.07.2012 the Tribunal dismissed OA No.1543/2012 as withdrawn with liberty to the applicants therein as well as the applicant Alok Kumar in MA No.2022/2012 to challenge the order notifying the revised seniority list. After the withdrawal of the aforesaid OA, the applicant Alok Kumar made representation seeking revision of the seniority list circulated on 25.07.2012 and for restoration of his seniority. The applicant Alok Kumar also disputed the seniority granted to D. M. Sharma w.e.f. 15.12.1988 on the basis of his date of appointment as regular Inspector in CISF. This representation dated 30.07.2012 has been rejected vide the impugned order dated 22.08.2012 (Annexure A-2). While rejecting the representation, the official respondents relied upon the Government of India office memorandum dated 27.03.2001

regarding fixation of seniority. The applicant Alok Kumar has accordingly challenged the impugned order of rejection of his representation, whereas common relief sought in both the OAs is as follows:

- “(b) Quash and set aside impugned seniority list of Inspectors in CBI as on 01.01.2010 issued vide letter dated 25.07.2012 and restore the seniority of applicant as per the earlier seniority list as on 01.01.2010 issued on 04.01.2010 and later confirmed on 08.12.2011;”

7. The official respondents 1 to 3 and private respondents have filed their separate counter-affidavits. However, the grounds of challenge to the averments in the OAs are similar. The respondents have relied upon judgment dated 18.01.2011 passed by the Tribunal in **D. M. Sharma**'s case (supra) as also DOP&T OM dated 27.03.2001 and OM No.14017/27/75-Estt.(D)(Pt.) dated 07.03.1984. Apart from the reliance placed upon the aforesaid judgment, it is specific case of the respondents that the private respondents who were brought on deputation from CISF to CBI and later absorbed, were holding post of Inspectors on regular basis in their parent department with effect from dates prior to the dates the applicants were promoted as Inspector in CBI, i.e., 21.07.1997, and on the basis of the criteria for analogous posts and their absorption, they were found entitled to seniority in CBI with effect from the dates of their substantive appointment as Inspectors in their parent organization, i.e., CISF.

8. We have heard the learned counsel for the parties at length.

9. The applicants have challenged the impugned seniority list dated 25.07.2012 reflecting seniority as on 01.01.2010 and the impugned order dated 22.08.2012 rejecting the representation of the applicant Alok Kumar on the following grounds:

- (i) That four seniority lists notified by the department, i.e., dated 01.06.2007, 31.12.2008, 04.01.2010 and 14.01.2011 have not been challenged by the private respondents.
- (ii) That the Inspectors in CISF who were deputed to CBI and later absorbed, were not holding analogous posts in their parent organization, and they were not comparable with the Inspectors in CBI. To project their view, it is stated that – (a) the selections of Sub Inspectors in CBI and other Central Police Organizations (CPOs) including CISF, were conducted by Staff Selection Commission on the basis of written test and interview, and the candidates with higher rankings in the merit list were selected for CBI and those with lower rankings in CISF and other CPOs; (b) the Sub Inspectors selected for CBI were placed in the higher pay scale of Rs.1640-2900 than the Sub Inspectors selected for other CPOs who were placed in pay scale of Rs.1400-2300; (c) Inspectors in CISF are not provided with the detailed knowledge of

law and investigation procedure and skill during their training, whereas CBI Inspectors are provided intensive/detailed knowledge of law and investigating procedures and skills during basic training; (d) nature of duties in CISF and CBI are totally different, inasmuch as the members of CISF are required to protect and safeguard the industrial undertakings and installations etc. of the Government, whereas Inspectors in CBI are required to investigate various offences, including serious offences under the Prevention of Corruption Act, 1988; CISF Inspectors do not have the powers to arrest without warrant, whereas CBI Inspectors possess the power to arrest without warrant, and so on.

10. The contentions of the applicants are rebutted by the learned counsel appearing on behalf of the respondents. Firstly, it is argued that the posts of Inspector in CISF are analogous in nature, as these posts satisfy the tests and criteria laid down by the Government in their office memorandum dated 07.03.1984. As regards the pay scales, it is contended that all the private respondents were placed in the revised pay scale of Rs.2000-3200 w.e.f. 10.10.1997 when they were given the seniority. It is also contended that the post in CISF and CBI has been held to be of analogous nature by the Tribunal in **D. M. Sharma's** case (supra), as also by the Apex Court in **SI Rooplal** (supra).

11. Respondents 1 to 3 in their counter-affidavit have narrated the complete details of the private respondents with their dates of deputation, dates of absorption in CBI, dates of their appointment as regular Inspectors in their parent organization, i.e., CISF, and their seniority as Inspectors. Relevant chart is reproduced hereunder:

Sl. No.	Name of Inspector	Date of deputation in CBI	Date of absorption in CBI	Rank w.e.f./Parent Department, pay scale in parent department at the time of absorption	Seniority given w.e.f.
1.	B.M. Pandit	6.1.2002	20.8.2008	18.3.91 Inspector in CISF	18.3.91
2.	K. Subbian	15.5.1999	13.7.2006	4.7.84 – SI in CISF 30.1.92 – Inspr. in CISF	30.10.92
3.	A.K. Pandey	16.1.2002	20.8.2008	23.7.84 – SI in CISF 5.10.93 – Inspr. in CISF	5.10.93
4.	S.K. Sharma	3.1.2000	13.7.2006	5.7.85 – SI in CISF 8.11.93 – Inspr. in CISF	8.11.93
5.	T.V. Joy	10.5.1999	13.7.2006	15.7.85 – SI in CISF 11.7.95 – Inspr. in CISF	11.7.95
6.	C.B. Ramadevan	30.1.2000	13.7.2006	15.7.86 – SI in CISF 22.9.95 – Inspr. in CISF	22.9.95
7.	R.K. Bhatta- charjee	4.2.2002	20.8.2008	25.8.95 Inspector in CISF	25.8.95
8.	M. Sundaravel	27.3.2002	20.8.2008	27.5.87 – SI in RPF 11.9.96 – Inspr. in RPF	11.9.96

9.	P. Chakraborty	14.6.99	13.7.2006	1.7.87 – SI in CISF Inspr. in CISF 23.11.96	23.11.96
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12. It is admitted case of the applicants that they were appointed as Inspectors in CBI on regular basis w.e.f. 21.07.1997. From the above chart, it is evident that the private respondents were appointed as Inspectors on substantive basis in their parent organization between 18.03.1991 and 23.11.1996, i.e., prior in time than the applicants in these OAs. It is also not disputed that the private respondents were sent on deputation to CBI in the exigencies of service as there was dire necessity of officials in CBI. The Tribunal can always take a judicial notice of the fact that CBI is entrusted with large number of cases, and the manpower has always been wanting in the organization. It is nobody's case that the private respondents were deputed to CBI on their request for any of their personal reasons and later absorbed. The deputation of the private respondents is an action of the State in larger public interest, and so is their absorption.

13. The private respondents were granted pay scale equivalent to the applicants at least w.e.f. 1997, and they are at par with the Inspectors in CBI insofar as their pay scale is concerned, notwithstanding different pay scales as Sub Inspectors or even Inspectors prior to their deputation in CBI.

14. Office memorandum dated 07.03.1984 lays down the criteria for determining analogous posts in the Central

Government. Relevant extract of this memorandum reads as under:

- “(i) Though the scales of pay of the two posts which are being compared may not be identical, they should be such as to be an extension of or a segment of each other, e.g. for a post carrying the pay scale of Rs.1200-1600, persons holding posts in the pay scale of Rs.1100-1600 will be eligible and for a post in the scale of Rs.1500-2000, persons working in posts carrying pay scale of Rs.1500-1800 and Rs.1800-2000.
- (ii) Both the posts should be falling in the same Group of posts as defined in the Department of Personnel and Administrative Reforms Notification No. 21/2/74-Estt.D dated 11th November 1975.
- (iii) The levels of the responsibility and the duties of the two posts should also be comparable.
- (iv) (a) Where specific qualifications for transfer on deputation/transfer have not been prescribed, the qualifications and experience of the officers to be selected should be comparable to those prescribed for direct recruits to the post where direct recruitment has also been prescribed as one of the methods of appointment in the recruitment rules.

(b) Where promotion is the method of filling up such posts, only those persons from other Departments may be brought on 36 DoP&T's O.M. No.20011/1/2008-Estt.(D) Dated 11th November 2010 transfer on deputation whose qualifications and experience are comparable to those prescribed for direct recruitment for the feeder grade/post from which the promotion has been made.”

The conditions required to be considered for determining the analogous nature of the posts are not so rigid so as to be equivalent in all respects. What is the requirement to determine the analogous nature of posts is that they should fall in the same group of posts as defined in the DOP&T OM; the level of responsibilities of the two posts should be comparable; the

qualification/experience of the officials to be comparable with those prescribed for direct recruits and for promotion; and the pay scale should be compared not by identical scales but should be such as to be an extension of or segment of each other, meaning thereby the pay scales should be almost relatable. The contention of the applicants that their pay scale should be equal and their nature of duties should also be equal is thus not acceptable in view of the laid down criteria by the Government of India to determine the analogous nature of the posts for purposes of deputation and for other allied purposes.

15. DOP&T has also issued another office memorandum dated 29.05.1986 laying down the criteria for determination of seniority of persons who are brought on deputation and later absorbed. Relevant extract of the memorandum reads as under:

“(iv) in the case of a person who is initially taken on deputation and absorbed later....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 department, 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.”

The words “whichever is later” were, however, declared violative of Articles 14 and 16 of the Constitution by the Hon’ble Supreme Court in ***SI Rooplal*** (supra), and thereafter the DOP&T issued another office memorandum dated 27.03.2001, which reads as under:

“OFFICE MEMORANDUM

Subject: Seniority of persons absorbed after being on deputation.

The undersigned is directed to say that according to our O.M.No.2002017/80/Estt(D) dated May 29, 1986 (copy enclosed) 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 department, 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 same or equivalent grade in his parent department,

whichever is later.

2. The Supreme Court has in its judgement dated December 14, 1999 in the case of *Shri S.I. Rooplal & Others Vs. Lt. Governor through Chief Secretary, Delh, JT 1999 (9) SC 597* has held that the words “whichever is later” occurring in the Office Memorandum dated May 29, 1986 and mentioned above are violative of Articles 14 and 16 of the Constitution and, hence, those words have been quashed from that Memorandum. The implications of the above ruling of the Supreme Court have been examined and it has been decided to substitute the term “whichever is later” occurring in the Office Memorandum dated May 29, 1986 by the term “whichever is earlier”.

3. It is also clarified that for the purpose of determining the equivalent grade in the parent department mentioned in the Office Memorandum dated May 29, 1986, the criteria contained in this Department Office Memorandum No. 140 17/27/75-Estt(D)(pt) dated March 7, 1984 (copy enclosed), which lays down the criteria for determining analogous posts, may be followed.”

16. In **D. M. Sharma**’s case (supra) the post of Inspector in CRPF has been held to be analogous to the post of Inspector in CBI. However in **D. S. Dagar** (supra), the official in CISF who came on deputation to CBI was held not to be holding analogous post. It is under these circumstances that the learned counsel appearing for the applicants argued that the judgment in **D. M. Sharma**’s case was *sub silentio* having been passed in the peculiar facts and circumstances of that case, whereas in **D. S. Dagar**’s case there was a direct comparison between a CISF Inspector and the CBI Inspector, as is the issue involved in the present case. It seems that when **D. S. Dagar**’s case was decided, the judgment of the Hon’ble Supreme Court in **SI Rooplal** (supra) was not cited. The controversy, however, as to which of the two judgments should prevail, should not detain us any longer, same having been settled by the Apex Court in **SI Rooplal** (supra). It is relevant to notice that in **SI Rooplal**’s case there was deputation of personnel from Border Security Force (BSF) to Delhi Police (Executive Branch), who later came to be absorbed in Delhi Police. The deputationist, SI Rooplal, on absorption claimed seniority with effect from the date of his substantive appointment as Sub Inspector in his parent organization, i.e., BSF. The Tribunal allowed his plea for grant of

seniority with effect from the date of his substantive appointment in his parent organization. The review application filed by the Delhi Administration also resulted in dismissal, whereupon they challenged the order of the Tribunal passed in the OA and review, in SLP before the Hon'ble Supreme Court. Examining the similar issue as involved in the present OAs, the Hon'ble Supreme Court observed as under:

“15. We will now take up the question whether the appellants are entitled to count their service rendered by them as Sub-Inspector in the BSF for the purpose of their seniority after absorption as Sub-Inspector (Executive) in Delhi Police or not. We have already noticed the fact that it is pursuant to the needs of Delhi Police that these officials were deputed to Delhi Police from the BSF following the procedure laid down in Rule 5(h) of the Rules and subsequently absorbed as contemplated under the said Rules. It is also not in dispute that at some point of time in the BSF, the appellants' services were regularised in the post of Sub-Inspector and they were transferred as regularly appointed Sub-Inspectors to Delhi Police Force. Therefore, on being absorbed in an equivalent cadre in the transferred post, we find no reason why these transferred officials should not be permitted to count their service in the parent department....”

Referring to the earlier decisions in **K. Madhavan & another v Union of India & others** [JT 1987 (4) SC 43], **R. S. Mokashi & others v I.M. Menon & others** [(1982) 1 SCC 379] and **Wing Commander J. Kumar v Union of India & others** [(1982) 3 SCR 453], the Hon'ble Supreme Court in **SI Rooplal** (supra) observed as under:

“16. Similar is the view taken by this court in the cases of R.S. Mokashi and Wing Commander J. Kumar (supra) which judgments have been followed by this Court in Madhavan's case. Hence, we do not think it is

necessary for us to deal in detail as to the view taken by this Court in those judgments. Applying the principles laid down in the above referred cases, we hold the appellants are entitled to count the substantive service rendered by them in the post of Sub-Inspector in the BSF while counting their service in the post of Sub-Inspector (Executive) in Delhi Police Force.

In paras 17 and 18 the Hon'ble Supreme Court further dealt with the question of equivalence of posts and opined as follows:

“17. In law, it is necessary that if the previous service of a transferred official is to be counted for seniority in the transferred post then the two posts should be equivalent. One of the objections raised by the respondents in this case as well as in the earlier case of Antony Mathew is that the post of Sub-Inspector in BSF is not equivalent to the post of Sub-Inspector (Executive) in the Delhi Police. This argument is solely based on the fact that the pay scales of the two posts are not equal. Though the original Bench of the Tribunal rejected this argument of the respondent, which was confirmed at the stage of SLP by this Court, this argument found favour with the subsequent Bench of the same Tribunal whose order is in appeal before us in these cases. Hence, we will proceed to deal with this argument now. Equivalency of two posts is not judged by the sole fact of equal pay. While determining the equation of two posts many factors other than “pay” will have to be taken into consideration, like the nature of duties, responsibilities, minimum qualification etc. It is so held by this Court as far back as in the year 1968 in the case of *Union of India v. P.K. Roy* [(1968) 2 SCR 186]. In the said judgment, this Court accepted the factors laid down by the Committee of Chief Secretaries which was constituted for settling the disputes regarding equation of posts arising out of the States Reorganisation Act, 1956. These four factors are: (i) the nature and duties of a post; (ii) the responsibilities and powers exercised by the officer holding a post, the extent of territorial or other charge held or responsibilities discharged; (iii) the minimum qualifications, if any, prescribed for recruitment to the post; and (iv) the salary of the post. It is seen that the salary of a post for the purpose of finding out the equivalency of posts is the last of the criteria. If the earlier three criteria mentioned above are fulfilled then the fact that the salaries of the two posts are different would not in any way make the post “not equivalent”.

In the instant case, it is not the case of the respondents that the first three criteria mentioned hereinabove are in any manner different between the two posts concerned. Therefore, it should be held that the view taken by the Tribunal in the impugned order that the two posts of Sub-Inspector in BSF and Sub-Inspector (Executive) in the Delhi Police are not equivalent merely on the ground that the two posts did not carry the same pay scale, is necessarily to be rejected. We are further supported in this view of ours by another judgment of this Court in the case of *Vice-Chancellor, L.N. Mithila University v. Dayanand Jha* [(1986) 3 SCC 7] wherein at para 8 of the judgment, this Court held:

“Learned counsel for the respondent is therefore right in contending that equivalence of the pay scale is not the only factor in judging whether the post of Principal and that of Reader are equivalent posts. We are inclined to agree with him that the real criterion to adopt is whether they could be regarded of equal status and responsibility. xxx The true criterion for equivalence is the status and the nature and responsibility of the duties attached to the two posts.”

18. Therefore, in our opinion, the finding of the Tribunal that the posts of Sub-Inspector in BSF and Sub-Inspector (Executive) in the Delhi Police are not equivalent, is erroneous, and the same is liable to be set aside.”

Further referring to the office memorandum dated 29.05.1986, the Hon’ble Supreme Court observed:

“23. It is clear from the ratio laid down in the above case that any rule, regulation or executive instruction which has the effect of taking away the service rendered by a deputationist in an equivalent cadre in the parent department while counting his seniority in the deputed post would be violative of Articles 14 and 16 of the Constitution. Hence, liable to be struck down. Since the impugned memorandum in its entirety does not take away the above right of the deputationists and by striking down the offending part of the memorandum, as has been prayed in the writ petition, the rights of the appellants could be preserved, we agree with the prayer of the appellant-petitioners and the offending words in the memorandum

“whichever is later” are held to be violative of Articles 14 and 16 of the Constitution, hence, those words are quashed from the text of the impugned memorandum. Consequently, the right of the appellant-petitioners to count their service from the date of their regular appointment in the post of Sub-Inspector in BSF, while computing their seniority in the cadre of Sub-Inspector (Executive) in the Delhi Police, is restored.”

17. Thus, we find that the ratio of the judgment in **D. M. Sharma**’s case (supra) depicts correct view. Ordinarily, we would have simply answered the reference, however, in view of the fact that answering the reference itself disposes of the main *lis*, we chose to pass the final order in these Applications. Present case is no different from the broader facts in **SI Rooplal**’s case (supra). Thus, it leaves us with no other ground to accede to the contention of the applicants for quashing the seniority list. We are of the considered opinion that the deputationists who are absorbed in CBI cannot be denied seniority or benefit of past service rendered by them in their parent organization on substantive basis.

18. Resultantly, these Applications are dismissed with no order as to costs.

(Dr. B. K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

(Justice Permod Kohli)
Chairman

/as/