

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

**O.A No. 1022/2013
M.A No. 794/2013**

Reserved on: 06.02.2019

Pronounced on: 19.02.2019

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Aradhana Johri, Member (A)

1. Rajesh Kumar
HC in Delhi Police
PIS No. 28990871
Aged about 40 years,
S/o. Sh. Jagdish Chand,
R/o. Vill : Gudiyani, Tehsil & PS : Kosli,
Distt : Rewari, Haryana.
2. Prem Chand
HC in Delhi Police
PIS No. 28990839
Aged about 40 years,
S/o. Sh. Singh Ram,
R/o. VPO : Tigaon,
Distt : Faridabad, Haryana.
3. Manoj Kumar
HC in Delhi Police
PIS No. 28990834
Aged about 39 years,
S/o. Sh. Randhir Singh,
R/o. Vill : Janaula, PS : Pataudi,
Distt : Gurgaon, Haryana.
4. Rajnish Kumar
HC in Delhi Police
PIS No. 28990635
Aged about 40 years,
S/o. Sh. Rampat,
R/o. Vill : Dhamlawasm PS : Rampura,
Tehsil/Distt.: Rewari, Haryana.

5. Mukesh Raj,
 HC in Delhi Police
 PIS No. 28990650
 Aged about 40 years,
 S/o. Sh. Shriram,
 R/o. Vill : Tumna, Tehsil : Kosli,
 Distt : Rewari, Haryana.

6. Krishan Kumar
 HC in Delhi Police
 PIS No. 28000085
 Aged about 41 years,
 S/o. Sh. Gulzari Lal
 R/o. Vill : Chandpura,
 PS : Ateli Mandi,
 Distt : Mahendergarh, Haryana.

...Applicants

(By Advocate : Mr. Anil Singal)

Versus

1. Govt. of NCT of Delhi
 Through Commissioner of Police,
 PHQ, IP Estate, New Delhi.

2. DCP/Recruitment Cell
 NPL, Kingsway Camp, Delhi.

3. Delhi Commissioner of Police,
 (Establishment), PHQ,
 IP Estate, New Delhi.

...Respondents

(By Advocate : Mr. Amit Anand)

O R D E R

By Hon'ble Ms. Aradhana Johri, Member (A) :

The applicants Shri Rajesh Kumar and 5 others were recruited as Constables in Delhi Police. The recruitment advertisement was issued in 1995. Their batchmates joined in 1996. The applicants were selected

provisionally under the OBC category. During scrutiny of records the authorities did not find the OBC certificate as being given by the prescribed authority and the candidates who had not joined the department were not called for joining and their candidature was cancelled. Aggrieved candidates, including the applicants, approached this Tribunal and got relief from the Tribunal vide its order dated 24.10.1997. The Government filed Writ Petition in Hon'ble High Court which initially granted stay vide its order dated 04.03.1998 on the CAT's order. Thereafter, Hon'ble High Court of Delhi vacated the stay vide its order dated 24.09.1998 and admitted the Writ Petition as a regular matter. This order of the Hon'ble Delhi High Court was challenged by filing Special Leave Petition before the Hon'ble Supreme Court of India, which was dismissed vide order dated 15.03.1999. The Writ Petition is still going on. (Copies of orders of Hon'ble High Court and Supreme Court have not been filed). Thereafter, the appellants were given appointment and they joined on various posts between 1999 and 2000. They were promoted to Head Constable after giving them due service seniority in promotion list 'A' test. Subsequently, a decision was taken by the Delhi Police taking seniority from the date of joining. Because of

this, the number of marks for length of service were reduced and they could not be treated as qualifying for Head Constable. They were reverted from the post of Head Constable to Constable.

2. It is the contention of the applicants that they were illegally not considered under the OBC category. Therefore, the delayed joining was none of their creation. Thus, not only was their inter se seniority fixed with their batchmates, who joined in the year 1996 on the basis of the recruitment held in the year 1995 but their names were also included in the promotion list 'A' giving three marks in the examination for promotion list 'A' counting their seniority with effect from 1996. They were deputed for training and promoted also as Head Constables. They did not apply for promotion list 'A' test in 2011 and 2012, since they had already been admitted to the list of promotion list 'A' in the year 2010/2011. On 07.12.2011, the respondents issued a corrigendum whereby the orders fixing their inter se seniority were unilaterally cancelled without any show cause notice and their seniority was re-fixed with effect from the date of their joining. A show cause notice was issued to the applicants on 12.03.2013 as to why they should not be reverted to the rank of

Constable, on the ground that now due to refixation of their seniority, they have lesser marks of length of service and are not qualified for promotion list 'A'.

3. The applicants have cited several rulings which are discussed subsequently, in support of their contention that seniority of a Constable regularly appointed to a post according to rules would be determined by the order of merit indicated at the time of initial appointment and persons appointed as a result of earlier selection, being senior to those appointed as a result of a subsequent selection. It is their contention that if they are given seniority with effect from the date of joining i.e., 1999-2000, then they will be junior to even those who have been selected in subsequent selection of 1997, 1998 and 1999.

They have claimed the following reliefs :-

“1. To call for the records relating the case of the applicants.

2. (A) To quash and set aside the impugned Corrigendum dated 7.12.2012 and Show Cause Notice dated 12.02.2013 and direct the respondents to maintain the promotion and Seniority of the applicants with all consequential benefits including seniority/promotion and pay.

(B) To direct the respondents to grant the applicants all those benefits that were given to HC Durgesh with all consequential benefits including seniority and subsequent promotions protecting the Pay Scale and Last Pay drawn by the applicants as on date.

(C) To direct the respondents to

Firstly, identify all those officers and staff who are guilty of alleged erroneous fixation of seniority and promotion of the applicants.

Secondly, hold disciplinary enquiry against them on charges of making erroneous fixation of seniority and promotion of the applicants.

Thirdly, if the charges are proved then punish them at least to the extend the applicants shall have to suffer due to Corrigendum dated 07.12.2012 and Show Cause Notice dated 12.03.2013 and only then take action against the applicants.

3. To award costs in favour of the applicants and

4. To pass any order or orders which this Hon'ble Tribunal may deem just and equitable in the facts and circumstances of the case."

4. Respondents have denied the claim of the applicants. They have held that the Tribunal by a common order in O.A No. 2410/1996 dated 24.10.1997 directed that past service shall be counted for the purpose of seniority of those applicants who have been terminated. It does not speak of giving back dated seniority to those whose appointment orders are yet to be issued. Therefore their seniority should be reckoned from the date of their joining Delhi Police. They have claimed that there is no illegality in the orders, since they have given a show cause notice for the same.

5. Heard Mr. Anil Singal, learned counsel for applicants and Mr. Amit Anand, learned counsel for respondents.

6. The main point is whether the seniority of the applicants should be fixed from the date of joining or they should be given notional seniority, so that they are with the

rest of their batch. On 24.10.1997, this Tribunal passed the following orders :-

“(i) Orders dated 15.10.1996, 30.10.1996, 31.10.1996 and 01.11.1996 cancelling the candidatures and thereby refusing to issue Offer of Appointment and orders dated 30.10.1996, 31.10.1996, 12.11.1996 and 18/19.02.1997 terminating the services of the applicants stand quashed.

(ii) In the case of those applicants awaiting Offer of Appointment after due process of selection respondents are directed to issue offers of appointment to them provided other condition stand fulfilled. Applicants serviced with letters of termination shall be re-instated and orders of termination already served be withdrawn or to those threatened to be served shall not be effected. These orders shall be carried out within a period of eight weeks from the date of receipt of a certified copy of this order.

(iii) Our order; however, will not be applicable to the applicants in OA No. 52/1997 or other applicants who have approached the High Court in writ petitions separately.

(iv) In case services of some of the applicants have been terminated, all their past service shall be counted for the purpose of seniority. However, there shall be no back-wages for them for the intervening period since they have not actually worked.”

7. This order states that those awaiting offers of appointment should be issued offers of appointment and those issued letters of termination shall be reinstated. It goes on to say that in case services of some of the applicants have been terminated, all their past services shall be counted for the purpose of seniority. However, this order does not specifically say anything about notional seniority for those who have not been issued letters of appointment. Therefore only inferences have to be drawn in this matter.

8. Counsel for applicants has filed several rulings in W.P. (C) No. 3834/2013 **Parma Nand Yadav and Ors. Vs. Union of India & Ors.**, the Hon'ble High Court cited the case of **Avinash Singh Vs. UOI & Ors.** in W.P. (C) No. 5400/2010. This case is related to delay in issuance of appointment letter due to belated review medical board. In the case of Avinash Singh (supra), the following orders were passed :-

“17. It is settled law that if appointment is by selection, seniority of the entire batch has to be reckoned with respect to the merit position obtained in the selection and not on the fortuitous circumstance on the date on which a person is made to join.

18. We highlight in the instant case the fortuitous circumstance of the petitioners being made to join as Assistant Commandant on 08.08.2005 is not the result of anything created by the petitioners but is a result of a supine indifference and negligence on the part of the ITBP officials.

19. Thus, petitioners would be entitled to their seniority as Assistant Commandant with respect to their batch-mates in the context of the merit position in the select panel. We make it clear, the seniority as Assistant Commandant of the entire batch would be a reflection of the merit position in the select list and not the date of joining.

20. It is trite that where a thing is deemed to come into existence everything which logically flows therefrom has to be followed and the imagination cannot boggle down. In other words, the effect of the petitioners' seniority being reckoned with reference to the select panel would mean that the petitioners would come at par with their brethren who joined on 02.11.2004. Since their brethren were granted 1 year qualifying service relaxation, petitioners would be entitled to the same benefit and additionally for the reason the next below rule requires that if a person junior in the seniority position acquires the necessary qualifying service, the person above has also to be considered for promotion.”

9. Taking note of this ruling, the Hon'ble High Court in the case of Parma Nand Yadav (supra) passed the following

orders:-

“11. On facts it needs to be noted that the seven petitioners of WP(C) No.5400/2010 had lost out on their seniority with reference to their merit position in the Select List due to delay in conducting their Review Medical Evaluation and in the interregnum their batchmates had joined ITBP.

12. On parity of reasoning and application of law the petitioner is held entitled to his seniority being refixed as a Sub Inspector in CRPF with reference to his merit position at the SSC Combined Graduate Level 2000 Examination i.e. those who joined CRPF pursuant to the said examination in March 2003. The petitioner has already earned promotion to the post of Inspector and accordingly we direct that he would be entitled to seniority refixed in said rank with reference to his revised seniority position in the rank of Sub-Inspector, and this would mean that the petitioner would be considered for promotion to the post of Assistant Commandant as per the revised seniority list.

13. The respondents are therefore directed to revise the seniority position of the petitioner in the two ranks within a period of four weeks from today and thereafter consider the petitioner along with other eligible persons for promotion to the post of Assistant Commandant.

14. As regards wages, on the principle of not having shouldered responsibility for the higher post, we do not direct backwages to be paid.

15. On the subject of the petitioner being entitled to the old Pension Scheme, in similar circumstances, deciding WP(C) No.10028/2009 Amrendra Kumar vs. UOI & Ors., where the petitioner therein was also similarly deprived the opportunity to join with his batch on account of delay in conducting medical re-examination, the Court had directed that said writ petitioner would be entitled to the benefit of the old Pension Scheme which remained in force till December 31, 2003.

16. The petitioner would be entitled to similar benefit and accordingly the next mandamus issued is by way of a direction to the respondents to treat the petitioner as a member of the pension scheme which remained in vogue till December 31, 2003.

17. No costs.”

10. In the case of **Sanjay Dhar Vs. J&K Public Service**

Commission and Anr., (2000) 8 SCC 182, it was held by

the Hon'ble Apex Court that where issue of appointment order has been delayed, the Hon'ble Court held the following :-

“16. For the foregoing reasons the appeal is allowed. The judgment under appeal is set aside. It is directed that the appellant shall be deemed to have been appointed along with other appointees under the appointment order dated 06.03.1995 and assigned a place of seniority consistently with his placement in the order of merit in the select list prepared by J&K PSC and later forwarded to the Law Department. During the course of hearing the learned Senior Counsel for the appellant made a statement at the Bar that the appellant was interested only in having his seniority reckoned notionally in terms of this order and was not claiming any monetary benefit by way of emoluments for the period for which he would have served in case he would have been appointed by order dated 06.03.1995. We record that statement and direct that the appellant shall be entitled only to the benefit of notional seniority (and not monetary benefits) being given to him by implementing this order. The appeal is disposed of accordingly. The contesting respondents shall pay the appellant costs quantified at Rs.5000.”

11. In the case of **G. Deendayalan Ambedkar Vs. Union of India & Ors.**, (1997) 2 SCC 638, the following was held :-

“It is settled legal position that the order of merit and ranking given by the Recruitment Board should be maintained when more than one person are selected, the same inter se seniority should be maintained for future promotions unless Rules prescribe passing of departmental test as a condition for confirmation but was not passed as on the date of determining of inter se seniority. Under these circumstances, the Tribunal was justified and right in not directing the respondent to give seniority to the appellant over the respondents.”

12. The applicants have also cited the case in W.P. (C) No. 394/2008 in **The Commissioner of Police & Ors. Vs. H. C. Durgesh Kumar**, the facts of the case are that Shri

Durgesh Kumar was appointed as Constable in 1980 and promoted to Head Constable in 1990. Where Shri Durgesh Kumar submitted OBC certificate, he was treated as and given the benefit of SC/ST candidates. When the mistake came to light, a show cause notice was issued as to why he should not be reverted to Constable. This notice was issued after a delay of 5 years. This Tribunal giving the benefit to Shri. Durgesh Kumar passed the following orders:-

“Having given our thoughtful consideration to the issue, we find the solution to the problem would lie in giving same treatment to the applicant as was thought proper even by the department in an absolutely identical case. That being so, while setting aside the impugned orders, we would order that the applicant be treated to have passed the examination required for promotion to the post of Head Constable held immediately after the examination in which the applicant had appeared and passed the examination in the said year, and his seniority be accordingly fixed. The applicant shall also be entitled to consequential reliefs that may accrue to him on account of fixation of his seniority in the manner referred to above. In view of the peculiar facts of this case, costs are made easy.”

13. From the conspectus of these various rulings, it becomes clear that the notional seniority of the applicants has to be reckoned along with their batchmates since their appointment was delayed due to no fault of theirs. Once giving benefit of notional seniority, they qualify for promotion list 'A' for the years 2010/2011 for being made Head Constables. Accordingly, show cause notice dated 12.03.2013 and the corrigendum dated 07.12.2012 are

quashed to the extent of fixing the notional seniority of the applicants.

The O.A is allowed. No order as to costs.

(Aradhana Johri)
Member (A)

(V. Ajay Kumar)
Member (J)

/Mbt/