

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1114/2003

New Delhi, this the 11th day of January, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)**


1. Shri V.P.Gupta
Assistant Commissioner of Police (Traffic)
A-87, Derawala Nagar
Delhi - 110 009.
 2. Sh. Ramesh Kumar Joshi
Assistant Commissioner of Police
Block No.21, House No.109
Lodhi Colony
New Delhi.
- ... Applicants

**(By Advocate: Sh. A. Mariaputham with Sh. Ashwani Bhardwaj
and Sh. Shishir Singh)**

Versus

1. The Union of India
Through Secretary
Ministry of Home Affairs
New Delhi.
 2. The Commissioner of Police
Police Head Quarters
New Delhi - 110 002.
 3. Union Public Service Commission
Through its Chairman
Shahjahan Road
New Delhi.
 4. Sh. R.A.Sanjeev
ACP, Special Branch
Police Head Quarter
New Delhi.
 5. Sh. Prabhakar, ACP
S/o Sh. Ram Chander Parshad
R/o W-1/1, Police Quarters
Andrews Ganj,
New Delhi.
- ... Respondents

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**(By Advocate: Sh. Rohit Priyadarshi proxy for Sh. R.N.Singh
for the official respondents and Sh. Vikas Singh for
respondents)**

ORDER

By Mr. Justice V.S.Aggarwal:

Applicants by virtue of the present application seek the following reliefs:

“A) ISSUE appropriate orders/directions to the official respondents not to consider anyone for promotion to JAG without first framing a new/fresh seniority list of ACPs, and without first considering the officiating promotees for Grade I posts from their entitlement; and

B) ISSUE appropriate orders/directions to the official respondents not to consider only direct recruits ACPs for all consequential promotions including further promotion to JAG/IPS on the basis of their dates of Grade I appointments alone; and

C) ISSUE any other further orders/directions as may be deemed necessary and fit in the facts of this case; and”

2. The Delhi Andaman Islands Police Service Rules (for short ‘the Rules’) had been framed in the year 1971. It provided for appointment to the post of Assistant Commissioner of Police in the ratio of **50% by direct recruitment** and **50% by promotion**. The seniority between the direct recruits and promotees (those who were appointed on promotion) has been the subject matter of litigation. In the year 1989, four promotee officers had filed an Original Application No.300/1989 in this Tribunal claiming regular appointment from the date of their officiation. In that application, no direct recruit officer had been arrayed as a party. This Tribunal had allowed the application holding that they were



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entitled to substantive appointment with all consequential benefits six months from the date of their officiation. The respondents – Union of India had filed a Special Leave Petition (for short 'SLP') in the Supreme Court against the order of this Tribunal dated 31.3.1992 entitled **UNION OF INDIA & ANOTHER v. HARISH CHANDER BHATIA & OTHERS.** Some of the direct recruits even had filed a Review Application which was dismissed. They also preferred Special Leave Petition in the Supreme Court. On 8.12.1994, an appeal filed by the Union of India was partly allowed and the order passed by this Tribunal was modified. It was directed that seniority had to be decided in accordance with Rule 29 of the Rules by rotation of the vacancies. The Supreme Court held:

“11. According to us, the just and proper order to be passed would be to direct the appellants to treat the dates of officiating appointments of the respondents as the dates of their regular appointment and then to place them in the seniority list as required by Rule 29 i.e. to inter-pose a direct recruit in between two promotees as per their respective inter-se seniorities; and we direct accordingly. The seniority would, therefore, be re-fixed of all concerned not as per the length of service alone as ordered by the tribunal but as indicated by us.”

The Special Leave Petition filed by direct recruit was also disposed of on the same terms.

3. On 2.8.1995, the Union of India prepared a seniority list. In January 1996, some promotee officers had filed a combined Original Application No.384/1996 in this Tribunal claiming the



benefit of seniority from the respective dates of their officiating appointment and claiming seniority over one **Khan Chand**. Herein also, direct recruit had not been made as a party. On 17.4.1996, 18 direct recruits who were Assistant Commissioner of Police also filed an application in this Tribunal challenging the legality of the order of 2.8.1995 contending that the seniority so drawn was contrary to the orders passed by the Supreme Court.

4. On 30.12.1996, this Tribunal had dismissed the application of the direct recruits holding that none of the promotee officer who had been granted seniority had been placed in between two direct recruits. The direct recruits on 21.1.1997, filed a Special Leave Petition in the Supreme Court. In the meantime, this Tribunal also disposed of the application filed by the promotee officers. Therein, it upheld the contention raised by the direct recruits and held that the seniority of the officers had to be fixed in accordance with **Rule 29** of the Rules. It was further recorded that the seniority should be fixed in the same manner as was done in the case originally filed in this Tribunal by the promotees. The operative part of the order is:

"16. Respondents have correctly pointed out that there are two aspects of the Hon'ble Supreme Court's direction both of which are equally important. Firstly there is the direction to treat the dates of the officiating appointments of Shri Bhatla and others as the dates of their regular appointments and the second direction is that after treating the dates of their officiating appointments as the dates of their regular appointments one direct recruit has to be interposed in between the two promotees as per their inter se seniority. Such an interposition will necessarily entail revision of the seniority



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list, as the respondents have done in implementation of the Hon'ble Supreme Court's directions in Bhatla's case and Shri Vikas Singh's assertion that the Hon'ble Supreme Court's decision did not envisage any revision in the seniority list cannot be accepted. However, it is extremely important to mention here that while revising the seniority list both directions of the Hon'ble Supreme Court noted above have to be kept squarely in view, because the judgments of the Apex Court has to be implemented in totality as per operative portion extracted above. Furthermore while doing so, this has to be done within the frame work of the quota-rota Rule as well as the other provisions of DANIPS Rules.

17. Keeping in view the above parameters, these two OAs are disposed of with a direction to respondents to scrutinize the claims for refixation of seniority in respect of each of the applicants in the two OAs before us within 3 months from the date of receipt of a copy of this order, by means of reasoned order in each case, and subject to their claims falling within the parameters discussed in para 16 above refix their seniority in the same manner as was done in the case of Shri Bhatla & others, with consequential benefits. No costs."

A Writ Petition No.2012/1999 was filed by the direct recruits in the Delhi High Court. It was directed that seniority list should be prepared in accordance with Rule 29 of the Rules and it should be placed before the Delhi High Court.

5. While the said Writ Petition was pending, on 29.4.1999, the Supreme Court passed an order that the direct recruits who were appellants therein should get themselves impleaded in the Writ Petition pending in the Delhi High Court so that at the time of finalisation of the seniority list, the grievance of those appellants in the Supreme Court could be heard and decided.



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6. When the matter came up before the Delhi High Court, the same was disposed of holding that the direct recruits may file objections against the tentative seniority list. Thereafter, the same had to be examined by the Union of India and appropriate orders had to be passed. The relevant portion of the said order reads:

“Aggrieved direct recruits (parties to this list) may file objections/representation against tentative seniority list prepared by Union Respondents within two weeks from this order taking all pleas available to them in law including requirement of Rules 14 & 29. Union Respondent and all its concerned functionaries shall thereafter examine and consider their plea taking in regard all relevant factors including Hon’ble Supreme Court directions dated 8.12.94 and relevant rules 14 & 29 and pass appropriate orders for finalization of the seniority list in the category of ACP on or before 31.1.2002. This list, however, shall not be acted upon for two weeks after its finalization.

Writ Petition and all connected matters shall stand disposed of by this order and CCP 253/99 is also dismissed as not pressed.”

7. After the order passed by the Delhi High Court, a seniority list had been issued on 14.5.2002. The Original Applications No.1418/2002 (**Braja Kishore Singh & Others v. Union of India & Others**) and No.1435/2002 (**Sh. Ram Kumar Sharma & Anr. v. Union of India & Others**) had been filed challenging the said seniority list of 14.5.2002. On 26.2.2003, the said Original Applications were allowed and the following directions had been given:

“(a) the seniority list prepared by the respondent is quashed;

(b) the seniority of direct recruits and promotees has to be fixed as per the

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decision of the Supreme Court in the case of Harish Chander Bhatia (supra), namely a direct recruit has to be interposed in between two promotees;

(c) so far as the promotees are concerned, their inter se seniority has to be determined in terms of sub-rule (2) to Rule 14 and Rule 29 of the Rules for those who were inducted before the amendment was effected on 6.9.1991; and

(d) those who were inducted after the amendment effected on 6.9.1991 would be governed by the amended Rules.

It is directed that this exercise be completed preferably within a period of six months in accordance with law."

8. Against the decision of this Tribunal, the Civil Writ Petition No.5973/2003 entitled **TRILOCHAN SINGH v. UNION OF INDIA & ORS.**, had been filed and we are informed that the following order had been passed by the Delhi High Court which is still in operation:

"CW. 5973/2003 & CM.10524/2003

Fresh notice to unserved respondents dasti and alternatively by other prescribed modes of service on satisfying the requirements of the Registry. Seniority list in which contestants are falling shall not be acted upon till next date before the court.

List on 20.3.2004."

9. The applicants who are the promotee officers are claiming the above said relief contending that before preparation of the seniority list, the Ministry of Home Affairs has decided to hold a Departmental Promotion Committee meeting to further promote those Grade-I ACPs whose selections and appointments were



subject to the pending litigation. They are being discriminated. Unless there is a final seniority list issued, the direct recruits alone could not be considered for promotion to selection grade and any appointment made, during the pendency of the litigation, cannot be regularized at all. They contend that Supreme Court had recognized the retrospective date of officiation of the applicants and in this backdrop, the present application has been filed.

10. Needless to state that the application is being opposed by the private respondents as well as the Union of India. During the course of submissions, the applicants' learned counsel reiterated the pleas and basically it was argued that till such time the final seniority list is not drawn, promotions should not be granted to the Junior Administrative Grade because this affects the rights of the applicants.

11. On appraisal of the facts, we find that as yet no final decision has been taken. Merely because if Departmental Promotion Committee meeting is to be held, that will not confer on a person a cause to challenge that action. The decision of the Departmental Promotion Committee would necessarily be subject to the final approval of the appropriate authority. In that light, the application must be taken to be premature.

12. Otherwise also, under Schedule III of the National Capital Territory of Delhi, Andaman and Nicobar Islands, Lakshdweep, Daman and Diu and Dadra and Nagar Haveli Police Service Rules, 1998, the officer with five years of approved service in Grade-I is eligible to be considered for promotion to the Junior

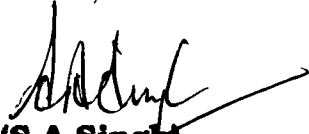



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Administrative Grade. It was pointed that as yet applicants are only Grade-II and they are yet to be promoted to Grade-I, thus, they are not eligible to be considered. In that backdrop, necessarily as yet the applicants cannot be said to be having any just grievance.

13. Though at the time when the matter was argued, it was suggested to the parties to wait till the decision of the Delhi High Court where the other petition is pending or agree that matter be also sent to the Delhi High Court so that the High Court could take up the matter at one time, but for certain reasons either party was not agreeable.

14. In any case, for the reasons recorded above, the application must be held to be not maintainable. It must fail and is dismissed.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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