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\$~R-21 to 22A

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: October 07, 2013

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W.P.(C) 4287/2002

COMMISSIONER OF POLICE Petitioner
Represented by: Mr.V.K.Tandon, Advocate

versus

MUKESH TYAGI & ORS. Respondents
Represented by: Mr.M.K.Gupta, Advocate with
Mr.Shekhar Kumar, Advocate

W.P.(C) 2267/2003

RAJ KUMAR SHARMA Petitioner
Represented by: Mr.M.K.Gupta, Advocate with
Mr.Shekhar Kumar, Advocate

versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Represented by: Ms.Sangeeta Sondhi, Advocate

W.P.(C) 958/2002

DY.COMMISSIONER OF POLICE Petitioner
Represented by: Mr.V.K.Tandon, Advocate

versus

MULAK RAJ Respondent
Represented by: Mr.Sachin Chauhan, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE V. KAMESWAR RAO

(5)

PRADEEP NANDRAJOG, J. (Oral)

1. Rule 22 of the Delhi Police (Appointment & Recruitment) Rules, 1980 as originally framed read as under:-

“Seniority in the case of upper and lower subordinate shall be initially reckoned from the date of first appointment, and officer of subordinate rank promoted from a lower rank being considered senior, to persons appointed direct to the same rank on the same day, till seniority is finally settled by confirmation. The seniority of direct recruits in all ranks except Sub-Inspectors (Ex.) appointed as a result of some examination or selection shall be reckoned by the order of merit determined.

By the Selection Board and in case no order of merit is indicated by the age of candidates, the oldest being placed senior-most and the youngest the junior-most. The inter-seniority of directly recruited Sub-Inspectors (Ex.) shall be fixed, on the basis of total of marks obtained by them in the Staff Selection Commission Examination/Interview as well as in the final examination held at Police Training School/College.”

2. The Rule was amended on May 07, 2003, and the amended Rule reads as under:-

“Seniority in the rank of upper and lower subordinate shall be initially reckoned from the date of first appointment, and officer of subordinate rank promoted from a lower rank being considered senior to persons appointed direct to the same rank on the same day. The seniority of direct recruits in all ranks except Sub-Inspectors (Executive) appointed as a result of some examination or selection shall be reckoned by the order of merit determined by the Selection Board and in case no order of merit is indicated, by the age of the candidate, the oldest being placed senior-most and the youngest the junior-most. The inter-seniority of directly

recruited Sub-Inspectors (Ex.) shall be fixed, on the basis of total of marks obtained by them in the Staff Selection Commission Examination/Interview as well as in the final examination held at Police Training School/College."

3. The Commissioner of Police challenges an order dated May 09, 2001 passed by the Central Administrative Tribunal allowing OA No.1159/1999 directing seniority of the respondents Mukesh Tyagi and Mukesh Kumar to be fixed as Sub-Inspector as per their merit position and not from the fortuitous date of confirmation. Raj Kumar Sharma challenges in W.P.(C) No.2267/2003 a judgment dated November 08, 2002 dismissing Original Application filed by him on the bar of limitation. On merits, we note that seniority of Raj Kumar Sharma was fixed with reference to the date of his confirmation in service. The Commissioner of Police challenges the order dated August 07, 2001 allowing OA No.2276/2000 filed by the respondent who was aggrieved by his seniority being fixed vis-a-vis one Janak Raj on the basis of merit position to the post of HC (MT) and wanted seniority to be fixed with reference to the date of confirmation.

4. We find that the reasoning of the Tribunal in the decision challenged in W.P.(C) No.4287/2002 and W.P.(C) No.958/2002 are at variance. Whereas one decision holds that the seniority has to be with reference to the merit position, the other holds that the seniority has to be with reference to the date of confirmation.

5. We note that in all three cases the litigating parties were fighting on the seniority position having joined service as direct recruits.

6. We have heard learned counsel for the parties. We note that the Central Administrative Tribunal itself relies on the contradictory view taken

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by different Benches of the Tribunal on the subject of inter-se seniority fixation principle enshrined in Rule 22 of the Delhi Police (Appointment & Recruitment) Rules, 1980 and in particular the requirement of the Rule that it would be the date of confirmation which would determine the seniority; which Rule was amended in the year 2003 and the words that seniority would be settled with reference to the date of confirmation were deleted.

7. There existed an OM No.9/11/55-RPS dated December 22, 1959, issued by the Ministry of Home Affairs, Government of India, on the subject of the principle to be adopted in determining seniority. Making a reference to Office Memorandums dated June 22, 1949, February 03, 1950, April 27, 1951 and August 04, 1956, the Office Memorandum dated December 1959 required seniority to be drawn up, in case of posts to be filled up by direct recruitment, in the order of merit in which candidates were selected, but subject to a proviso; and since the proviso needs an interpretation as it was debated upon between learned counsel for the parties, we quote the main provision along with the proviso; it reads as under:-

"Notwithstanding the provisions of para 3 above the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment on the recommendations of the UPSC or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of subsequent selection;

Provided that where persons recruited initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the original order of merit."

8. On July 03, 1986, vide Office Memorandum No.22011/7/86-Estt.(D),

SP/ date 20/11/11

though using a different language on the subject of seniority position, in sum and substance the same principle of fixation of seniority as was prescribed by the Office Memorandum dated December 22, 1959 was retained.

9. But, on May 02, 1990, the Constitution Bench of the Supreme Court had rendered an opinion reported as AIR 1990 SC 1607 Class II Direct Recruits Engineering Officers' Association Vs. State of Maharashtra resulting in an Office Memorandum No.20011/5/90-Estt.(D), dated November 04, 1992 being issued, modifying the principle pertaining to seniority laid down in the Office Memorandum dated December 22, 1959; to bring the same in conformity with the law declared by the Constitution Bench of the Supreme Court; but made it clear that seniority already determined according to the existing principles on the date when seniority lists were drawn up would not be re-opened. The changed position was to accord seniority with reference to the order of merit indicated at the time of initial appointment and not according to the date of confirmation.

10. Thus, we need not speak any further. The view taken by the Tribunal in its decision dated May 09, 2001 conforms to the law declared by the Supreme Court as noted above.

11. Thus, W.P.(C) No.4287/2002 is dismissed.

12. As regards W.P.(C) No.2267/2003 we find that though the seniority list drawn up which was challenged therein wrongly applies the principle of date of confirmation and not merit position in the select list as the criteria for determining seniority, but we find that the challenge to the seniority list was highly belated and thus concur with the Tribunal that the challenge had to fail, it being settled law that if a seniority list is allowed to operate over a number of years, the same cannot be undone or set aside. We additionally

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note that the writ petitioner has superannuated on April 30, 2011. Accordingly, we dismiss W.P.(C) No.2267/2003.

13. The reasoning of the Tribunal in favour of the respondent of W.P.(C) No.958/2002 quashes a seniority list drawn up with reference to the merit position in the select panel and directs re-drawing of the seniority on the principle of date of confirmation being the criteria.

14. The view taken by the Tribunal is wrong requiring the order dated August 07, 2001 passed by the Tribunal to be set aside, but issuing further directions to preserve and protect the interest of the petitioner as also HC (MT) Janak Raj whose seniority has been disturbed.

15. For reasons best known to him, Janak Raj did not challenge the impugned decision. The Commissioner of Police did so by filing the instant writ petition No.958/2002 but without seeking any stay of the operation of the impugned decision dated August 07, 2001. This has resulted in the Department re-drawing the seniority list in which the respondent was shown senior to Janak Raj resulting in the respondent earning a promotion to the post of ASI (MT) Fitter Grade I in the year 2012. Janak Raj earned promotion to the said post in the year 2013. Setting aside the impugned order and restoring status quo ante would mean that respondent's promotion in the year 2012 would have to be withdrawn by the Department, but he would earn a promotion the next year i.e. 2013. It will affect one increment earned by the respondent.

16. But, as a result of the seniority list being re-drawn, having worked on the promotional post since the year 2012, the respondent would be entitled to an increment the next year i.e. 2013, in which year he would in any case earn a promotion.

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17. We do not disturb the increment drawn.

18. Accordingly, we dispose of W.P.(C) No.958/2002 setting aside the impugned order dated August 07, 2001 but directing that promotion earned by the respondent would not be disturbed, however with reference to the seniority to the post of HC (MT) as originally drawn by the Department, the seniority list of ASI (MT) shall be drawn up treating HC (MT) Janak Raj senior to the respondent for the reason in the year 2012 it would be HC (MT) Janak Raj who would have earned the promotion would have earned one in the year 2013.

19. To summarize:-

- (i) W.P.(C) No.4287/2002 is dismissed.
 - (ii) W.P.(C) No.2267/2003 is dismissed.
 - (iii) W.P.(C) No.958/2002 is disposed of in terms of paragraph 18 above.
20. No costs.

es
(PRADEEP NANDRAJOG)
JUDGE

es
(V. KAMESWAR RAO)
JUDGE

OCTOBER 07, 2013

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