

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.3041/2003

Monday, this the 8th day of November 2004

Hon'ble Shri Justice V. S. Aggarwal, Chairman
Hon'ble Shri S. K. Naik, Member (A)

Suresh Chander, [488/SB]
s/o Shri Sant Ram Sharma
r/o Barrack No.3
Police Station Lajpat Nagar
New Delhi-24

..Applicant

(By Advocate: Shri Shyam Babu)

Versus

1. Govt. of NCT of Delhi
Through its Chief Secretary
Players Building
New Delhi
2. Commissioner of Police Delhi
Police Headquarters
IP Estate, New Delhi
3. Deputy Commissioner of Police (HQ)
(Establishment)
Police Headquarters
IP Estate, New Delhi
4. Shri Parmeshwari Das,
c/o Brother Hardwari Pandit
Village & PO Kapashera, Delhi
5. Shri Sultan Singh
C-10/101, Yamuna Vihar,
Delhi-53
6. Shri Brij Lal
B-501, Raghubir Nagar,
Shivaji Colletge Road, Raja Garden
New Delhi
7. Shri Birkha Ram
Village & PO Lath, Sonipat
Haryana

...Respondents

(By Advocate: Shri Rishi Prakash for respondents 1 to 3 -
none for respondents 4 to 7)

ORDER (ORAL)

Justice V.S. Aggarwal:

The facts are not in dispute. Therefore, rather than delineating the pleadings, we state the admitted facts. The applicant joined the Border Security Force as a Constable (Dvr.) in 1970. He was taken on deputation in Delhi Police on 1.3.1986. He was permanently absorbed as a Constable on 5.12.1988. The applicant was promoted as Head Constable from 1.1.1989.

2. Private respondent – Shri Parmeshwari Das (respondent No.4) was absorbed in Delhi Police as a Constable (Dvr.) on 1.9.1970. He was promoted as a Head Constable on 1.1.1984. He earned another promotion as Assistant Sub Inspector (Dvr.) in 1986.

3. The precise grievance of the applicant is that after the decision of the Supreme Court in the case of **S.I. Roop Lal & another v. Lt. Governor through Chief Secretary, Delhi & others**, JT 1999 (9) SC 597, the applicant was entitled to the benefit of past service rendered by him in the Border Security Force. Thus, he is senior to Shri Parmeshwari Das (respondent No.4) and other private respondents and consequently, he should also be considered and promoted as Head Constable from 1.1.1984. The learned counsel, in support of his argument, relies upon the order passed by the Assistant Commissioner of Police dated 9.8.2000 to contend that the applicant was absorbed in Delhi Police w.e.f. 27.5.1970, i.e., before respondent No.4 and, therefore, he is entitled to the benefit, referred to above.

4. As against this, the respondents' plea is that the applicant was only absorbed in Delhi Police on 5.12.1988. He was taken on deputation on 1.3.1986. Therefore, when he was not serving in Delhi Police, he could not be promoted as Head Constable, as in the case of Smt. Parmeshwari Das.

5. We have considered the submissions referred to above.

6. The decision of the Apex Court in the case of **S.I. Roop Lal** (supra) had set the ball rolling, insofar as the seniority of certain staff in the Delhi Police is concerned. In the said case, there were certain Sub Inspectors in the Border Security Force. They were appointed on deputation and thereafter

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absorbed in Delhi Police. The question for consideration was as to whether their inter-se-seniority as Sub Inspectors has to be taken from the date of absorption or their past service rendered on equivalent post has to be given credit. The supreme Court held that they were entitled to count the service from the date of their regular appointment to the post of Sub Inspector in Border Security Force and due credit has to be given for seniority. The operative part of the judgment reads:-

"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 petitioners/appellants 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 petitioners/appellants 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."

7. In pursuance of the said decision rendered by the Supreme Court, the claim of the applicant had also been considered. The order, copy of which is Annexure -B, was passed on 9.8.2000 and the relevant portion of the same reads:-

"In pursuance of judgement dated 14.12.1999, delivered by the Hon'ble Supreme Court of India in Civil Appeal Nos. 5363-64 of 1997- SI Roop Lal & others Vs. L.G., Delhi and others, the seniority of the following Head Constables/Constables (Drivers) who were taken on deputation from B.S.F/C.R.P.F. and permanently absorbed in Delhi Police is fixed as under:-

Sl. No.	Rank, Name, No. & PIS No.	Date of absorption in MT cadre	Placement of seniority
1.	HC (Dvr.) Ram Chander, (PIS No.29620416)	18.11.62	
2.	HC (Dvr.) Gurmej Singh No.937/L (PIS No.28660154)	5.12.66	Their names will stand at Sl.No.1 to 4 above the name of Constable (now ASI) Parmeshwari Dass,

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| 3. | HC (Dvr.) Mahavir Singh No.3887/PCR (PIS No.29660184) | 9.12.1966 | ASI) Parmeshwari Dass, No.4009/PCR in the Order issued vide Notification No.7995/P.Br. (PHQ) (P-II, dated 23.3.89. |
| 4. | Const. (Dvr.) Suresh Chander No.488/SB. (PIS No.28860319) | 27.5.1970 | |
| 5. | HC (Dvr.) Inder Singh No.4025/PCR (PIS No.29710111) | 27.4.1971 | His name will stand at Sl.No.15-A between the names of Ram Singh, 424/N and Partap Singh, 364/N in the Order issued vide Notification No.7995/P. Br. (PHQ) (P-II) dated 23.3.89." |

8. Learned counsel for the applicant contends that the applicant had been absorbed from 27.5.1970 as per the said order. The order has to be read in proper perspective. The date mentioned necessarily draws a strength and colour from the operative portion of the order, which clearly refers to the decision in the case of **S.I. Roop Lal** and thereupon fixes the seniority of certain Constables/Head Constables (Drivers). For purposes of seniority only, his date has been taken as 27.5.1970. In this process, the applicant became senior to Shri Parmeshwari Dass (respondent No.4) and other private respondents, who are, in any case, juniors to respondent No.4.

9. The difficulty arises when the applicant seeks promotion as Head Constable from 1.1.1984. Admittedly, he was serving with the Border Security force on that date. He came on deputation only on 1.3.1986 and at the risk of repetition, it is re-mentioned that he was absorbed on 5.12.1988 as Constable (Dvr.) in Delhi Police.

10. When the applicant was not serving in Delhi Police before 1.3.1986, the question, thus, of giving any promotion or deemed promotion for a period when he was serving in Border Security Force, will not arise. The decision rendered by the Supreme Court in the case of **S.I. Roop Lal** (supra) cannot be taken to be that promotions can be granted when persons were serving in other Departments, as already mentioned above. That was a decision basically concerning the seniority position of the services rendered in the lending Departments. To that extent, the plea of the official respondents necessarily must be considered to be valid.

11. However, the applicant has been promoted as Head Constable (Dvr.) from 1.1.1989. The official respondents themselves have made the applicant

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senior to private respondent No.4 but his name still has been considered and actually promoted from 1.1.1989, though he has been absorbed earlier and came on deputation even before that. Necessarily, the claim of the applicant has to be re-considered from an earlier date and not as fixed by the official respondents, i.e., 1.1.1989.

12. Resultantly, we allow the present application only in part and direct that the claim of the applicant should be re-considered in light of the findings given above.



(S. K. Naik)
Member (A)



(V. S. Aggarwal)
Chairman

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