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

+ W.P.(C) 6309/2007

Dated of Decision: 4th April, 2016

UOI THR. COMMISSIONER OF POLICE DELHI

..... Petitioner

Through Mr. Naushad Ahmed Khan, Addl.
Standing Counsel Ms. Aastha Nigam,
Adv.

Versus

SUMAN PUSHKARNA & ORS.

..... Respondents

Through Mr. H.S. Dahiya, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

1. The Union of India and the Commissioner of Police, Delhi in this writ petition, impugn the order dated 06.03.2007, in O.A. No. 2769 of 2005, and the order dated 07.07.2007, in R.A. No. 69/2007) passed by the Central Administrative Tribunal, Principal Bench.

2. The factual matrix and the legal issue is not required to be examined in detail as these have been examined and decided by the Supreme Court in *Sub Inspector Roop Lal and Another Vs. Lt. Governor through Chief Secretary, Delhi and others* (2000) 1 SCC 644. This decision decides inter se seniority dispute between the direct recruits and deputationists from the Border Security Force (BSF) and the Central Reserve Police Force (CRPF) who were

absorbed as Sub Inspectors in Delhi Police in the cadre of Sub Inspector (Executive).

3. In 1985, to deal with the law and order situation and to strengthen the existing security and policing system in Delhi, twelve new police stations were set up. Recruitment to the posts to man these new police stations was important and required immediate attention. In the normal course, fresh/direct recruitment at different levels and training would have taken a long time. Accordingly, recruitment of suitable persons on deputation from the BSF and CRPF in the ranks of Inspector, Sub-Inspector, Assistant Sub-Inspector, Head Constable, Constable and Drivers, Head Constable and Constable was considered by writing letters to the Director Generals of the BSF and the CRPF. The Commissioner exercised his powers under Rule 5(h) of the Delhi Police (Appointment and Recruitment) Rules, 1980 to make appointment(s) to all non-gazetted categories in both executive and ministerial cadres on deputation basis by drawing suitable persons from another central police organisation or force or any other State/Union Territory. Rule 17, enacted and enforced on 31.03.1983, further empowered the Commissioner of Police to sanction permanent absorption of the deputationists with their consent, and the consent of seniors and subordinate officials of the deputed official in the Delhi Police with the concurrence of the Head of Police Force from which the said official was deputed. Thereupon the deputationists so requisitioned were absorbed in the Delhi Police.

4. On absorption dispute arose, whether for the purpose of inter se seniority between the Sub Inspectors in the Delhi Police, service put

in by the absorbed deputationists in the parent department could be counted. Counting of past service was objected to by the direct recruits and some others.

5. Antony Mathew and two other officers, who joined the Delhi Police from the BSF, moved O.A. NO. 470/1991 before the Central Administrative Tribunal positioning that their continuous officiation on substantive basis as Sub-Inspectors in the BSF should be counted for determining inter-se seniority. This application was allowed by the Tribunal and it was directed that the applicants should be accorded seniority in the Delhi Police taking the date of appointment as Sub-Inspectors in the BSF on substantive basis as the relevant date. The applicants were to be accorded benefits flowing from the said seniority.

6. The Delhi Police filed a review application urging a new ground that the post of Sub-Inspector in the BSF and that of Sub-Inspector in the Delhi Police were not equivalent because the pay scales of the posts were not identical. Hence, service in the parent department (i.e. the BSF) could not be counted for seniority in the transferred post. Review application was rejected by the Tribunal holding that equivalence of pay scales was not the sole and determinative factor for determining equivalency of posts.

7. Not satisfied, the Delhi Police filed a Special Leave Petition before the Supreme Court against the two orders, i.e., orders in O.A. 470/1991 and the review application, asserting that the ratio of *K. Madhavan v. Union of India (1987) 4 SCC 566* was inapplicable as the post of Sub-Inspector held by Antony Mathew and others in the

BSF was not equivalent to the post of Sub-Inspector in the Delhi Police. A bench of three judges dismissed the SLP vide order dated 22.04.1994. A review petition belatedly filed after 444 days, met with the same fate.

8. The Delhi Police/government did not give benefit of the directions to other transferee officers. The said officers made repeated representations and then filed Original Applications, OA Nos.1414 and 1415 of 1994 before the Tribunal. The Tribunal dismissed the said O.As, relying on the office memorandum dated 29.05.1986. It was held that the post of Sub-Inspector in the BSF was not equivalent to the post of Sub-Inspector in the Delhi Police. The deputationists who had been absorbed were not entitled to count prior service rendered by them in the BSF before their absorption in the Delhi Police for the purpose of seniority.

9. This order was challenged before the Supreme Court in the case of *SI Rooplal* (supra). The Supreme Court reversed and overturned the decision of the Tribunal recording dissatisfaction as to the manner in which the coordinate bench of the Tribunal had in effect overruled an earlier judgment of another coordinate bench in the case of *Antony Mathew* (supra). The Supreme Court declined the prayer for fresh adjudication by a larger Bench of the Tribunal in view of the conflicting decisions, as considerable time had already lapsed, with costs and inconvenience suffered by the parties. The Supreme Court adjudicated upon and decided the controversy to set at rest the question whether the service rendered by the transferee officers as Sub-Inspectors could be counted for the purpose of their seniority

upon absorption as Sub-Inspectors (Executive) in the Delhi Police. Reference was made to the case of **K. Madhavan** (supra). In unequivocal and explicit terms it was held that it would be against all rules of service jurisprudence if a government servant holding a particular post transferred to the same or an equivalent post in another government department is not entitled to count the period of his service in the equivalent post before his transfer in computing his seniority in the transferred post. The transfer and absorption/appointment cannot wipe or erase his length of service in the equivalent post from which the officer was transferred. The Supreme Court also relied on **R.S. Makashi v I.M. Menon** (1982) 1 SCC 379 and **Wing Commander J. Kumar v. Union of India** (1982) 2 SCC 116, which were referred to in **K. Madhavan** (supra).

10. The learned counsel for the petitioner, to distinguish, has placed considerable emphasis on paragraph 17 in the decision in the case of **SI Roop Lal** (supra), which reads:

“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 a Sub-Inspector in the BSF is not equivalent to the post of a Sub-Inspector (Executive) in 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 and Anr. v. P.K. Roy and Ors](#), [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 criterion. 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 the BSF and the Sub-Inspector (Executive) in 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 equivalency 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 responsibilityThe true criterion for equivalence is the status and the nature and responsibility of the duties attached to the two posts"

We have examined the said paragraph. After examination of the case law, the Supreme Court in ***SI Rooplal's*** case gave an affirmative finding that the post of Sub-Inspector in the BSF and Sub-Inspector (Executive) in the Delhi Police were equivalent posts and therefore, the contrary finding of the Tribunal that the posts were not equivalent was held to be erroneous and set aside. Thereafter, the Supreme Court referred to the office memorandum dated 29.05.1986, to observe that the author had taken inconsistent views regarding the right of a deputationist to count his seniority in service from an equivalent post held in the parent department. The first part of clause (iv) had observed that such regular service of a deputationist in an equivalent grade on regular basis in the parent department shall be taken into account in fixing seniority. In the latter portion of the same clause, a contradictory expression, "whichever is later", that negates the first part was incorporated. Use of the words "whichever is later" being

unreasonable, offended Articles 14 and 16 of the Constitution, for it took away the service rendered by the deputationist before he was absorbed in the Delhi Police. This service rendered by the civil servant could not have been taken away without the authority of law. After referring to case law, it was held that any rule, regulation or executive instruction that had the effect of taking away the service rendered by a deputationist in an equivalent post in the parent department while counting his seniority in the absorbed post would be violative of Articles 14 and 16 of the Constitution and liable to be struck down. It was ordered accordingly.

11. Learned counsel for the Delhi Police/Government submits that the aforesaid decision repeatedly refers to the transferee employees who were earlier working as Sub-Inspector in the BSF, and not to the transferee employees of the CRPF. Referring to paragraph No. 17 of *SI Roop Lal* (supra), it was submitted that equivalence is not dependent only on the pay scale. Other relevant factors; nature of duties, responsibility and powers exercised by the officer holding a post, extent of territorial or other charge held or responsibilities discharged, the minimum qualifications, if any, prescribed for recruitment to the post, etc. are relevant. These factors, it is submitted, were not examined and considered.

12. We do not find any merit in the said contention. The Supreme Court had elucidated relevant criteria for determining and deciding the question of equivalence. After referring to the legal ratio, the Supreme Court had specifically held that the posts of Sub-Inspectors held by the deputationists in the parent cadre were equivalent posts.

After recording and accepting equivalence, specific directions, that the service rendered by the deputationists in the post of Sub-Inspector in the BSF would be counted for computing the seniority in the cadre of Sub-Inspector (Executive) in the Delhi Police was given. We reject the contention raised by the Delhi Police/government that the equivalence exercise was not undertaken by the Supreme Court before giving the said directions. The contention overlooks the mandate and inescapable conclusion flowing from a binding precedent. *Ratio decidendi* of a decision by the Supreme Court is binding on us under Article 141 of the Constitution. The High Court is duty bound to follow the said ratio as a precedent. In ***Purbanchal Cables and Conductors Private Ltd. Vs. Assam State Electricity Board and Anr.***, (2012) 7 SCC 462 elucidating upon the binding value of a precedent, reference was made to ***Waman Rao Vs. Union of India***, (1981) 2 SCC 362 wherein it has been held that for the rule of *stare decisis* to apply it was not necessary that the earlier decision or the decisions of long standing should have considered or the Court should have either accepted or rejected a particular argument advanced in the case at hand. The rule of *stare decisis* can be invoked when a decision is on a certain question which had arisen and was argued and it is not necessary to enquire or determine what was the rationale of the earlier decision. Quoting earlier judgments in ***Purbanchal Cables and Conductors Private Ltd.*** (supra), the Supreme Court held that an earlier decision of the Supreme Court is binding when the same question is raised again before the Supreme Court. Certainty and predictability requires that the ratio should be

followed. Reference was made to ***CIT v Saheli Leasing and Industries Ltd.***, (2010) 6 SCC 384 to elucidate, when a reference could be made to a larger bench, by quoting the following paragraph from ***Saheli Leasing***:-

"29. (x) In order to enable the court to refer any case to a larger Bench for reconsideration , it is necessary to point out that particular provision of law having a bearing over the issue involved was not taken note of or there is an error apparent on its face or that a particular earlier decision was not noticed, which has a direct bearing or has taken a contrary view."

13. Similarly, in ***Shanker Raju Vs. Union of India***, (2011) 2 SCC 132, referring to the doctrine of stare decisis and the law of precedent, it was observed that in the hierarchical judicial system, it is of paramount importance that the law declared by the Supreme Court is adhered to and followed as an authority or binding precedent. This ensures certainty, consistency and clarity. In ***Director of Settlements, A.P. and Others Vs. M.R. Apparao and Anr.***, (2002) 4 SCC 638, the Supreme Court has held that what is binding is the principle underlying the decision, which becomes the declared law. A decision on a point when decided by way of concession is not the *ratio decidendi*. The Courts while dealing with constitutional matters as a practise may not make pronouncements on points not directly raised. At the same time, a decision of the Supreme Court which is a binding precedent cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court. When the Supreme Court decides a principle, it

is binding on the High Court and District Courts. A judgment of the High Court, which refuses to follow the decision, is a nullity.

14. Another contention raised by the petitioner is that the Supreme Court had never examined the question of equivalence of the transferee employees from the CRPF. This argument, again we find, has no merit. The decision in ***Rooplal*** (supra) is a binding precedent. In paragraph 1 of the judgment in ***Rooplal*** (supra), the Supreme Court specifically refers to WP(C) 4128 of 1998, that was pending before the High Court and transferred to the Supreme Court to be registered as TC(C) No. 56 of 1999. This writ petition/Transfer case arose from O.A. No. 767 of 1997 titled ***Diwan Chand Sharma v. Govt. of NCT of Delhi*** filed by the transferee officers from the CRPF and the BSF who were absorbed in the Delhi Police. Thus, transferee officers from the CRPF were also parties before the Supreme Court. This O.A., titled as ***Diwan Chand Sharma v. Government of NCT of Delhi***, was decided by the Tribunal in favour of the transferee officers following the first judgment in the case of ***Antony Mathew*** (supra). Thereupon, the Delhi government had filed WP(C) No. 4128 of 1998 before the Delhi High Court which was transferred to the Supreme Court. Consequently, the Supreme Court had dealt with cases of the transferee officers from the CRPF who were absorbed in Delhi Police. The aforesaid factual matrix is not denied or disputed by learned counsel for the petitioner.

15. Learned counsel for the petitioner, however, submits that the Supreme Court did not go into the question of equivalence in the case of the Sub-Inspectors from the CRPF. We must reject the said

contention as TC(C) No. 56 of 1999 filed by the Delhi government was dismissed by the Tribunal. In other words, the order of the Tribunal that the Sub-Inspectors absorbed from the CRPF would be entitled to count their service as Sub-Inspector in the Delhi Police, was upheld by the Supreme Court.

16. The respondents in the present writ petitions were forced to file O.A. 2769 of 2005, when inspite of the decision of the Supreme Court in the case of **Rooplal** (supra), Delhi Police/Government, the petitioners before us, did not give benefit of past service rendered by them as Sub-Inspectors in the CRPF. In paragraph 4.11 to 4.15 of the OA No.2769/2005, the respondents had made the following averments:

“4.11 That in another case of Diwan Chand Sharma and Others in O.A. No.767 of 1997, on identical question of seniority of 6 applicants, who had come on deputation to Delhi police from B.S.F. and C.R.P.F. and were absorbed in Delhi police, the Hon’ble Central Administrative Tribunal upholding the judgment in Antony Mathew case held by order dated 4/5/1998, that the applicants on absorption were entitled to seniority from the date of their regular appointment in the parent department.

4.12 That the judgment of the Hon’ble Central Administrative Tribunal in the case of Diwan Chand Sharma and Others in O.A. No. 767 of 1997, was challenged in CWP 4128 of 1998 in the Hon’ble High Court of Delhi at New Delhi.

4.13 That the question of seniority of deputationists as governed by Office Memorandum No.20020/7/80-Estt.(D) dated 29-5-1986 issued by Government of India, was also a matter of challenge in W.P.(C) No. 191 of 1999 filed in the Hon’ble Supreme

Court. The question of challenge was the provision in the Office Memorandum, which provided that the seniority to the deputationists was either to be given from the date of regular appointment in the parent department or from date of absorption, whichever was later.

4.14 That the Civil Appeal No. 5363-64 of 1997 in the case of SI Rooplal and Another versus LG through Chief Secretary, Delhi and Others, and the CWP 4128 of 1998 against the judgment of the Hon'ble Central Administrative Tribunal, Principal Bench, Delhi in Diwan Chand Sharma case taken up as TC(C) 56 of 1999, and the WP(C) No. 191 of 1999, involving question of legality of Office Memorandum No.20020/7/80-Estt.(D) dated 29-5-1986 were all decided by one common judgment by the Hon'ble Supreme Court on 14/12/1999 (Rooplal case).

4.15 That the Hon'ble Supreme Court in the case of SI Rooplal upheld the right of deputationists in the case of both SI Roplal and other applicants in the case of Diwan Chand Sharma, who had come on deputation from B.S.F./C.R.P.F. to get the service tendered in the parent department counted from seniority on their absorption in Delhi police. The Hon'ble Supreme Court observed as follows:

*“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 services in the parent department. At any rate, this question is not *res integra* and squarely covered by the ratio of judgments of this Court in more than one case.”*

The petitioner, Delhi Police/Government, did not specifically dispute the aforesaid assertion of facts in their reply.

17. The Tribunal by the impugned order dated 06.03.2007 has set

aside and quashed the seniority list dated 7.12.2005 and the promotion list dated 9.12.2005. The Tribunal has directed that the petitioner should restore the seniority of the applicants (the respondents herein) from the date of their regular appointment in their parent department and count the service rendered by them in their parent department for the purpose of seniority for promotion to the rank of Inspector.

18. Learned counsel for the petitioner has drawn our attention to paragraph 24 of the said order dated 6.3.2007, wherein the Tribunal, on the question of permissibility of absorption and equation of posts of Sub-Inspector in the Delhi Police and the CRPF has referred to the decision in ***Rooplal case*** (supra). The Tribunal has observed that, as far as the question of equivalence of the two posts was concerned, the competent authorities in the Delhi Police had considered their service as Sub-Inspectors in the CRPF as equivalent and then absorbed them. Learned counsel for the Petitioner/Delhi Government contests the said finding recorded in the order dated 6.3.2007 and submits that this question was never examined till the year 2015. The petitioner has filed in this Court, a comparative statement showing the disparity between the Sub-Inspector (Executive) in the Delhi Police and the Sub-Inspector, in the CRPF. The chart was not filed before the Tribunal. It is stated that this exercise was recently undertaken. We are not impressed with the said submission for several reasons. We are bound and must abide by the decision of the Supreme Court in ***Rooplal*** (supra) pronounced way back in the year 2002. The affirmative and conclusive findings cannot be disturbed or re-

examined. Law declared and pronounced by the Supreme Court in ***Rooplal*** (supra) could apply as the binding precedent under Art. 141 of the Constitution. In view of and in terms of the authoritative pronouncement, the post of Sub-Inspectors in the CRPF and the post of Sub-Inspector (Executive) in the Delhi Police, it has to be held were equivalent posts. As elucidated above, TC(C) No.56/1999 was also decided and disposed off along with the decision in the case of the ***Rooplal*** (supra). The writ petition filed by the Delhi Government was dismissed.

19. The petitioner had earlier published the Seniority List dated 1.3.2000 after the judgment of the Supreme Court in ***Rooplal*** (supra), dated 14.12.1999. This order publishing the Seniority List, specifically records that pursuant to the judgment in ***Rooplal*** case (supra) seniority in the cadre of Sub-Inspector (Executive) after transferee employees were absorbed in the Delhi Police, was fixed with effect from the date of their regular absorption/promotion as Sub-Inspector in the parent department. This was noted and recorded against each officer. Thus, clearly, the judgment in the case of ***Rooplal*** (supra) had dealt with the question of equivalence and the petitioner had accepted that the service rendered in the post of Sub-Inspector in the parent cadre would be counted for the purpose of seniority. In case the Petitioner/Delhi Government had any reservations or had felt that Sub-Inspectors absorbed from the CRPF were not holding equivalent posts, they could have filed an application for review or clarification before the Supreme Court after pronouncement in the case of ***Rooplal*** (supra). No such exercise was

undertaken. The findings attained finality.

20. We find it strange that the petitioner/Delhi Police/Government has accepted the equivalence in the case of Sub-Inspectors from the BSF and the CRPF who were absorbed on or after 14.12.1999 in the Delhi Police as Sub-Inspectors (Executive), but have not accepted their equivalence where the absorption from the CRPF or the BSF was made prior to 14.12.1999. According to the petitioner, the judgment in *Rooplal case* (supra) would have prospective binding effect and is not retrospective. We must reject this submission and reasoning. A decision by the Court normally declares rights of the parties as they exist in accordance with the law. The courts do not legislate and create new law. A Division Bench of this Court in WP(C) No.510/2007 titled *UOI & Ors v Ranbir Singh & Ors* has held that the decision in *Rooplal case* (supra), declares the legal position as it always existed and, therefore, it does not have a restricted prospective application.

21. We have also been informed that the Delhi Government has implemented the impugned order in the case of the respondents and they have been promoted as Inspectors.

22. In view of the aforesaid discussion, we do not see any reason to interfere with the impugned order. The writ petition is dismissed. There will be no order as to costs.

SANJIV KHANNA, J

NAJMI WAZIRI, J

APRIL 04, 2016/acm/tp/na