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

+ **W.P.(C) 10776/2016**

ALOK KUMAR

..... Petitioner

Through: Mr. Pradeep Dahiya, Adv.

versus

UNION OF INDIA & ORS

..... Respondent

Through: Mr. Sarat Chandra, Adv for R-1&2
Mr. Naresh Kaushik and Mr. Omung
Raj Gupta, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

27.09.2017

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1. The petitioner has assailed the order dated 02.08.2016 passed by the Full Bench of the Central Administrative Tribunal, Principal Bench, New Delhi (CAT/ Tribunal) in O.A. Nos. 3314/2012 and 3849/2012. The present writ petition has been preferred by the petitioner, who was the applicant in O.A. No. 3314/2012.

2. The aforesaid two OAs were placed before the Full Bench of the Tribunal pursuant to an order of reference dated 22.07.2014 passed by the Division Bench of the tribunal. Reference was made in view of the conflict of opinion arising between two earlier decisions of the tribunal in O.A. No.

3245/2009 in *D.M. Sharma v. Union of India & Ors.* decided on 18.01.2011., and the earlier decision of the Division Bench of the tribunal in O.A. No. 101/2004 in *D.S. Dagar & Ors. v. Union of India & Ors.*, decided on 31.08.2004. In *D.S. Dagar* (supra), the tribunal had rejected the claim of the applicant whereby he claimed seniority by counting his past service in his parent cadre as an Inspector in the CISF for purpose of fixation of his seniority upon his absorption in the CBI on the ground that the post held by him in the CISF could not be considered as equivalent to the post held by him in the CBI. In *D.M. Sharma* (supra), the tribunal allowed the claim of the applicant by placing reliance on a decision of the Supreme Court in *S.I. Rooplal & Anr. v. Lt. Governor through Secretary*, (2000) 1 SCC 644. Pertinently, while deciding *D.M. Sharma* (supra), the earlier decision in *D.S. Dagar* (supra) was not brought to the notice of the tribunal.

3. The petitioner was aggrieved by the fact that, after the decision in *D.M. Sharma* (supra) was rendered by the tribunal, the respondent department on its own revised the seniority list and placed the petitioner junior to several other persons who had been absorbed in the CBI after deputation, by counting their past service in their parent cadre. The petitioner claimed that the posts held by such absorbees in their parent cadre CISF could not be considered to be equivalent to the post held by them in the CBI and, therefore, they could not avail of their past service for purpose of fixation of their length of service/ seniority.

4. Before the Tribunal, the petitioner had also raised a contention that the seniority of the Inspectors had been settled in the CBI in 2007 itself and none of the absorbees, who were earlier shown junior to the petitioner, had raised

any objection to the seniority lists issued year after year from 2007. The petitioner submitted that the respondent CBI could not have unsettled the settled seniority in respect of all the persons merely on account of the decision in ***D.M. Sharma*** (supra).

5. We may observe that the last submission, taken note of herein above was not referred by the Division Bench to the Full Bench. The Full Bench, however, by the impugned order, dismissed the O.A. without even considering the said submission. The Full Bench held that the decision in ***D.M. Sharma*** (supra) holds the correct view and invoked ***S.I. Rooplal*** (supra) while dismissing the O.A. of the petitioner.

6. The submission of learned counsel for the petitioner is that in ***D.S. Dagar*** (supra), the aspect of equivalence of posts held by the absorbtees in their parent cadre with the posts held by them in the CBI had been specifically gone into and it was found by the tribunal that, the posts could not be considered to be equivalent. In ***D.M. Sharma*** (supra), this exercise was not undertaken. The Full Bench has also not undertaken the said exercise. ***S.I. Rooplal*** (supra) proceeds on the basis that the deputationist – who is absorbed in the transferee department, held an equivalent post in the parent department. Therefore, to invoke the principle laid down in ***S.I. Rooplal*** (supra), it was essential for the tribunal to be first satisfied that the posts held by the respondent absorbtees were equivalent to the post in the CBI. He further submits that the other aspect raised by the petitioner, as taken note of herein above, has also not been considered while dismissing his O.A.

7. Learned counsel also points out that the Full Bench of the tribunal has

observed that in *D.S. Dagar* (supra), *S.I. Rooplal* (supra) had not been considered, which observation according to him is factually incorrect.

8. We have perused the decision in *D.S. Dagar* (supra) and the same extensively considered *S.I. Rooplal* (supra). Counsel for the respondents cannot dispute any of the aforesaid facts taken note of herein above.

9. In the light of the aforesaid, we are inclined to set aside the impugned order and remand the O.A. back to the tribunal for reconsideration of all the aforesaid aspects. The Full Bench may now proceed to consider the aspect of equivalence and after its determination on the said aspect, it may either on its own or by sending the matter back to the Division Bench, determine the other issues raised by the petitioner. The respondents are permitted to file an additional affidavit before the tribunal specifically on the aspect of equivalence within four weeks. The petitioner may file the rejoinder within four weeks thereafter.

10. The parties shall appear before the tribunal on 05.12.2017. No further notice shall be required to be given to the parties. Dasti.

VIPIN SANGHI, J

REKHA PALLI, J

SEPTEMBER 27, 2017

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