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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 12307/2009**

SATVINDER SINGH Petitioner
Through : Sh. Naresh Kaushik, Sh. Omung Gupta
and Sh. Gaurav Ahlawat, Advocates.

versus

UNION OF INDIA AND ORS Respondents
Through : Sh. N.K. Singh and Ms. Palak
Rohmetra, Advocates, for Respondent Nos. 2 and
3.
Sh. A.K. Behera, Advocate, for Respondent No.4.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER
% **13.11.2018**

1. The petitioner is aggrieved by the order of the Central Administrative Tribunal [hereafter referred to as the "CAT"] by which it was held that Respondent No.4 was wrongly shown to be junior to him.
2. Briefly, the facts are that the petitioner was appointed on 14.05.1987 to the post of Assistant Sub-Inspector (Stenographer) [hereafter referred to as "ASI"]. The appointment was pursuant to completion of regular recruitment process. In the result declared, the Respondent No.4 was ranked at S. No.1 and the petitioner at S. No.6. The Respondent No.4 – for unknown but administrative reasons, was issued with an appointment letter and subsequently joined service on 23.06.1987. The orders of confirmation of the petitioner and the Respondent No.4 followed the pattern of their initial appointments, i.e. immediately on completion of two years. At the

material point of time, the *Delhi Police (Confirmation and Promotion) Rules, 1980*, by Rule 18 [hereafter “the Promotion Rules”], required confirmation of employees. The petitioner had approached the CAT complaining that subsequent to the amendment – made to the Rules some time in 2003, delinking confirmation from seniority, he was wrongly ranked as junior to the fourth respondent without granting an opportunity of hearing. The CAT directed that he ought to be granted a hearing which was subsequently granted, but the earlier order was reiterated.

3. Aggrieved, he approached the CAT yet again but this time without impleading the fourth respondent. The CAT, in his second application, granted the relief. Thereupon, the fourth respondent approached the CAT which referred the controversy to a larger three-member Bench. By the impugned order, it was finally held that the fourth respondent was in fact senior to the petitioner having secured a higher rank in merit than him.

4. Learned counsel for the petitioner juxtaposed Rule 22 of the *Delhi Police (Appointment and Recruitment) Rules, 1980* [hereafter “the Appointment Rules”] (which was relied upon by the CAT in the impugned order) along with Rule 18 of the Promotion Rules mentioned above and Rule 8(c) of the *Delhi Police (General Conditions of Service) Rules, 1980* [hereafter “the GCC Rules”]. It was submitted that at the relevant time, prior to 2003 when the issue of seniority arose and was finally determined, the principle based on which seniority had to be necessarily determined was confirmation in the post. Since the petitioner was concededly confirmed earlier than the fourth respondent, treating him as her senior merely based upon plain and literal reading of Rule 22, is not in order. Learned counsel also highlighted para 2.3 of the DOPT Office Memorandum dated 03.07.1986 and para 4 of the OM No.9/11/15-RPS of

the Ministry of Home Affairs (MHA) dated 22.12.1959 and stated that confirmation is the only basis for determination of seniority generally in one cadre.

5. This Court notices that the controversy in the present case is to be resolved on the interplay of three rules, i.e. Rule 22 of the Appointment Rules; Rule 18 of the Promotion Rules and Rule 8(c) of the GCC Rules.

6. The three Rules are set-out below:

“Delhi Police (Appointment and Recruitment Rules), 1980

Rule 22. Seniority in the case of upper and lower subordinates 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-Inspector (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 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 marks obtained by them in the Staff Selection Commission Examination/Interview as well as in the final examination held at Police Training School/College.

Delhi Police (Promotion & Confirmation) Rules, 1980.

Rule 18. Confirmation – (i) Confirmation shall be made only once in the service of an official which shall be in the entry grade. Confirmation is de-linked from the availability of permanent vacancy in the grade. In other words, an officer who has successfully completed the period of probation may be considered for confirmation.

Delhi Police (Promotion & Confirmation) Rules, 1980

Rule 8. Command and precedence – (i) Command and precedence amongst police shall be:

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(c) Seniority of officers appointed or promoted on probation to any rank shall be finally determined by the date of which confirmed in that rank.”

7. A plain and general reading of all the three Rules leads to the conclusion that the first Rule which is enunciated in respect of direct recruits is that *inter se* that category, merit is the defining criteria to define seniority. One allied principle is that if *inter se* merit is equal, then the individual senior in age would be deemed senior. The Promotion and Confirmation Rules, in the opinion of the Court, do not directly come into the picture. However, since the wording of these are linked with the issue of seniority which is also mentioned in Rule 22 of the Appointment Rules, the second principle which is to be considered and reconciled here is that confirmation becomes an important criteria if a supervening incident, such as extension of probation of a direct recruit occurs. In other words, ordinarily, if Rule 22 is given its full play with the training and completion of probation of the senior and the junior (in terms of Rule 22), confirmation would be on the same date. However, if for some reasons, the more merited and more senior employee or official does not succeed in completing probation, but rather it is extended in public interest, he or she would be deemed junior based upon date of confirmation.

8. If the interpretation indicated by this Court is applied to the facts of this case, it is immediately apparent that both the petitioner and the fourth respondent participated in the same recruitment process. That the petitioner

was fortunate and received the appointment letter earlier became the sole basis for his earlier confirmation in 1989. However, Rule 22 mandates that in such circumstances, their *inter se* merit guides the seniority. Had that principle been followed, the date of confirmation in this case was typically something termed by the Supreme Court as “*one of the inglorious uncertainties of government service*” [refer *S.B. Patwardhan and Ors. v. State of Maharashtra and Ors.* 1977 (3) SCC 399, paragraph 39].

9. In the present case, there are no circumstances which could have in any manner led the authorities to treat the fourth respondent as junior to the petitioner, nor is there anything on the record to indicate that the period of her probation was extended.

10. For these reasons, the Court is of the opinion that the CAT’s findings and reasoning are sound and do not call for interference.

11. In view of the foregoing reasons, the writ petition has to fail. It is accordingly dismissed.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

NOVEMBER 13, 2018/AJK