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

***Date of decision: 15.12.2025***

+ W.P.(C) 13258/2019  
RAM DAYAL

.....Petitioner

Through: Mr.S.N. Kaul, Adv.

versus

UNION OF INDIA & ORS

.....Respondents

Through: Ms.Radhika Bishwajit Dubey,  
CGSC with Ms.Gurleen Kaur  
Wariach, Mr.Kritarth Upadhyay  
and Mr.Vivek Sharma, Advs.  
Major Anish Muralidhar  
(Army)

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MS. JUSTICE MADHU JAIN**

**NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed, challenging the Order dated 19.02.2019 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'Tribunal') in O.A. No.591/2013, titled *Shri Ram Dayal v. The Union of India & Ors.*, dismissing the O.A. filed by the petitioner herein.

2. The brief facts giving rise to the present petition are that the petitioner had participated in the recruitment process for the post of Engineering Equipment Mechanic (EEM) in 510 Army Base Workshop, Meerut, wherein a total of 7 posts were advertised on



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17.10.1998-23.10.1998. He was selected for the said post and it is his case that he secured 2<sup>nd</sup> rank on merit. Due to a delay in the verification of his documents and character, he was offered the appointment *vide* Letter dated 09.04.1999 *vis-a-vis* others who had been offered appointment *vide* Letters dated 02.12.1998 onwards. He joined his duties on 10.04.1999 and was confirmed in service on 09.04.2001.

3. On 14.06.2010, based on the recommendations of the 6<sup>th</sup> Central Pay Commission (CPC), the Government of India, Ministry of Defence issued an order regarding restructuring of Cadre of Artisan Staff in Defence Establishment. The said order was applicable w.e.f. 01.01.2006 and provided the following grades of service:

- *“Highly skilled Grade-II PB-I Grade Pay of Rs. 2400/-.*
- *Highly Skilled Grade-I, PB-I Grade Pay of Rs. 2800/-.*
- *Posts to be divided in the ratio of 50:50 and re-designated as HSG-II (Grade Pay of Rs. 2400/-) and HSG-I (Grade Pay of Rs. 2800/-)*  
*HSG-I was to be placed in Block senior to HSG-II”*

4. As the petitioner was placed in Grade Pay of Rs.2400/- whereas, candidates placed below him in merit of the selection process were placed in Grade Pay of Rs.2800/-, the petitioner made a representation on 16.07.2012 claiming that his seniority should be fixed in accordance with the DoP&T's OM dated 04.11.1992, which provides that the seniority has to be based on merit in the examination rather than the date of joining of service.



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5. The respondent no.3, however, rejected the representation *vide* Order dated 09.10.2012.
6. Challenging the same, the petitioner filed the above O.A. before the learned Tribunal on 05.11.2012.
7. The same, however, came to be dismissed by the learned Tribunal, *vide* its Order dated 12.11.2014, on the ground of limitation.
8. Challenging the same, the petitioner filed a review application, which was also dismissed by the learned Tribunal *vide* Order dated 07.01.2015.
9. Aggrieved by these orders, the petitioner filed a Writ Petition before this Court, being W.P.(C) 4125/2015.
10. This Court, by its Judgment dated 20.10.2016 passed in the said petition, remanded the matter back to the learned Tribunal, observing as under:

*“5. The Tribunal in the impugned order has not examined the merits of the contention raised by the petitioner and Rahul Rana for the O.A. was dismissed as barred, by limitation. Reference was made to Section 21 of the Administrative Tribunal’s Act.*

*6. Learned counsel for the petitioner has submitted that the seniority list of Engineer Equipment (Mechanic) was published for the first time and circulated on 15.11.2012. Thus, the cause of action arose on the said date. Only when and after the seniority list was published, could the petitioner have challenged and questioned the seniority given to respondent Nos.4 to 8.*

*7. Learned counsel appearing for the respondent Nos.1 to 3 has not been able to dispute and deny the said factual assertion i.e. seniority list was published on 15.11.2012.*



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8. In the counter affidavit, it was averred that service books of all employees were available to the individuals to take into and there were instances where anomalies in the service record were rectified.

9. It would be a matter of debate whether the aforesaid assertion would be sufficient to oust and bar the petitioner from challenging the seniority list published on 15.11.2012. The petitioner, has contested the factual position. Service books, it is stated, would not confer or create cause of action.

10. The respondent Nos. 4 to 8 were given promotions with retrospective effect in view of the exercise done pursuant to the order dated 14.06.2010. Immediately and thereupon, the petitioner had raised objections and asserted that he was senior to those who had been promoted. The petitioner had then filed the OA on 05.11.2012 after the representation was rejected vide order dated 09.10.2012. The petitioner had protested against the promotions of respondent Nos. 4 to 8, who were the petitioner's batch mates, and asserted that their promotions would affect the overall structure of seniority.

11. The aforesaid facts and aspects have not been noticed by the Tribunal in the impugned order dated 12.11.2014. In these circumstances, the said order is set aside with direction to the tribunal to decide the O.A. afresh. Consequently, the order in RA No. 223/2014 will be also treated as set aside. In order to cut short the delay, the parties are directed to appear before the Tribunal on 15.11.2016 when a date of hearing will be fixed."

11. Pursuant thereto, the petitioner amended his O.A., now praying for quashing of the seniority list that had been published *vide* Service Order No. 652/2012 dated 15.11.2012.



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12. As noted hereinabove, the learned Tribunal had dismissed the said O.A. *vide* its Impugned Order dated 19.02.2019. The review application filed thereagainst also stood dismissed by the learned Tribunal *vide* Order dated 17.07.2019. Aggrieved thereof, the petitioner has filed the present petition.

13. The learned counsel for the petitioner submits that the learned Tribunal has failed to appreciate that the rule of prescribing seniority on the basis of date of appointment or on the date of confirmation has been struck down by the Supreme Court in ***Class II Direct Recruits Engineering Officers Association v. State of Maharashtra***, (1990) 2 SCC 715, based whereon, the DoP&T issued an Office Memorandum dated 04.11.1992 providing that the general rule of seniority is that the seniority of a person regularly appointed to a post would be determined by the order of merit indicated at the time of initial appointment and not according to the date of his confirmation.

14. He further submits that, in the present case, all officers who were appointed, were to be confirmed after period of two years. As there was a delay in the offer of appointment to the petitioner due to a delay in verification of documents by the respondents, the date of confirmation of the petitioner also came to be late, because of which he has lost out on his seniority in spite of securing 2<sup>nd</sup> rank on merit in the selection process.

15. He submits that the learned Tribunal completely failed to appreciate these facts and instead, has stated that the seniority will be determined on the date of offer of appointment, which is contrary to



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the OM dated 04.11.1992.

16. On the other hand, the learned counsel for the respondents submits that there was a delay on the part of the petitioner in approaching the learned Tribunal. She submits that the petitioner was all along aware of his seniority being determined in accordance with the date of offer of appointment to him and, therefore, him being placed at serial no.7. The petitioner never challenged the same and it is only in the year 2012 that he belatedly challenged the same in form of the above O.A.

17. She further submits that, in the present case, the seniority was not being determined on basis of the date of confirmation on completion of period of probation, but on the basis of the date of offer of appointment. She submits that, therefore, the OM dated 04.11.1992 would have no application to the facts of the case.

18. We have considered the submissions made by the learned counsels for the parties.

19. As would be evident from the facts narrated hereinabove, the petitioner having participated in the selection process, was ranked 2<sup>nd</sup> in the merit list. The respondents admit that his offer of appointment was delayed not because of any reason attributable to the petitioner. We may quote from the Impugned Order itself, where the reason for delay in offer of appointment to the petitioner has been stated by the respondents, as under:

*“5. ....It is also Stated that though the applicant and respondent Nos. 4 to 8 were selected at a time, the orders of their appointment were issued on different dates,*



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*depending on the availability of the verification of antecedents, and in the process the applicant was issued order of appointment on 10.04.1999, whereas remaining six were issued orders of appointment between 02.12.1998 and 08.03.1999.....”*

20. In such a scenario, the OM dated 04.11.1992 is explicit and requires no interpretation, in fact, that is the rule which now generally determines the seniority where persons are appointed through open selection process. It provides, as under:

*“2. This principle has been coming under judicial scrutiny in a number of cases in the past, the last important judgement being the one delivered by the Supreme Court on 2.5.90(JT-1990(2) SC-264) in the case of Class II Direct Recruits Engineering Officers Association vs. State of Maharashtra. In para 47(A) of the said Judgement the Supreme Court has held that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.*

*3. The general principle of seniority mentioned above has been examined in the light of the judicial pronouncement referred to above and it has been decided that seniority may be delinked from confirmation as per the directive of the Supreme Court in para 47 (A) of its judgement dated 2.5.90. Accordingly in modification of the general principle 3, proviso to general principle 4 and proviso to general principle 5(1) contained in MHA (now DOPT) O.M.No.9/11/55-RP dated 22.12.59 and para 2.3. of this Department O.M. dt.3.7.86 (copy enclosed) it has been decided that seniority of a person regularly appointed to a post according to rule would be determined by the order of merit indicated at*



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*the time of initial appointment and not according to the date of his confirmation.”*

21. The learned Tribunal has completely misdirected itself by now seeking to draw a distinction between the seniority determined on the basis of date of confirmation and the date of offer of appointment. In the present case, the confirmation was to take place on completion of two years of probation period successfully. The petitioner having been offered the appointment late due to a delay in his verification process, automatically had a later date for confirmation when compared with other candidates. It is to address this circumstance that the OM dated 04.11.1992 states that even when there is a delay in confirmation, the seniority in a general scenario should be governed by the order of merit. Therefore, the petitioner having secured 2<sup>nd</sup> rank in merit in the selection process should have been placed at the serial no.2 in the seniority list.

22. Coming to the issue of delay of the petitioner in approaching the learned Tribunal, apart from the observations which we have quoted from the Judgment dated 20.10.2016 in WP (C) 4125/2015 of this Court, we may only note that the petitioner has stated that, for the first time, the seniority list was published on 15.11.2012. He came to know of a wrong determination of his seniority only when, pursuant to a decision dated 14.06.2010 of the Government of India, Ministry of Defence doing a cadre restructuring, his juniors were given the Grade Pay of Rs.2800/- against the Grade Pay of Rs.2400/- to the petitioner. The O.A. was filed before the learned Tribunal on 05.11.2012,



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therefore, there was no delay in the petitioner approaching the learned Tribunal that even otherwise is not the ground for dismissal of the O.A. by the learned Tribunal in the second round after remand.

23. Accordingly, we find merit in the present petition. The Impugned Order passed by the learned Tribunal cannot be sustained and is, accordingly, set aside.

24. The petitioner shall be placed at serial no.2 in the seniority list based on his order of merit in the selection process and shall be entitled to all consequential benefits at par with his juniors.

25. The relief in this regard shall be determined by the respondents and shall be released to the petitioner within a period of 12 weeks from today along with the interest at the rate of 6% per annum.

26. The petition is allowed in the above terms.

27. The parties shall bear their own costs.

**NAVIN CHAWLA, J**

**MADHU JAIN, J**

**DECEMBER 15, 2025/ns/pb**