

CASE NO.:
Appeal (civil) 4791 of 2007

PETITIONER:
Attar Singh Kaushik

RESPONDENT:
Secretary/Commr. Transport Department & Anr

DATE OF JUDGMENT: 11/10/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T
(Arising out of SLP) No.18135 of 2006)

S.B. Sinha, J.

1. Leave Granted.
2. Inter se seniority amongst the deputationists is in question in this appeal which arises out of a judgment and order dated 13.9.2006 passed by a Division Bench of the High Court of Delhi whereby and whereunder the writ petition filed by the appellant herein assailing the order of the Tribunal dated 18.9.2003 allowing the original application filed by Visheshwar Dayal Sharma was dismissed. With a view to appreciate the fact of the matter involved herein, we may notice the particulars of the requisite service records amongst others of the Appellant vis-'-vis Respondent No.2 herein :

\023Seniority List

Date of promotion as A.S.I.

- | | | |
|----|--------------------------|-------------------------|
| 1. | Inder Pal Singh | 01.01.1987 |
| 2. | Mathura Prasad | 08.02.1988 |
| 3. | Vishveshwar Dayal Sharma | 03.06.1988 (Respondent) |
| 4. | Kartar Singh | 29.06.1988 |
| 5. | Ramesh Chander | 28.08.1989 |
| 6. | Tara Prasad | 28.08.1989 |
| 7. | Attar Singh Kaushik | 08.02.1990 (Appellant) |
| 8. | Joginder Singh | 30.01.1991\024 |

3. Indisputably, Appellant was appointed as a Constable. He was promoted in the year 1980; whereas the respondent was appointed as a Head Constable on or about 28.4.1982. They both were promoted to the post of Assistant Sub-Inspector, the respondent on 3.6.1988 and the appellant on 3.2.1990. Both of them were deputed to the Vigilance Department of the Transport Authority, National Capital Territory of Delhi on 12.8.1991.

4. It is not in dispute that both groups of employees were absorbed permanently in the Vigilance Department of the Transport Authority. Seniority of the deputationists upon absorption in the said department is governed by clause 3.1 of Establishment and Administration Rules (see Swamy\022s Manual). Indisputably, Respondent was deputed prior to the appellant herein, although he was absorbed in the Department, a month prior to him.

5. The High Court while determining the disputes examined the record of the Department. It noticed that in doing so, the relevant Rules, particularly Rule 10.2(ii), in terms whereof Administrative Ministry is required to certify that there was no other deputationist in position appointed earlier to the officer proposed for absorption, was not carried out. In terms of the said Rules, the borrowing department was further required to certify that if there had been any such person and he had not been willing to be considered for appointment on absorption basis. Keeping in view the aforementioned provision as also Clause 3.4.1 of the seniority of the absorbees as contained in Establishment and Administration Rules

(Swamy\022s Manual), the High Court opined that seniority of the parties hereto should be determined on the basis of their respective seniority in the equivalent grade in the parent department which is the feeder grade being the post of Assistant Sub Inspector of Police.

6. Mr. Nagendra Rai, learned senior counsel appearing on behalf of the appellant, in support of the appeal, inter alia, would submit:

(1) Third respondent being belonging to ministerial cadre was not eligible for appointment in the Vigilance Department under the Rules;

(2) The inter se seniority between the parties having been determined by the authorities as far back as on 28.5.1993, the original application filed by the respondent was barred by limitation; and

(3) Respondent No.3 could not have continued to remain on deputation despite his repatriation as directed by the order dated 16.12.1991.

(4) In the light of the decision of this Court in Sub-Inspector Rooplal & Anr. v. Lt. Governor Through Chief Secretary, Delhi & Ors. [(2000) 1 SCC 644], operates in the field, impugned judgment cannot be sustained.

7. Mr. P.P. Khurana, learned counsel appearing on behalf of the respondent, on the other hand, contended :

1. Respondent No.3 indisputably was senior to the Appellant as the entry point of the Appellant and the other respondents was different;

2. whereas the Appellant entered in the services as a Constable of the Transport Department, Respondent No.3 entered in the services as a Head Constable and, indisputably, he was promoted to the post of Assistant Sub Inspector earlier than the appellant and, thus, for all intent and purport he was senior; and

3. Even Respondent No.3 was deputed to the Transport Department prior to the Appellant, the same was of no consequence for the purpose of determining inter se seniority.

8. It has not been disputed before us that all the employees concerned who were parties to the original application before the Tribunal as also the writ petition before the High Court were working as Assistant Sub Inspector of Police in the parent department. It does not appear that any eligibility criteria had been laid down for the purpose of absorption by the State in its Transport Department. There is moreover nothing on record to show that the employees working in the Executive cadre alone were entitled to be absorbed in the Transport Department. From the Rules, as noticed hereinbefore, it appears that the only condition laid down for deputation was that employees concerned should be working in the cadre of Assistant Sub Inspector of Police.

9. It may be true that Respondent No.3 was directed to be repatriated to his parent Department but for one reason or the other the same has not been given effect to. The said order of repatriation admittedly was not implemented. Appellant, in our opinion, at this juncture, cannot, therefore, be permitted to question the very absorption of respondent No.3 on the deputed post on that ground or otherwise. Furthermore, the said question viz. continuity of respondent No.3 by the Transport Department was not even raised before the Tribunal or before the High Court and, thus, he cannot be permitted to do so before us.

10. The office order dated 28.5.1993 which is in the following terms :

\023In pursuance of the issue of No Objection by the Dy. Commr. Police Q(1) Delhi, vide letter No.21610/CB-VI dated 20.5.93 and willingness given by the Asstt. Sub Inspectors to their absorption in the Transport Deptt. Govt. of NCT of Delhi, the following Asstt. Sub-Inspectors are hereby absorbed as Sub-Inspectors (Enf.) in the pay scale of Rs.1200-1800 with immediate effect. Since all the officials are absorbed in the Transport Department from the days of the issue of the order, their inter se seniority will be on the date mentioned against their names :-

S.No.	Names of the official	Date of Appointment
1.	Sh. Mathura Prasad	17.3.1969
2.	Sh. Kartar Singh	23.9.1969

3.	Sh. Ramesh Chander	29.6.1974
4.	Sh. Tara Prasad	29.6.1974
5.	Sh. Inder Pal Singh	1.9.1978
6.	Sh. Joginder Singh	2.6.1980
7.	Sh. V.D. Sharma	28.4.1982

The above mentioned Sub-Inspectors (Enf.) have, however, option to revert back to their parent office within two years from the date of their absorption in the Transport Deptt., Govt. of NCT of Delhi.\024

11. It appears that only for the purpose of classification, they were mentioned as being belonging to Ministerial or Executive cadre but the qualifications laid down in the Recruitment Rules for the post of Assistant Sub Inspector on deputation were as under :

Recruitment Rules for the post of Asst. Sub-Inspector, Sub-Inspector & Inspector

S. No. Name of the Post No. of Posts Classification Scale of the Post Whether selection post or non- selection post Age limit for direct recruitment Educational and other qualification required for direct recruitment	2. Sub-Inspector 17 Group \021C\022 non Gazetted Non-Ministerial 1200-1300 Non-selection 25-30 years	1. Graduation from the recognized University 2. Sufficient knowledge of Motor Vehicle Law 3. 3 yrs. (illegible) of all typed of vehicle Whether age & Educational Qualifications prescribed for direct recruits will apply in the case of Promotees	Period of s in which promotion ssujted if any	Method of rectt. Whether by direct rectt. or by position or by deputation/transfer	In case of rectt by promotion/categories/ transfer (illegible) from which promotion/ what is in making rectt. composition	if a DCP exists, DPC\022s is to be co composition	Circumstance
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and percentage of the deputation/transfer vacancies to be filled to be made. by various notices

N.A. 2 Yrs. 33-1/3 promotion failing (illegible) Group \021C\022 N.A.
 which by transfer on Asstt. Sub-Inspector of D.C.P.
 deputation failing both by direct Enf. Branch of the Dte
 rectt, of transport with 5 yrs
 66-2/33 by transfer on Transfer of deputation:
 deputation failing which by Persons holding the post of ASI
 direct rectt. In Delhi Police/CRPF/RPF
 and having educational
 and other qualifications
 prescribed for direct recruits.

12. Relevant portion of the circular letter dated 10.5.1991 on the basis whereof the parties hereto, amongst others, volunteered for being deputed in the Transport Departments reads as under :

\023The service of Assistant Sub Inspector are required to fill up the post of Sub-Inspector in Transport Authority on deputation basis in the pay scale of Rs.1200-1800 and having the following qualification/experience are eligible for the above posts:-

- 1) Graduate from recognized University.
- 2) Sufficient knowledge on Motor Vehicle Law.
- 3) 3 years driving experiences of all types of vehicle.

2. Volunteers amongst ASI having above qualification/experience may please be called and names of willing officers may please be sent to this Hdqrs. on the enclosed pro forma by 20.5.91 positively. The officers so recommended for deputation under no circumstances may be permitted to withdraw their nomination either before or after the selection.\024

13. Clauses 3.1 and 3.4.1 of the Rules relating to seniority of the absorbees from Swamy\022s Manual on Establishment and Administration read as under :

\023Seniority of Absorbees

3.1 The relative seniority of persons appointed by absorption to a Central service from the Subordinate Officers of the Central Government or other departments of the Central or a State Government shall be determined in accordance with the order of their selection for such absorption

3.4.1 In the case of a person who is initially taken on deputation and absorbed later (i.e., where the relevant Recruitment Rules provide for \023deputation/absorption\024), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from \026

- the date he has been holding the post on deputation.
 (or)

- the date from which he has been appointed

on a regular basis to the same or equivalent grade in his parent department, whichever is earlier.\024

14. The tentative seniority list was circulated only on 19.6.1998. Only when the tentative seniority list was circulated, the original application was filed although the appellant was impleaded as a party in the said original application at a later date. We may, furthermore, notice that the said question is now wholly academic as the seniority list was published only in 2002. The Tribunal, as also the High Court, having laid down the principles for determining seniority list on the basis whereof now a fresh seniority list is to be published, the question of limitation loses all significance.

15. A bare perusal of the said provisions would furthermore clearly go to show that the position of the employees concerned in the same or equivalent cadre on regular basis in parent department is a relevant factor for determining the inter se seniority. The date from which the employee had been holding the post on deputation is another relevant factor. However, it has also been provided that date from which he has been appointed on regular post to the same or equivalent grade in his parent department, whichever is earlier would be considered for determining the inter se seniority. The Rules have rightly been interpreted by the High Court keeping in view its purport and tenor. The Rules are required to be interpreted harmoniously so as to give effect to all the relevant provisions. Makers of the Rules furthermore must be presumed to have in mind, while laying down the same, to give justice to all concerned. It is axiomatic that those who were senior in the parent department in the equivalent post should continue to be senior in the deputed post unless there exists a statutory rule to the contrary.

16. In Rooplal (supra) itself, whereupon Mr. Rai placed strong reliance, this Court opined :

\023Therefore, it is reasonable to expect that a deputationist when his service is sought to be absorbed in the transferred department would certainly have expected that his seniority in the parent department would be counted. In such a situation, it was really the duty of the respondents, if at all the conditions stipulated in the impugned Memorandum were applicable to such person, to have made the conditions in the Memorandum known to the deputationist before absorbing his services, in all fairness, so that such a deputationist would have had the option of accepting the permanent absorption in Delhi Police or not.\024

17. The question as regards determination of inter se seniority has been considered by this Court in Indu Shekhar Singh & Ors. V. State of U.P. & Ors. [(2006) 8 SCC 129], relied upon by Mr. Rai, wherein it was stated : \023The decisions referred to hereinbefore, therefore, lay down a law that past services would only be directed to be counted towards seniority in two situations: (1) when there exists a rule directing consideration of seniority; and (2) where recruitments are made from various sources, it would be reasonable to frame a rule considering the past services of the employees concerned.\024

The said case has no application in the instant case.

18. We, therefore, do not find any merit in this appeal. It is dismissed accordingly with costs. Counsel\022s fee assessed at Rs.25,000/- (Rupees twenty five thousands only).