

(2018) 08 CAT CK 0083

In the Central Administrative Tribunal

Case No : Original Application No. 3314, 3849 Of 2012

Alok Kumar And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 17-08-2018

Acts Referred:

Citation : (2018) 08 CAT CK 0083

Hon'ble Judges : L. Narasimha Reddy, J;V. Ajay Kumar, J;Aradhana Johri
Member (A)

Bench : Full Bench

Advocate : Pradeep Dahiya, Hanu Bhaskar, R.V. Sinha, Amit Anand

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. In these two OAs, the seniority list dated 25.07.2012, issued by the Deputy Director (Admn.), Central Bureau of Investigation (CBI), New Delhi, fixing the seniority of Inspectors as on 01.10.2010, is challenged. The applicants in both the OAs were initially appointed as Sub Inspectors in CBI, and thereafter they were promoted as Inspectors.

2. Apart from recruitment of the personnel directly to the CBI, there is a prevailing practice of taking employees on deputation from various departments, such as CISF, BSF, Customs & Central Excise, for the purpose of carrying out the functions of CBI. Some of the employees, so drawn, get absorbed permanently in CBI. The question as to how the inter se seniority as between the employees originally borne on the cadre of CBI, on the one hand, and those who are taken on deputation and absorbed later, on the other hand, was the subject matter of serious dispute and prolonged adjudication.

2. In OA No.101/2004 - D. S. Dagar and others v Union of India and others, a Division Bench of this Tribunal, through its judgment dated 31.08.2004 took the view that the seniority of Inspectors who came to CBI on deputation must be

reckoned from the date on which they got absorbed in CBI. In other words, the service rendered by them in their parent departments was held to be not relevant in that context. By that time, the Hon'ble Supreme Court rendered its judgment in *SI Roop Lal and another v Lt. Governor through Chief Secretary, Delhi and others* [(2000) 1 SCC 644]. That was a case in which a member of BSF was absorbed into Delhi Police, and in the context of determining his seniority, it was held that he was entitled to count the service rendered by him in his parent organization in the same or equivalent rank. An evaluation as to the similarity of duties in the BSF, on the one hand, and the Delhi Police, on the other, was undertaken, and it was held that such a similarity did exist as regards the duties in both the organizations. The judgment in *SI Roop Lal's* case was referred to in *D. S. Dagar's* case (*supra*).

3. Few years later, i.e., in 2009, OA No.3245/2009 (*D. M. Sharma v Union of India and others*) was filed, wherein a similar issue was raised. The Division Bench, which heard this matter, decided it on 18.01.2011, following the ratio in *SI Roop Lal's* case. The Bench held that the personnel drawn from other organizations to CBI are entitled to count their service from the date with effect from which, they held the equivalent positions in their parent organizations. The contention that they are entitled to reckon their service only from the date of absorption in CBI, was repelled.

4. When the present two OAs came up for hearing, the Division Bench found a clear conflict between the orders passed in *D. S. Dagar's* case, on the one hand, and *D. M. Sharma's* case, on the other hand. Therefore, through a detailed order dated 22.07.2014 running into 52 pages, the Division Bench referred the matter to a Full Bench. Accordingly, a Full Bench was constituted, and it heard the matter in detail. Judgment was rendered on 02.08.2016, taking the view that *D. M. Sharma's* case has been correctly decided, and that it accords with the ratio laid down by the Hon'ble Supreme Court in *SI Roop Lal* (*supra*). Though it was not mentioned that the judgment in *D. S. Dagar's* case (*supra*) is over-ruled, by implication, it is so.

5. The applicants filed writ petition, WP(C) No.10776/2016, before the Hon'ble High Court of Delhi, feeling aggrieved by the common judgment in both the OAs. The principal contention urged therein was that the seniority list for the post of Inspectors was revised by the department on its own accord, and thereby the seniority of the Inspectors that was settled in the year 2007, was disturbed and unsettled, in respect of all the persons just on the basis of the judgment of the Tribunal in *D. M. Sharma's* case. Another contention was that the Full Bench did not undertake an exercise regarding equivalence of posts, as was done in *D. S. Dagar's* case, and that the observation made by it to the effect that the judgment of the Hon'ble Supreme Court in *SI Roop Lal* was not considered in *D. S. Dagar's* case by the Tribunal, is factually incorrect. Taking those aspects into account, the High Court allowed the writ petition, set aside the orders in the OAs, and remanded the matter back to the Tribunal for consideration of those aspects

by the Full Bench. While summing up, it was directed that the Full Bench needs to consider the aspect of equivalence, and thereafter it may either by itself decide the other issues raised by the applicants, or send the matter back to the Division Bench. It is in this background, that the OAs are once again heard by the Full Bench. Not only the issue, pertaining to equivalence of the posts, but also other issues raised in the OAs, are argued at length.

6. We heard Shri Pradeep Dahiya, learned counsel for the applicants, and Shri Hanu Bhaskar, Shri R. V. Sinha and Shri Amit Anand, learned counsel appearing on behalf of the respondents.

7. The facts in detail have been furnished on more occasions than one in this marathon litigation. Not only the facts but also the issues, were discussed at length. The Full Bench that heard the case has covered the entire factual matrix and legal issues. The matter went before the Hon'ble High Court of Delhi, and as a result of the order passed therein, it was remanded.

8. It is not in dispute that CBI draws officials from various organizations to meet their requirement, from time to time. While in case of most of the departments of the Government, the work pattern is specific and definite, in the case of CBI, not only the quantum of work, but also the quality thereof, keeps on changing. The quantum of work depends on the number of cases that are referred to it by the State of Central Governments, and at times, by the Courts. It has no definite inflow, comparable to other civil police organizations. Nor it is entrusted with a definite work, such as protection of law and order, or boundaries of the country, or securing of industrial peace.

9. Once, the CBI is entrusted with a case, it has to carry out the investigation, which in turn resembles, in procedure, with the investigation by the civil police administration, in the context of registration of FIRs, filing of charge-sheets, etc. However, the nature of investigation to be undertaken by the CBI substantially differs from the one, in the conventional policing. It can be into serious crimes or organized crimes, or, at times, economic offences, or issues of anti-corruption. Many a time, expert knowledge and acquaintance with certain specific activities becomes essential. For instance, if the investigation is into an economic offence, the assistance of persons acquainted with the income tax and other relevant financial procedures becomes necessary. If the investigation involves examination of issues pertaining to export or import, assistance of persons having knowledge in that field would be of much use. It is on account of these reasons that, CBI draws such officials from various organizations.

10. The officials so drawn from other organisations, may return to their parent departments after some time, or may choose to get absorbed in CBI itself. While the deputation of employees from other organisations for a limited period may not present any difficulty as such, absorption of such persons into the organisation presents a problem regarding interpolation of their names in the seniority list of the concerned cadre.

11. The Government of India, in the Department of Personnel & Training, have been issuing guidelines from time to time, prescribing the manner in which the inter se seniority of such persons must be decided. For example, in office memorandum dated 29.05.1986 issued by the Department of Personnel & Training, the following principle was enunciated:

"(iv) In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for "Transfer on deputation/Transfer"), 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

- 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 later.

The fixation of seniority of a transferee in accordance with the above principle will not, however, affect any regular promotions to the next higher grade made prior to the date of such absorption.

In other words, it will be operative only in filling up of vacancies in higher grade taking place after such absorption.

In cases in which transfers are not strictly in public interest, the transferred officers will be placed below all officers appointed regularly to the grade on the date of absorption."

This memorandum fell for consideration before the Hon'ble Supreme Court in SI Roop Lal's case. It was observed that the expression "whichever is later", does not accord with the settled proposition of law, and on the other hand, it will lead to serious consequences, and that the correct way of presenting the things is to treat the expression as "whichever is earlier".

This was taken note of in office memorandum dated 27.03.2001.

Thus, it becomes clear that if the employee taken on deputation held an equivalent post in the parent organisation, he is entitled to count that service, for the purpose of seniority.

12. Not only in CBI, but also in many services and organisations, provision exists for deputation or transfer as a method of filling up of the posts. Such transfers are required to be from persons holding analogous posts. In their office memorandum dated 07.03.1984, the Department of Personnel & Training laid

down the following criteria to determine the analogous nature of the posts:

"(i) Though the scales of pay of the two posts which are being compared may not be identical, they should be such as to be an extension of or a segment of each other, e.g. for a post carrying the pay scale of Rs.1200-1600, persons holding posts in the pay scale of Rs.1100-1600 will be eligible and for a post in the scale of Rs.1500-2000, persons working in posts carrying pay scales of Rs.1500-1800 and Rs.1800-2000.

(ii) Both the posts should be falling in the same Group of posts as defined in the Department of Personnel and Administrative Reforms Notification No.21/2/74-Estt.(D) dated the 11th November, 1975.

(iii) The levels of the responsibility and the duties of the two posts should also be comparable.

(iv) (a) Where specific qualifications for transfer on deputation/transfer have not been prescribed, the qualifications and experience of the officers to be selected should be comparable to those prescribed for direct recruits to the post where direct recruitment has also been prescribed as one of the methods of appointment in the recruitment rules.

(b) Where promotion is the method of filling up such posts, only those persons from other Departments may be brought on transfer on deputation whose qualifications and experience are comparable to those prescribed for direct recruitment for the feeder grade/post from which the promotion has been made."

13. In SI Roop Lal's case, the initial deputation and subsequent absorption of the appellant was from the BSF to the Delhi Police. There also, the question of equivalence or analogous nature of posts in the lending and borrowing departments, as in the present case, fell for consideration. Their Lordships referred to the judgment in *Union of India v P. K. Roy & others* [1968 2 SCR 186], and identified the following criteria for that purpose:

"(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"

In the context of examination as to whether these criteria were fulfilled by the employees, who were parties to that case, the necessity to deal with the same in detail was obviated on account of the fact that the respondents therein did not dispute the fulfillment of the first three criteria. This is evident from the following observation in the judgment:

"...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 BSF and Sub-Inspector (Executive) in the 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...."

This judgment was referred to in D. S. Dagar's case. However, we do not find a detailed discussion on the issue of equivalence. The reason was that the applicant therein did not place the relevant material. That is evident from the following observation:

"7. From the above, it can conveniently, therefore, be stated that when a person is working in the parent department and is taken on deputation and subsequently absorbed, he would only be entitled to count his earlier service for purposes of seniority in case the nature of duties of the post are identical; responsibility and powers exercised are similar, minimum qualifications prescribed for the posts are same and salary of the posts is the last criteria that has to be seen. The court approves the earlier decision to hold that if first three conditions are satisfied, the fact that salaries of two posts are different would not make any difference.

8. At this stage, we just cannot restrain but observe that when such a situation arises, the applicants must allege, in the petition filed in the Tribunal, the grounds referred to above. It should not be left for the Tribunal to determine the same by making vague assertions. It is true that Code of Civil Procedure does not apply to the proceedings before the Tribunal but still the Tribunal has the trappings of a court. Unless a fact is pleaded, ordinarily it should not be allowed to be agitated. Just exceptions creep in where no prejudice is caused or similar situation can arise. Otherwise in peculiar facts, it can be taken that he does not mean to averring a particular fact to be considered."

In D. M. Sharma's case, the Division Bench of the Tribunal extracted the relevant portion of the judgment of the Hon'ble Supreme Court in SI Roop Lal's case, and observed as under:

"26. Accordingly, it would be seen that two posts would be treated as equivalent if they have equal status and responsibility. While determining equivalence the qualification and the pay scales for the two posts in question too will have to be given due consideration. In the ultimate analysis, what is to be seen is the status and responsibility of the two posts and the pay scales of the two posts by itself would not be decisive of the issue especially when the other facts, having regard to the facts mentioned by the Hon'ble Supreme Court as aforesaid, justify such equivalence. The learned counsel for the respondents was unable to point out if these facts were given any consideration by the respondents while holding the two posts as not equivalent. He also did not put forth any material as to the nature of duties, responsibilities, powers, and the minimum qualification for the two posts which would negate the equation between two posts. Besides the fact that the respondents themselves have already granted the benefits sought by

the applicant herein to the persons joining their services from CRPF in the post of Inspectors clinches the issue as the same cannot be denied to the applicant mainly for the reason that the equivalence between the two posts has already been established by the respondents' own conduct as such. If the person joining the respondents services from the cadre of Inspector in CRPF after 14.12.1999 can be given benefit of equivalence, there is no reason why such benefits cannot be given to the applicant only for the reason he joined the respondents' services prior to this date, especially when all other things remaining the same."

14. Keeping this background in view, the direction issued by the High Court of Delhi for undertaking comparison and equivalence of duties needs to be undertaken.

15. The first factor is about the nature of duties of the posts. It has already been mentioned that CBI draws personnel from specific departments for its needs. The overall nature of the duties to be undertaken by CBI may be wide in its purport. That, in turn, would have various facets, such as the angle of criminal law, the angle of economic offences, the angle of security threats, and the angle of conspiracy. When persons, who are conversant with any or some of these facets, are drawn, there exists a meeting point of the duties of the Inspectors of CBI, on the one hand, and persons holding equal status, but drawn from other departments, on the other hand. If the nature of duties is required to be identical, and not similar, the possibility to draw personnel from other departments does not exist at all. The reason is that it is the personnel in CBI alone that would discharge the duties of particular nature. Therefore, the comparison is required to be to the level of similarity, and not to the extent of being a mirror image or a true replica. Once the nature of duties of the officials drawn from other departments are akin to at least a facet of the nature of duties that are to be discharged by the officials of CBI, the condition tends to be fulfilled.

16. The next factor is the responsibilities and powers exercised by the officer holding a post, and the extent of territorial or other charge held or responsibilities discharged. The responsibilities of the officers in the departments, from which CBI draws the personnel, are almost similar from the point of view of the extent of territorial charge, and almost similar to the responsibilities discharged. The very fact that the Staff Selection Commission conducts a common examination for recruitment to the posts of Sub Inspectors in CBI and other Central Police Organisations, such as, CISF, CRFP, etc., would strengthen this view. From a logical point of view also, an inference can be drawn to the effect that the very fact that CBI has chosen some selected departments for drawing personnel, and not others, would indicate that it is only on being satisfied about the similarity in this regard that the personnel are drawn. The factor mentioned in the first aspect would also become relevant to a larger extent in relation to this also.

17. Coming to the third one, namely, the minimum qualifications, the pleadings in the OAs would be sufficient to buttress this. In para 4.13(i) of OA

No.3314/2012, the applicant stated that the Staff Selection Commission, for the post of Sub Inspectors in CBI and Central Police Organisations, including CISF, conducts written examination and interview, and the candidates are allotted to various departments, depending on their ranking. In other words, the qualifications for appointment to these posts are same. It is a different matter that the posts in the respective departments or organisations carry slightly different pay scales. There again, the difference is not much. The criteria prescribed for promotion are also on the same lines. Obviously, for that reason, if a candidate on deputation earns promotion in his parent organisation, that is reflected in the CBI also. Similar proximity exists in respect of the officials drawn from other departments.

18. The last factor is about the salary of the post. The Hon'ble Supreme Court itself has observed categorically that if the functional similarity exists on the first three factors, the small difference as to the salary should not make much of difference. Whatever may have been the difference of salary in the parent department, on the one hand, and the CBI, on the other, the gap stood filled with the recommendations of the successive Pay Commissions.

19. We are also fortified by the adjudication undertaken by the Hon'ble Supreme Court in SI Roop Lal's case. No difficulty or complexity was noticed in the equation of the duties and functions in the BSF with those in the Delhi Police. If one takes into account, the disparity of duties of both the organisations, on the one hand, and that between the CBI and the organisations from where it draws personnel, on the other hand, the answer invariably would be that, the similarity is more approximate, if not evident, in the case on hand.

20. In the ultimate analysis also, the question of the CBI drawing officials from the departments which do not have any functional parity, albeit partially, does not arise. Just as in each organisation branches exist for various specializations, in the CBI also, the personnel need to be trained differently, to deal with separate and typical situations. The ability of an inspector to investigate a crime may not be of much use to unearth white-collar and economic offences, if he is specialized in a different branch. Similarly, an officer, who is good at analyzing the economic offences, may not be able to focus on espionage issues. The illustrations can be multiplied. The effort is to drive home the point that the CBI is required to have a rainbow of specializations, and to draw and train the personnel to excel in each of the colors. That being the ground reality, one cannot expect the equivalence or parity of all officials with mathematical precision. Even among the inspectors or higher officials, who are initially recruited in the CBI itself, some may be specialized in one field, and the others in different fields. We, therefore, hold that there exists parity and similarity between the officials originally borne on the rolls of CBI, on the one hand, and those drawn from other departments, and absorbed later, on the other. When analysed on the touchstone of the guidelines issued by the DoP&T, and the law laid down by the Hon'ble Supreme Court.

21. The seniority lists from time to time have been prepared strictly in accordance with law, and it cannot be said that the applicants have suffered any detriment. Another factor which needs to be taken into account is that had there been any serious injustice to the employees originally borne on the cadre of the CBI, hundreds and thousands of persons recruited over the decades would not have kept quiet. It is only the two applicants herein that have kept the litigation alive for such a long time. Their contention that the entire seniority is unsettled, is incorrect. Whenever a principle of law is applied, the changes are bound to occur. They cannot expect the things to remain static, even when the law is otherwise.

22. In view of the discussion undertaken by us, we hold that the judgment rendered by the Division Bench in D. S. Dagar's case does not represent the correct legal position, and that the one in D. M. sharma's case accords with the principles laid down by the Hon'ble Supreme Court on the subject. As a result, we dismiss the OAs. There shall be no order as to costs.