

(2012) 02 DEL CK 0259
In the Delhi High Court
Case No : Writ Petition (C) 919 of 2012

Mukesh Kumar

APPELLANT

Vs

Commissioner of Police Delhi and Others

RESPONDENT

Date of Decision : 23-02-2012

Acts Referred:

Delhi Police (Appointment and Recruitment) Rules, 1980 — Rule 22

Citation : (2012) 02 DEL CK 0259

Hon'ble Judges : V.K. Jain, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Vishwendra Verma, for the Appellant; V.K. Tandon Proxy Counsel for Mr. L.K. Garg, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.

CM 2037/2012

Allowed subject to all just exceptions.

WP(C) 919/2012

1. This writ petition is directed against the order dated 20.09.2011 passed in OA 3393/2011 by the Central Administrative Tribunal, Principal Bench, New Delhi. The petitioner's Original Application was dismissed at the admission stage itself, in view of the speaking order passed by the respondents on 23.09.2010.

2. The petitioner had earlier filed OA 1980/2009 in which he sought seniority from the date he was appointed in the Indo-Tibetan Border Police (ITBP). Before we set down the order passed in that Original Application, it would be necessary to point out that the petitioner is currently working in the Delhi Police. Earlier, he was appointed as a Sub-Inspector with Indo-Tibetan Border Police (ITBP) on 05.07.1993 on the basis of a Combined Graduate Level Examination, 1991 conducted by the Staff Selection Commission. Thereafter, he was on deputation

to the Special Protection Group (SPG) with effect from 26.09.1996. He applied for the post of Sub-Inspector (Executive) in the Delhi Police in 1997 and he was selected for that post and joined the Delhi Police on 26.11.1999 after tendering technical resignation to his parent department. It is in this background that the earlier Original Application 1980/2009 was filed, whereby the petitioner sought that his seniority be fixed by taking into account his service with the Indo-Tibetan Border Police (ITBP).

3. The said Original Application No. 1980/2009 was disposed of by an order dated 20.07.2010 by the Tribunal directing that the petitioner may prefer an additional representation within two weeks and that the respondents would pass a reasoned and speaking order within two months of the receipt of such a representation informing the petitioner with regard to fixation of his seniority, particularly vis-a-vis, the private respondent (Shri Anil Kumar). It was also directed that, depending upon the seniority fixed by the respondent, they would consider him for promotion in accordance with law. Liberty was also given to the petitioner to seek redressal in accordance with law, if he was aggrieved by the speaking order, which was to be passed by the respondents.

4. Thereafter, the respondents passed a speaking order on the representation made by the petitioner, on 23.09.2010. The relevant portion of the order reads as under:-

The plea taken by the applicant in respect of S.I. Anil Kumar (Now Inspector) does not cover his case as S.I. Anil Kumar was taken on deputation from CRPF w.e.f. 1.07.1999 and he was permanently absorbed in Delhi Police on 13.01.2000. As per judgment dated 14.12.1999 of the Hon''ble Supreme Court of India in Civil Appeal No. 5363-64/97-Roop Lal & Ors. Vs L.G., Delhi & Ors. and judgment dated 11.01.2000 of the Hon''ble CAT, Delhi in O.A. No. 1562/1994 Jai Bhagwan Vs UOI & Ors. he was entitled to get the service rendered in his parent Department. Hence, he was given the seniority as per the service rendered by him in his parent department. As regards applicant, he was appointed in Delhi Police through direct recruitment on the basis of Examination 1997 conducted by the SSC. As per FR 22, the applicant is entitled for counting his previous service rendered in ITBP for pensionary benefits only but not for inter-se-seniority/seniority.

In pursuance of Hon''ble CAT, New Delhi's judgment/order dated 20.07.2010, inter-se-seniority the case of applicant SI (Exe.) Mukesh Kumar No. D/3512 has been examined in this Hdqrs. in view of Rule 22 of Delhi Police (Appointment & Recruitment) Rules, 1980 and S.O. No. 291/1995 as well as FR-22 by the Commissioner of Police, Delhi the inter-se-seniority of directly recruited SI (Exe.) in Delhi Police was fixed under Rule 22 of Delhi Police (Appointment & Recruitment) Rules, 1980 and S.O. No. 291/1995. His inter-se seniority was also fixed alongwith his batch mates on the basis of marks obtained in the entrance examination/interview and marks obtained at PTC. Hence, the inter-se-seniority fixed by this Hdqrs. hold good.

In view of facts explained above, the representation filed by the SI (Exe.) Mukesh Kumar No. D/3512 is hereby rejected. He may be informed accordingly.

5. Being aggrieved by the speaking order, in view of the liberty granted to him, the petitioner filed the Original Application No. 3393/2011, wherein the impugned order dated 20.09.2011 has been passed. The Tribunal has considered the speaking order dated 23.09.2010 and found that there was nothing wrong with the same. The main point that arises in this case is that Anil Kumar, who is alleged to be junior to the petitioner, was, in fact, on deputation from Central Reserve Police Force (CRPF) with effect from 01.07.1999 and was permanently absorbed on 13.01.2000. On the other hand, the petitioner was appointed to the Delhi Police through direct recruitment on the basis of an examination and he had joined the Delhi Police on 26.11.1999. Consequently, the two cases are entirely different. Whereas, in the case of Anil Kumar, he had joined the Delhi Police on 01.07.1999, the petitioner, as already indicated above, joined later on 26.11.1999. In any event, Anil Kumar had been given the benefit of past service in view of the decision of the Supreme Court in the case of Roop Lal and Others v. LG, Delhi and Others Civil Appeal No. 5363-4/1997.

6. The learned counsel for the petitioner sought to invoke FR 22 in order to substantiate his case. However, we find that FR 22 does not at all deal with seniority and it is only concerned with pay fixation. Insofar as the petitioner is concerned, there is no difficulty with regard to pay fixation inasmuch as the petitioner would be entitled to count his service in Indo-Tibetan Border Police (ITBP) for pensionary benefits, but not for inter se seniority.

7. The Tribunal, after considering the case of the petitioner, inter alia, passed the following order:-

4. After hearing the learned counsel for the applicant and perusing the record on file, we are of the opinion that this OA can be decided at the admission stage itself as the orders placed at Annexure A-1, passed by the respondents are very clear and self-explanatory. A perusal of the above mentioned order shows that the applicant was appointed in Delhi Police through direct recruitment on the basis of examination conducted by the SSC whereas Shri Anil Kumar was taken on deputation from CRPF with effect from 1.07.1999. Thus, while one is a case of direct appointment, the other is case of deputation. It is also seen that the applicant joined Delhi Police on 26.11.1999 and so did respondent no.3 Shri Anil Kumar from 1.07.1999. But respondent no.3 has been granted seniority from 1993 since he was on deputation whereas seniority of the applicant has been counted from the date of his joining the Delhi Police.

5. In the above facts we are of the opinion that no case has been made out by the applicant for allowing the reliefs sought by him. OA is accordingly dismissed being devoid of merit.

8. In this background, we see no reason to interfere with the order passed by the Tribunal, which is impugned before us.

The writ petition is dismissed.