
(2010) 01 DEL CK 0223

In the Delhi High Court

Case No : Writ Petition (C.) No. 10298 of 2009

Sh. Vinay Kumar

APPELLANT

Vs

The Commissioner of Police and Others

RESPONDENT

Date of Decision : 21-01-2010

Acts Referred:

Citation : (2010) 01 DEL CK 0223

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : D.S. Chaudhary, for the Appellant; Saleem Ahmed, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner challenges the order dated 30th April, 2009 passed in OA No. 1170 of 2008 titled Shri Vinay Kumar v. Commissioner of Police and Ors. dismissing his petition seeking seniority over respondents No. 2, 3 and 4.

2. The petitioner had joined Delhi Police as Constable on 25th April, 1981. At the time the petitioner was appointed as Constable, 13 persons had been appointed by common proceedings and the petitioner was ranked at No. 7 and respondents No. 2 to 6 were ranked as junior to him. However, the respondent No. 4, Mr. Cyperian Bara, had not been selected along with the petitioner as he was enlisted on 4th May, 1974 earlier to petitioner and was confirmed on 13th August, 1978.

3. The petitioner had filed original application being OA No. 263 of 2008 titled Vinay Kumar v. Commissioner of Police, Delhi, contending inter alia that his junior Constable, Cyperian Bara, had been promoted as Head Constable with effect from 16th October, 2006 whereas he should have been promoted as Head Constable. The petitioner's date of birth is 1st November, 1969 and he was enlisted on 25th April, 1989 and confirmed on 25th October, 1991 whereas Cyperian Bara's date of birth is 18th October, 1954 and he was enlisted on 4th

May, 1974 and he was confirmed on 13th August, 1978 and was absorbed as Constable Dog Handler on 11th August, 1989. The said original application was disposed of by order dated 4th August, 2008 directing the respondent No. 1 to consider the representation filed by the petitioner. Pursuant to the order of the Tribunal dated 4th February, 2008, the respondent No. 1 passed the order dated 11th April, 2008 rejecting the representation of the petitioner.

4. Aggrieved by the said order dated 11th August, 2008 of respondent No. 1, the petitioner filed another original application being OA No. 1170 of 2008, which has also been dismissed by order dated 30th April, 2009 against which the present writ petition has been filed by the petitioner.

5. The Tribunal while dismissing the petition has noted that the respondent No. 4 was confirmed on 13th August, 1978 whereas the petitioner was confirmed on 25th October, 1991. The respondent No. 4 had also been enlisted much prior to petitioner on 4th May, 1974 whereas the date of enlistment of the petitioner is 25th April, 1989. Reliance was also placed on OM dated 3rd July, 1986 of Ministry of Personnel, Public Grievances and Pension, contemplating that the seniority of police personnel was being decided on the basis of date of confirmation which is done once a service in the initial rank is accepted as per provision in Rule 18 of Delhi Police (Promotion and Confirmation) Rules, 1980.

6. The respondent No. 1 had categorically stipulated in its order dated 11th April, 2008 that the confirmation of the petitioner had been delayed for specific reason as he was found to be lethargic and the competent authority had directed delay by period of six months on account of the performance of the petitioner. The order delaying the confirmation of the petitioner was not challenged by him.

7. The DPC for promotion to the post of Head Constable had assessed the suitability of the employees for promotion on the basis of their service record with particular reference to the confidential reports for five preceding years irrespective of qualifying service prescribed in the service/recruitment rules and officers having reports of at least three "good" and above without any "below" or adverse reports even for a small period during the last five years were empanelled. The respondent No. 1 had also relied on OM No. 20011/5/90-Estt. (D), Government of India, Department of Personnel and Training, dated 4th November, 1992 contemplating that the seniority of a person regularly appointed to a post will be determined by the order of merit indicated at the initial appointment and not according to the date of confirmation.

8. Learned Counsel for the petitioner has very emphatically relied on (1992) 2 SCC 715, Direct Recruit Class II Engineer Officers Association v. State of Maharashtra and Ors. deciding about the inter se seniority between the direct recruits and promotees. It was held that where initial appointment is not made by following procedure laid down by the rules but appointee continues in the post uninterruptedly till regularization of his service in accordance with the rules, the period of officiating service will be also counted. It was further held that where

initial appointment is only ad hoc, made as a stop-gap arrangement and not according to the rules, the officiation in such post cannot be taken into account for considering the seniority. Apparently, the ratio of the decision relied by the learned Counsel for the petitioner is not applicable in the facts and circumstances of the present case. The respondent No. 4, Cyperian Bara, was not only confirmed before the petitioner but he was also enlisted as Constable much prior to petitioner on 4th May, 1974 whereas the petitioner was enlisted as Dog Handler on 25th April, 1989. In the circumstances, the petitioner cannot claim seniority over Cyperian Bara and for similar reasons he cannot claim seniority over other respondents.

9. In the circumstances, learned Counsel for the petitioner is unable to point out any such illegality or irregularity in the order of the Tribunal dated 30th April, 2009 which would require interference by this court. The writ petition, in the facts and circumstances, is, therefore, without any merit and it is dismissed.