



\$~11

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

%

DECIDED ON: 24.12.2014

+

W.P. (C) 3626/2014

RAJAN BHAGAT

..... Petitioner

Through: Mr. Dhruva Bhagat with Ms. Amita Kalkal and Ms. Aditi Gupta, Advocates.

versus

UNIN OF INDIA & ANR.

..... Respondents

Through: Mr. Abhay Prakash Sahay, CGSC on behalf of UOI with Mr. Deepak Gupta, Advocate.

CORAM:**HON'BLE MR. JUSTICE S. RAVINDRA BHAT****HON'BLE MR. JUSTICE VIPIN SANGHI****S.RAVINDRA BHAT, J. (OPEN COURT)**

1. Issue notice. Mr. Abhay Prakash Sahay, CGSC accepts notice on behalf of respondents.
2. The petitioner is aggrieved by an order of the Central Administrative Tribunal (hereafter referred to as 'CAT') dated 1.5.2014 whereby his application i.e. OA No.1148/2012 was rejected. The petitioner had claimed quashing of a communication dated 26.12.2011 rejecting his request for assignment of seniority on the basis of the judgment of the Supreme Court in *Union of India v. Harish Chander Bhatia*, 1995 (2) SCC 48 w.e.f. 10.10.194 when he was appointed on *ad hoc* basis to the cadre of DANIPS.



3. The petitioner was working in the Delhi Police when he was promoted as Assistant Commissioner of Police on 4.8.1994 under Rule 24 (1) of the Delhi Andaman & Nicobar Islands Police Services Rules (DANIPS Rules) against a sanctioned post. This was pursuant to the Central Ministry of Home Affairs' letter issued in that regard. The initial *ad hoc* appointment was followed by substantive appointment in 1997. A subsequent Notification dated 12.6.2000 clarified that the appointment of the petitioner was to be from 1997. The DANIPS cadre had seen the issue of seniority being carried in appeal to the Supreme Court in *H.C. Bhatia's case (supra)*, where that Court observed that the long period of service spent beyond six months (in accordance with Rule 25 of the DANIPS Rules) could not be ignored while reckoning seniority. This led to second and subsequently third round of litigation. The seniority lists prepared at that stage were challenged by direct recruit officers who, eventually, succeeded in their challenge and on 26.2.2003, the CAT allowed their applications and quashed the seniority list. It was held that OM governing the seniority - contained in the Circulars/Memos dated 7.2.1986 and 3.7.1986 were inapplicable. Even the Review Petition was rejected on the ground that the amendment relied upon by the promotees in the case was made in 1991. That order of the CAT in OAs 1418/2002, 1435/2002 and 1611/2002 was challenged by the promotees as well as the Union of India. The latter filed W.P. (C) 598/2004.

4. All the above aspects were taken into account by the CAT in its order made in the present case in the following terms: -



27. We further take note of the submissions made in the additional affidavit filed by the respondents that the matter was examined in the Ministry in the light of the representations made by the direct recruit officers, the judgment in the case of *Union of India & Anr. Versus H.C. Bhatia & Others* (supra), orders of the Tribunal in cases of *Jaipal Singh & Ors. Versus Union of India and Others* (OA No. 384/1996) and *Shri S.K. Dua versus Secretary, Ministry of Home Affairs & Others* (OA No. 1739/1996), the decision of Hon'ble High Court in the matter of *Shri Prabhakar versus Union of India & Others* [CWP No.2012/1999], the provisions contained in DACIPS Rules, 1971 and the general principles of fixation of seniority laid down by the Government from time to time and the seniority of all those officers who officiated in DANIPS under Rule 25(1) and (2) of DANIPS Rules, 1971 was re-fixed by taking the dates of their officiating appointment as the dates of their regular appointment in the service and a revised seniority list of officers appointed to Grade-II of DANIPS was prepared and published vide order dated 14.05.2002. However, it was challenged by some of the direct recruits vide OA Nos. 1418/2002, 1435/2002 and 1611/2002 and the Tribunal vide its order dated 26.02.2003 quashed the seniority list with the direction that the same be prepared as per the decision of the Hon'ble Supreme Court in the case of *Union of India and Another versus Harish Chander Bhatia and Others* (supra). It is further submitted by the respondents that against the aforesaid order of the Tribunal, a Writ Petition No.598/2004 had been filed by the Ministry. While the matter was still pending, a revised seniority list was further prepared and filed in the Hon'ble High Court on 24.10.2005 in compliance of its directions in another WP(C) No.4625-26/2005 titled as *Ram Kumar Sharma and Others versus Union of India and Others*. These matters are still pending consideration.

28. In the light of these facts, we feel that any order at this stage would only add to complicating the matter further. It is



better that the Hon'ble High Court apply their mind and lay down the guidelines. We are of the considered opinion that the Tribunal is only entrusted with the responsibility of interpreting the law and find that the respondents have acted as per the law. In the decisions cited within, the Hon'ble Courts have gone strictly by the ratio that what is provided by the law should be implemented. However, the applicant seeks to attack beyond what is provided by the rules."

5. The petitioner contends that the decision in W.P.(C)598/2004 and connected cases was delivered by this Court on 28.7.2014 and the correctness of the seniority list based upon rotation of vacancies by treating the promotees as having entered the cadre from the date they joined on officiating basis - provided they were subsequently treated as substantive, was upheld. It is, therefore, contended that this subsequent development ought to put a quietus on the dispute, and the petitioner is entitled to succeed. His period spent on *ad hoc* or officiating basis should also be reckoned for the purposes of seniority, given that he was granted substantive appointment as far back as in 1997.

6. Learned counsel for the respondents submits that the terms of appointment of the petitioner itself initially clarified that he would not be entitled to seek seniority or other such allied benefits. Specific reference made to paragraph 2 of the appointment letter of 10.10.1994 in this regard. It was also submitted that under Rule 25 of the DANIPS Rules, officiating arrangement is permissible only for six months and given these circumstances, the petitioner could not claim entitlement to seniority for any date prior to 1997 when he was



actually appointed on substantive basis.

7. This Court has considered the submissions. The decision in *Union of India v. H.C. Bhatia (supra)* mandated that the respondents had to give effect to the officiating period or periods spent by officers in the cadre having regard to the overall circumstances of the case. The seniority list drawn by giving effect to such position and taking into account the Circulars of the Central Government, issued in regard to seniority, specially the OM dated 3.7.1986 required rotation of vacancies for the purposes of assigning *inter se* seniority as between direct recruits and promotees. The CAT fell into an error in the decision in OA 118/2002, 1435/2002 and 1611/2002 in proceeding on the assumption that such Circulars were not binding and could not be applied given the structure of the Rules. The CAT was of the opinion that the amendments made to the DANIPS Rules was only effective from 1991. This Court, however, was of the opinion that the CAT's decision was wrong in view of the mandate in *H.C. Bhatia's case (supra)* and especially considering that even in 1988, amendments were made to the rules authorizing the application of rota rule to the extent employees or officers were available, in any particular quota. Even according to the CAT's decision in OA 1418/2002 and connected cases, the Rules of 1991 would apply which, in turn, means that rotation in vacancies had to be resorted to for the purposes of seniority to the extent of availability of officers from one stream or the other. In these circumstances, following the judgment in *Trilochan Singh v. UOI & Ors. W.P.(C)5973/2003*, the impugned order has to be set aside. Ordered accordingly. The



petitioner is entitled to the consequential benefits of assignment of seniority from the date he joined the DANIPS on 10.10.1994.

8. The writ petition stands allowed.

**S. RAVINDRA BHAT
(JUDGE)**

**VIPIN SANGHI
(JUDGE)**

DECEMBER 24, 2014
/vikas/