

**(2002) 11 DEL CK 0113**

**Delhi High Court**

**Case No:** Civil Writ Petition No. 6024 of 1998

Sh. Dip Lal Sharma and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision:** Nov. 12, 2002

**Hon'ble Judges:** B.N. Chaturvedi, J; B.A. Khan, J

**Bench:** Division Bench

**Advocate:** S.M. Garg, for the Appellant; D.K. Singh, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Khan, J.

Petitioners are whipping up a dead horse and are wanting their pre-absorption service to be counted towards their seniority with consequential benefits. Their cause is age-old and has been declared so even by the Supreme Court decades back but they still want to reopen it by catching at straws.

2. Petitioners were originally appointed as LDCs or in equivalent grades in the lower formations of the Army between 1941-1948 and were later absorbed in the Armed Forces Headquarters "AFHQ" from 1951-1958 after being declared surplus. When they had joined service, one Govt. Memo of 1949 provides for determination of seniority on the basis of length of service. But subsequently OM's dated 12-8-59 and 21-12-63 were issued providing for counting of their service in LDC grade from the date of their appointment in the "AFHQ" for purposes of their seniority. They filed CWP Nos. 192 & 941/72 against this which were dismissed by order dated 22-4-76 on grounds of delay and laches. While doing so the Court observed:-

"Both 1959 and 1963 Memorandum could not be said to conform to the model provided by 1949 M.O. and to the extent of inconsistency they are invalid.

It also said:-

"This is Therefore a strong case for an executive review at an appropriate level within a reasonable time....."

3. Petitioner made representations on the strength of this which were considered and decision communicated to them on 1-2-1980. Petitioners filed CWP No. 5942/80 against this before the Supreme Court which was also dismissed by order dated 27-8-1987 observing that the matters in dispute were stale.

4. While all this was going on, the "AFHQ" clerical rules of 1968 were challenged by some employees in CWP No. 423/75 claiming that seniority in the grade of LDCs should be determined on the basis of length of service and not on the date of confirmation. This petition was allowed by judgment dated 8-4-81 and was eventually affirmed by the Supreme Court in C.A. No. 4133/84 (D.P. Sharma v. UOI), benefit in whereof was also extended later to writ petitioner in CWP No. 493/90 (R.K. Khosla v. UOI). In compliance to all this, a seniority list dated 20-4-92 was issued under O.M. dated 21-12-63 and promotions to the grade of UDC, Asstt. and ACSO were reviewed on the basis of that.

5. Petitioners found a fresh cause in this and filed OA No. 1782/92 which was dismissed and so was the review taken against it. Hence this petition representing petitioners last-ditch effort to revive the otherwise dead issue.

6. While dismissing petitioners' OA, Tribunal noted:-

"Applicants seek to support this claim on the basis of the Delhi High Court's Single Bench judgment dated 8.4.81 in CWP No. 423/75 and connected cases, which was eventually upheld by the Hon'ble Supreme Court in D.P. Sharma's case (Supra), which was later extended in R.K. Khosla's case (Supra) and still later in H.L. Gauba's case (Supra), on the basis of which respondents published the final seniority list of LDCs in AFHQ on 20-4-92 but it must be remembered that in CWP No. 423/75 the issue before the Delhi High Court Single Bench was not whether LDCs who joined AFHQ from lower formations in defense Ministry were to be allowed to count their services outside AFHQ for the purpose of seniority as LDCs in AFHQ or not, but whether their seniority as LDCs in AFHQ would count from the date of their joining AFHQ (the principle of length of service) or from the date of confirmation upon their passing the UPSC typing test. It is the principle of length of service (i.e. from the date of joining AFHQ) which was upheld by the Delhi High Court Single Bench in CWP No. 427/75 and was subsequently upheld in D.P. Sharma's case (Supra) and later extended in R.K. Khosla's case (Supra) and H.L. Gauba's case, on the basis of which Respondents have issued their final seniority list of LDCs in AFHQ on 20.4.92.

7. This should have answered petitioners' grievance squarely, but their counsel, Mr. Garg has taken a new route and is seeking enforcement of the observation of this court in judgment dated 22.4.76 whereby petitioners' CWPs 192 and 941/72 were dismissed though observing that MO of 1962 was invalid for inconsistency with Memorandum of 1949. He submits that once it was declared invalid, it could not

have been acted upon again in drawing up the seniority list dated 20-4-92. The submission appears attractive on the face of it but fails on scrutiny because petitioners overlook that their writ petitions were dismissed and any observation made in these by the Court was not enforceable. Their cause stands sealed by the dismissal of their petition on the subject matters by the Supreme Court also. They should, Therefore, reconcile to the settled position and give up their chase for good.

Petition is dismissed with this.