

Bal Kishan

Vs

Delhi Administration and Another

Civil Appeal No. 1106 of 1989

(K. Jagannatha Shetty, A. M. Ahmadi JJ)

06.10.1989

JUDGMENT

JAGANNATHA SHETTY, J. –

1. This appeal by leave is directed against the judgment of the Central Administrative Tribunal dated November 11, 1988 in O.A. No. 1677 of 1988. The events leading to the appeal are these :

On February 20, 1958, Bal Kishan, the appellant, was enrolled as a Constable in Delhi Police. On February 1, 1964, he was promoted to officiate as Head Constable. His confirmation as Head Constable was delayed on account of certain adverse remarks against him. Those adverse remarks were later expunged and he was confirmed in 1969. This has delayed his promotion as Sub-Inspector (SI). Complaining about the belated confirmation and seeking further promotion, he filed a writ petition in Delhi High Court. The High Court by judgment dated September 25, 1984 allowed the writ petition and directed the respondents to confirm the appellant w.e.f. February 1, 1966 with all consequential benefits. The operative portion of the order of the High Court is as under :

"It is apparent that the petitioner is to be considered as a permanent Head Constable with effect from February 1, 1966. In that view of the matter, on re-fixation of his seniority in that rank, he is to be considered for promotion as Assistant Sub-Inspector from the date his next junior was promoted as such. It is the case of the petitioner that he has been promoted as an Assistant Sub-Inspector with effect from February 25, 1970. This is not disputed by the respondents. But in view of my findings that the petitioner is deemed to be permanent from February 1, 1966, his seniority as an Assistant Sub-Inspector from the date his next junior was promoted is to be re-fixed. If on re-fixation of his seniority as an Assistant Sub-Inspector his next junior or juniors have been considered for promotion as a Sub-Inspector the petitioner be also considered for promotion from that date. The petition is allowed to the extent indicated above."

2. There was no immediate compliance with this order and the appellant had to move the High Court to initiate contempt proceedings against the respondents. To avoid action in the contempt proceedings, the respondents made, perhaps hurriedly several orders giving the benefit of promotion to the appellant. The appellant was confirmed as directed w.e.f. February 1, 1966 and promoted as ASI (Min) w.e.f. July 24, 1967 instead of February 25, 1970. Again he was promoted as SI (Min) w.e.f. May 1, 1980 and confirmed as such w.e.f. July 5, 1983. Further he was admitted to promotion list 'F' (Min) w.e.f. February 18, 1988 and further promoted as Officiating Inspector (Min) w.e.f. April 19, 1988.

3. As a result of these promotions, the appellant practically jumped over several of his seniors. The seniors however, were not given corresponding promotions. They made representations complaining of injustice done to them. There when the respondents realised that they had committed a serious error in giving successive promotions to the appellant overlooking the case of seniors. On May 26, 1988, the appellant was called upon to show cause why his promotions may not be cancelled and his seniority be re-fixed ranking him below his confirmed seniors. The show-cause notice has also stated that upon further examination of his case in the light of numerous representations from his seniors, given to the appellant were fundamentally incorrect and illegal. The relevant portion of the notice reads as follows :

2. The case has further been examined on receipt of numerous representations from your counterparts for giving them due seniority. It is found that while your confirmation as Head Constable (Min) retrospectively as mentioned in para 1(i) above was correct, the remaining action at para 1(ii) to 1(iv) above are not fundamentally right. P.P.R. 13.18 lays down the procedure of confirmation and not regarding seniority. The seniority of lower subordinate was to be reckoned from the date of appointment under the mandatory provision of P.P.R. 12.2(3). It does not say that the seniority may be taken from the date of confirmation. Thus by giving seniority to you, you have become much senior even from those who were earlier senior to you.

3. You are, therefore, called upon to show cause as to why orders dated August 22, 1985, February 19, 1988 and April 20, 1988 mentioned in para 1(ii) to 1(iv) may not be cancelled. Your seniority as Head Constable (Min) will remain below the names of confirmed Head Constables (Min) Rameshwar Singh, No. 291/1830 (800/D) and Kanwar Singh, No. 1654/DAP (801/D). Your reply should reach this Headquarters within 15 days of the receipt of this notice failing which it will be presumed that you have nothing to say in this regard and the case will be decided ex parte on merit.

Sd/- (Arun Bhagat) Addl. Commissioner of Police (Admn.) Delhi.###

4. The appellant replied to the show-cause notice but could not carry conviction. The Additional Commissioner of Police (Admn.) after considering the reply made an order dated October 25, 1988 in the following terms :

"After going through the relevant record available on file, I find that the name of Inspector (Min) Bal Kishan, No. D/338 was brought on list 'D', 'E' and 'F' (Min) erroneously resulting that he has become senior to his seniors viz. HCs (Min) Rameshwar Singh, No. 291/1830/L(800/D) and Kanwar Singh No. 1654/DAP (801/D). Thus I do not find any reason to accept the reply submitted by Inspector (Min) Bal Kishan No. D/338 and hereby confirm the 'show-cause notice' and order as under :

(i) The name of HC(M) Bal Kishan, No. 3058/L is admitted to promotion list 'D' (Min) w.e.f. February 19, 1970. He is promoted to officiate as ASI(M) w.e.f. February 25, 1970 and confirmed as such w.e.f. October 20, 1973 by allotting him range No. 117/D. His name will exist above the name of ASI Bhagat Ram, No. 802/D and below the name of ASI Rameshwar Singh, No. 800/D.

(ii) The name of ASI (M) Bal Kishan No. 117/D is admitted to promotion list 'E' (Min) w.e.f. October 14, 1985. He is promoted to officiate as SI (Min) w.e.f. December 5, 1985. He is confirmed as SI (Min) w.e.f. December 6, 1987 by allotting him range No. D/338. His name will exist at SI. No. 23-A above the name of SI (Min) Khazan Singh, No. D/80 and below the name of SI (Min) Jagdish Singh, No. D/1347 in this Headquarters Notification No. 7837/CB-III, dated March 15, 1988.

(iii) Orders regarding admission of his name to promotion list 'F' (M) w.e.f. February 18, 1988 vide Notification No. 5381/CB-I, dated February 19, 1988 and subsequent promotion as officiating Inspector (Ministerial) w.e.f. April 19, 1988 vide Notification No. 11834/CB-I, dated April 20, 1988, are cancelled.

Sd/- (Arun Bhagat) Addl. Commissioner of Police (Admn.) Delhi No. 42034-50/CB-I, dated Delhi, October 25, 1988.###

5. Challenging the aforesaid order, the appellant preferred an appeal to the Central Administrative Tribunal. The Tribunal has dismissed the appeal. It has observed that the re-fixation of appellant's seniority and consequent reversion was not arbitrary. It was consistent with the provisions of the Punjab Police rules which govern the service conditions of the Delhi Police. The appellant was not legitimately entitled to seniority upon which he was promoted over his seniors. It has no support from the statutory rules. His promotion to the cadre of HCs, ASIs and SIs was unjustified. With this and other conclusion, the Tribunal expressed the view that there was no illegality in the reversion of the appellant and it was corrective action justified under the circumstances.

6. The order of the Tribunal has been assailed in this appeal.

7. There is no dispute that as a result of implementation of the order of the High Court, the appellant has marched over his seniors in every cadre. When the appellant was promoted from cadre to cadre his seniors were not considered for such promotions. Counsel for the appellant did not dispute this fact. He, however, urged that the seniors who were not confirmed within the prescribed time or before confirmation of the appellant were not entitled to retain their seniority above the appellant. On this aspect of the matter we asked Mr. Datta, learned Additional Solicitor General to have the matter re-examined by the respondents. Upon re-examination of cases of the appellant and his seniors in the light of the judgment of the High Court and the relevant rules of promotion, counsel has produced before us the list showing the particulars of all those Head Constables whose names were brought in list 'D' (promotional list) for promotion to the rank of ASI w.e.f. December 21, 1966 and thereafter up to February 18, 1970. He has also produced another list showing the particulars of ASIs (Min) whose names were brought on list 'E' (Promotional list) for promotion to the rank of SIs drawn on July 21, 1978 and thereafter up to August 14, 1985.

8. We have perused the lists and given our anxious consideration to the question urged. We fail to understand how the appellant could be ranked above his seniors and how he could get flyover promotions in every cadre. This High Court while directing confirmation of the appellant with reference to a particular date did not say that he should be ranked above even those who were appointed earlier to him. There was also no direction that he should be ranked above those who were liable to be confirmed before him. Indeed, it was not the intention of the High Court and it could not have been intended too, since his seniors were not parties to the writ petition. But the faulty implementation of the order of the High Court has resulted in that undesirable consequence. It has resulted in supersession of appellant's seniors. In fact, the appellant has overtaken 21 SIs who

were senior to him. That was totally unjustified and arbitrary.

9. In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralising effect in service apart from being contrary to Article 16(1) of the Constitution.

10. It is not shown that the seniors were not eligible for confirmation when the appellant was confirmed. Nor it is shown that the seniors were not suitable for promotion when the appellant was promoted. The appellant therefore, could not complain against the corrective action taken by the respondents.

11. In the result, we dismiss the appeal, but without an order as to costs.

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