

State of Rajasthan

Vs

Fateh Chand Soni

Civil Appeals No. 4311 of 1995 with Nos. 4312 and 4313 of 1994

(S. C. Agarwal, G. B. Pattanaik JJ)

12.12.1995

JUDGMENT

S. C. AGRAWAL, J. –

1. The common question which falls for consideration in these appeals is whether seniority in the Selection Scale in the Rajasthan Police Service (for short 'the Service') is to be fixed on the basis of date of appointment to the Selection Scale or on the basis of seniority in the Senior Scale irrespective of the date on which appointment is made to the Selection Scale.

2. Recruitment to the posts in, and conditions of service of persons appointed to the Service is governed by the Rajasthan Police Service Rules, 1954 (hereinafter referred to as 'the Rules'). Originally, the Service consisted of posts in the Ordinary Time Scale and Posts in the Senior Scale as indicated in Schedule I to the Rules. In 1966, Schedule I to the Rules was amended and out of the posts in Senior Scale, 3 posts were kept for officers drawing pay personally in Selection Grade. In 1974 the number of posts in the Selection Scale was increased to 14 and 1978 it was increased to 19. In 1985 the said number was increased to 30. By virtue of notification dated 19-4-1988/20-4-1988 issued under Rule 6 of the Rules, the posts in the Services fall in four scales, viz., Junior Scale, Senior Scale, Selection Scale and Superintendent Scale. The number of posts in the Selection Scale was reduced from 30 to 22 and 8 posts were placed in the Super Time Scale.

3. Km. Badam Bairwa and Hari Ram Meena (appellants in Civil Appeal No. 4313 of 1994) and Kundan Lal Sharma (appellant in Civil Appeal No. 4312 of 1994) and Fateh Chand Soni (Respondent 1 in the appeals) were all appointed to the Service by direct recruitment and were promoted to the Senior Scale. In the Senior Scale Respondent 1 was senior to the said appellants. On the basis of recommendations made by the Selection Committee constituted under Rule 32 of the Rules all these three appellants were promoted to Selection Scale by order dated 27-4-1989. The said appointment of these appellants was on the basis of seniority-cum-merit. The said order dated 27-4-1989 has been described as promotion order. Km. Badam Bairwa and Hari Ram Meena were appointed to the Selection Grade on posts reserved for the Scheduled Scale by order dated 24-1-1991. In the seniority list dated 30-6-1990 seniority in the Selection Scale was fixed on the basis of date of appointment to the Selection Scale. Feeling aggrieved by the fixation of the seniority in the said seniority list in respect of Selection Scale, Respondent 1 filed a Writ Petition (CWP No. 3939 of 1991) in the Rajasthan High Court at Jaipur Bench wherein he challenged the seniority list dated 30-6-1990 insofar as it related to the seniority in the Selection Scale and sought a direction for maintaining the seniority of the incumbents of the Seniority Scale even after the grant of the Selection Scale. Respondent 1 also assailed the validity of Rule 8 of the Rules as well as the reservation policy dated 10-2-1975 and the 100-point roster system dated 9-7-1985 as being ultra

vires Article 16(4) of the Constitution.

4. The said writ petition filed by Respondent 1 has been allowed by the High Court by the impugned judgment dated 21-9-1993. The High Court has held that there is/are no separate post/posts in the Selection Scale and that grant of Selection Scale to a certain number of officers working in the Senior Scale so as to avoid stagnation and to keep interest of the officers in the Service intact, does not involve promotion in the eye of law and that if, for any reason, a junior officer is granted Selection Scale in preference to his senior, it will not have any impact on the seniority position and it will not affect the position of the officers who were otherwise senior in the Senior Scale. Since the High Court was of the view that there is no separate post in the Selection Scale, it did not consider it necessary to examine the validity of Rule 8 of the Rules and the reservation policy and the 100-point roster system. The High Court quashed the seniority list dated 30-6-1990 and directed that the seniority list be prepared afresh in the light of the decision.

5. Civil Appeal No. 4311 of 1994 had been filed by the State, Civil Appeal No. 4312 of 1994 had been filed by Kundan Lal Sharma and Civil Appeal No. 4313 of 1994 has been filed by Km. Badam Bairwa and Hari Ram Meena. Shri Prahlad Rai Jawaria was also one of the appellants in Civil Appeal No. 4313 of 1994, but, at the time of hearing of the appeal, the learned counsel appearing for the said appellant stated that he does not wish to press the appeal on his behalf and the appeal, insofar as the said appellant is concerned, has been dismissed.

6. Seniority in the Services is governed by Rule 33 of the Rules. The relevant provisions of the said rule are as under :

"33. Seniority. - Seniority of persons appointed to the lowest post of the Service or lowest categories of posts in each of the Groups/Sections of the Service, as the case may be, shall be determined from the date of confirmation of such persons to the said post but in respect of persons appointed by promotion to other higher posts in the Service or other higher categories of post in each of the Groups/Sections in the Service, as the case may be, shall be determined from the date of their regular selection to such posts.

Provided :

#(i) * * *(ii) * * *##

(iii) That the persons selected and appointed as a result of a selection, which is not subject to review and revision, shall rank senior to the persons who are selected and appointed as a result of subsequent selection.

Seniority inter se of persons selected on the basis of seniority-cum-merit and on the basis of merit in the same selection shall be the same as in the next below grade, and

#(iv) * * *(v) * * *"##

7. Seniority in the Selection Scale has to be fixed as per the aforesaid provisions contained in Rule 33 if appointment to the Selection Scale is treated as promotion from Senior Scale to Selection Scale. The High Court has held that the said appointment cannot be treated as promotion for the reason that when an officer in the Senior Scale is granted Selection Scale, he neither leaves the post which was already held by him nor he occupies any new post and the post held by him remains the

same and he starts getting pay in Selection Scale instead of Senior Scale which, by itself, cannot confer a higher status or rank. According to the High Court, the grant of Selection Scale to a Senior Scale officer does not exalt his status, rank or honour and an officer does not stand elevated to any superior or commanding position over other Senior Scale officers. The High Court has also referred to the fact that the post of Additional Superintendent of Police held by Senior Scale officers and officers who are being paid in the Selection Scale is interchangeable and such change or replacement and substitution by posting and transfer in the Service is a matter of routine and merely because the Government follows the process of selection to identify the officers to whom the Selection Scale is to be granted cannot confer a higher status so as to make it a case of promotion.

8. The High Court, in our opinion, was not right in holding that promotion can only be to a higher post in the Service and appointment to a higher scale of an officer holding the same post does not constitute promotion. In the literal sense the word 'promote' means "to advance to a higher position, grade, or honour". So also 'promotion' means "advancement or preferment in honour, dignity, rank, or grade". (See : Webster's Comprehensive Dictionary, International Edn., p. 1009.) 'Promotion' thus not only covers advancement to higher position or rank but also implies advancement to a higher grade. In service law also the expression 'promotion' has been understood in the wider sense and it has been held that "promotion can be either to a higher pay scale or to a higher post". (See : Union of India v. S. S. Ranade, SCC at p. 468.)

9. In Lalit Mohan Deb v. Union of India, the pay scale of the all the Assistants in the Civil Secretariat in Tripura was Rs. 80-180 and on the basis of the recommendations of the Second Pay Commission appointed by the Government of India the scale were revised and 25% of the posts were placed in the Selection Grade in the scale of Rs. 150-300 and the rest continued in the old pay scale of Rs. 80-180. For the purpose of filling the Selection Grade posts, a test was held and those who qualified in the said test were appointed to the Selection Grade. The Assistants in the Selection Grade and the Assistants in the old pay scale were doing the same type of work. This Court observed that "provision of a Selection Grade in the same category of posts is not a new thing" and that "a Selection Grade is intended to ensure that capable employees who may not get a chance of promotion on account of limited outlets of promotions should at least be placed in the Selection Grade to prevent stagnation on the maximum of the scale" and that "Selection Grades are, therefore, created in the interest of greater efficiency". The Court took note of the fact that the basis for selection of some of the Assistants to the Selection Grade scale was seniority-cum-merit which is one of the two or three principles of promotion widely accepted in the administration and, therefore, the creation of the Selection Grade in the category of Assistants was not open to challenge. In that case, the Court had proceeded on the basis that the appointment to the higher grade amounted to promotion.

10. The Rules governing appointment to the Selection Scale in the Service also envisage that such appointment constitutes promotion. The relevant provision is contained in Rule 28(A) of the Rules which prescribes the criteria, eligibility and procedure for promotion to Junior, Senior and other posts encadred in the Service. Under sub-rule (5) of Rule 28(A) promotion from the lowest post or category of post in the Service to the next higher post or category of post in the Service is required to be made strictly on the basis of seniority-cum-merit. Sub-rule (6) or Rule 28(A) provides that selection for promotion to all other higher posts or higher categories of posts in the Service shall be made on the basis of merit and on the basis of seniority-cum-merit in the proportion of 50:50. Sub-rule (7) reads as under :

"(7) Selection for promotion to the highest post/posts in the State Service shall

always be made on the basis of merit alone :

Provided that :

(a) in a Service or Groups or Section thereunder, where there are only two scales e.g. Junior Scale or Senior Scale and there is only one promotion then promotion shall be made on the basis of seniority-cum-merit alone.

(b) in a Service or Groups or Sections thereunder, where there are three scales e.g. Junior Scale, Senior Scale and Selection Scale and there are two promotions the promotion shall be as under;

(i) first promotion on the basis of seniority-cum-merit.

(ii) second promotion on the basis of seniority-cum-merit and merit in the proportion of 50:50.

(c) in Services or Groups or Sections thereunder, where there are more than two promotions then first promotion shall be made on the basis of seniority-cum-merit alone and promotions to subsequent higher posts shall be made on the basis of seniority-cum-merit and merit in the proportion of 50:50 except to the highest post :

Provided further that if the Committee is satisfied that suitable persons are not available for selection by promotion to highest post/posts strictly on the basis of merit in a particular year, selection by promotion to highest post/posts on the basis of seniority-cum-merit may be made in the same manner as specified in these Rules."

11. The said provision [especially clause (b) of the proviso] would show that the Rules contemplate that appointment to the post in the Selection Scale is by way of promotion and the High Court was in error in holding that appointment on the Selection Scale does not constitute promotion under the Rules.

12. The High Court has referred to the decision of this Court *Dayaram Asanand Gursahani v. State of Maharashtra* wherein, after considering the resolution or the State Government sanctioning the post of District Judge in the Selection Grade, this Court has held that the said resolution did not indicate that there was any process of promotion by selection or otherwise from the cadre of District Judges to the Selection Grade District Judges. In the particular facts of that case it was held that mere nomenclature given to the extended pay scale as the Selection Grade pay scale does not lead to the inference that there is an element of selection involved in sanctioning it and that it should be treated as just an extended pay scale which forms part of the pay scale. The position in the present case is, however, different. Here the Selection Scale is a separate scale and is not an extension of the Senior Scale. Moreover appointment to the Selection Scale is made by selection on the basis of merit and seniority-cum-merit in accordance with Rule 28(A) of the Rules.

13. It must, therefore, be concluded that appointment to the Selection Scale of an officer in the Senior Scale in the Service constitutes promotion and seniority in the Selection Scale has to be fixed in accordance with Rule 33 of the Rules on the basis of the date of selection and a person selected and appointed as a result of an earlier selection would rank senior to a person who is selected and appointed as a result of a subsequent selection. Since the appellants were selected and appointed on the basis of earlier selection in 1989 while Respondent 1 was selected and appointed on the basis of

a subsequent selection in 1991, the appellants would rank senior to Respondent 1 in the Selection Scale. The direction given by the High Court for revising the seniority list of the officers in the Selection Scale of the Service on the basis of their seniority in the Senior Scale cannot, therefore, be upheld and has to be set aside. The seniority of officers in the Selection Scale of the Service has to be fixed as per Rule 33 on the basis of date of selection.

14. Shri R. Mohan, the learned Senior Counsel appearing for Respondent 1, has agitated the question regarding the validity of Rule 8 dealing with reservation for Scheduled Castes and Scheduled Tribes and has submitted that such reservation in the matter of promotion to the higher post is impermissible in view of the decision of this Court in *Indra Sawhney v. Union of India*. The said contention cannot be accepted since in *Indra Sawhney* this Court has indicated that the existing provisions providing for reservation can continue to operate for a period of five years from the date of the said decision.

15. Shri Mohan has also submitted that provision for reservation for Scheduled Castes and Scheduled Tribes can be made only against post in the cadre and not against vacancies and that under Rule 8 of the Rules and the Reservation Policy and the 100-point roster, such reservation is made on the basis of vacancies and that *Km. Badam Bairwa* and *Hari Ram Meena* have been promoted against vacancies reserved for the Schedule Castes and the Scheduled Tribes. Shri Mohan has placed reliance on the decision of the Allahabad High Court in *J. C. Malik v. Union of India* which has been approved by this Court in *R. K. Sabharwal v. State of Punjab*. We find no merit in this contention. In his writ petition, Respondent 1 had not challenged the promotion of *Km. Badam Bairwa* and *Hari Ram Meena* to the Selection Scale and therefore, this contention about the basis for reservation does not fall for consideration in this case. Moreover in *R. K. Sabharwal* this Court has directed that the interpretation given by the Court about the working of the roster and the findings on this point shall be operative prospectively which means that actions that have been taken prior to the decision in *R. K. Sabharwal* cannot be assailed on the basis of the law laid down in the said decision.

16. For the reasons aforementioned, the appeals are allowed, the judgment of the Rajasthan High Court dated 21-9-1993 is set aside and the writ petition filed by Respondent 1 is dismissed. But in the circumstances there is no order as to costs.