

(1981) 02 DEL CK 0057

In the Delhi High Court

Case No : Civil Writ Appeal No. 1192 of 1976

Amrit Lal Berry

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-02-1981

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1982) 3 DRJ 54 : (1981) ILR Delhi 153 : (1981) LabIC 1534 : (1982) 1 SLJ 180

Hon'ble Judges : S.B. Wad, J

Bench : Single Bench

Judgement

(1) The petitioner was appointed as Inspector in the Central Excise Collectorate at Delhi on 22-11-48. In 1952, 15% of the permanent posts of Inspector were assigned a higher grade of pay which were described as Inspector Senior Grade. The post of Senior Grade Inspector was not in a different cadre nor was it a promotional post. There was one seniority list of all the Inspectors. A seniority list was published in 1958 and in that seniority list the petitioner was shown senior to respondents 6 to 83. The seniority was determined on the basis of length of service which was a principle of seniority laid down by the Ministry of Home Affairs O.M. Dated 22-6-49. On 22-12-59, the Ministry of Home Affairs issued orders superseding the orders of 1949 and the new principle of seniority which was laid down was the date of confirmation and not the date of appointment. In accordance with the new principle a new seniority list was drawn out by the department determining the seniority as on 1-7-67, and in this seniority list the petitioner lost his seniority position by more than 100 places. Respondent 6 to 83 became senior to him. The next promotional post was that of Superintendent of Central Excise which was a selection post. The petitioner was selected for promotion in 1974 but as some departmental proceedings were pending he was finally given the benefit of promotion in the year 1976. In this petition the petitioner's complaint was that the department had refused to follow the two judgments of the Supreme Court i.e. 1972 S.C. 671 & 1975 S.C. 538.

The petitioner claimed that had his seniority been correctly determined according to the principle of continuous length of service he would have come in the zone of consideration for promotion when the first respondent was promoted to the post of Superintendent. His grievance was that he was denied an equal opportunity to compete in violation of Articles 14 & 16 of the Constitution. The petitioner restricted his grievance only to the promotions made subsequent to 4-1-72 in accordance with the Supreme Court decision. Respondents No. 6 to 83 were promoted subsequent to 4-1-72. The petitioner, Therefore, challenged his displacement in the seniority list and delayed promotions which was the result of the displacement. The contentions of the respondent were that the petitioner was promoted to the post of Senior Grade Inspector on 8-12-67 and was, Therefore, governed by 1959 O.M. and not 1949 O.M. ; the petitioner was confirmed in the grade of Inspector on 1-7-55 and according to the order issued by Ministry of Home Affairs in 1973 for purposes of promotion two separate lists were to be prepared -one of permanent persons and other of non-permanent persons and for promotions the confirmed persons were to be preferred to non-confirmed people ; benefit of re-fixation of seniority in the light of 1972 S.C. 671 could be given if an employee who was appointed before 1949 and continued to be in the said grade up to 4-1-72 ; and that 1972 Supreme Court neither considered nor gave any ruling as to the consequential effect of the re-fixation of the seniority on promotion and confirmation already made.

(2) Held that :- The grade of Inspectors was Rs. 100-120-8-200-10/2-220. The grade of the senior Inspector was Rs. 200-10-300. Fifteen per cent of the Inspectors were given the higher grade on the basis of their seniority. If the Government submission was correct there would have been two separate seniority lists-one for the Inspectors and the other for the Inspectors senior grade. But as a matter of fact, the seniority list was always a combined seniority list. This is clear both from the 1958 seniority list and 1967 seniority list. Two Inspectors, Ravi Verma and Kini, who were similarly situate filed a writ petition against the seniority list in Mysore High Court. They succeeded. While dismissing the appeal of the Union of India against the said decision the Supreme Court held in Ravi Verma's case 1972 S.C. 671 that as Ravi Verma and Kini were promoted prior to December 22, 1959, their seniority should be determined on the basis of their service "in accordance with O.M. dated 22-6-49 and not on the basis of the date of their confirmation. The impugned seniority list had been framed on the basis of date of confirmation as Inspector implicate with the result that the petitioner who should have been shown at S.No. 41 according to his date of joining had been pushed down to position No. 143 in the 1967 seniority list.

(3) In the Supreme Court the petitioner had challenged the validity of 1972 Memorandum as violative of Article 16(1) of the Constitution. (According to the petition this circular sought to make the date of the judgment as the date from which the seniority has to be revised though the Supreme Court clearly laid down that the persons appointed prior to adoption of 1959 Office Memorandum should be restored seniority in accordance with the principle of length of service

contained in 1949 Office Memorandum. The Supreme Court did not strike down the said memorandum but read it down. Although the Supreme Court gave interpretation of 1972 Memorandum, the department did not consider the question of seniority of the petitioner according to 1949 Memorandum. The department should have re-opened the seniority list, giving the proper place of seniority to the petitioner on the basis of the length of service and it was also incumbent upon the department to have considered the petitioner for promotion for the first post which was filled after 4-1-72. The petitioner was considered for promotion for the first time in 1974. Inspire of the fact that the Supreme Court read down the 1972 Memorandum according to the law laid down in Ravi Verma's case, the department applied its own interpretation of the 1972 Memorandum. The action of the department was clearly in breach of the law laid down by the Supreme Court and was Therefore illegal.

(4) The petitioner was found fit for promotion in 1974 but his actual promotion was delayed to 1976. The procedure for keeping the result in a sealed cover where the departmental proceeding is pending was not followed. The petitioner ought to have been given the benefit of the 1974 selection since he was acquitted in the departmental proceedings and that action of the department was Therefore held to be contrary to law and Therefore set aside.

(5) The justification of the Government for its own action was that the criterion for promotion was confirmation and since the petitioner was confirmed later than the respondents he could not be considered till 1974. There is no doubt that the Government lay down the criteria for promotion. The post of the Superintendent is no doubt selection post. But for considering the order of merit the foundation is the zone of consideration created on the basis of the seniority of employees, in the cadre of Inspectors. The Supreme Court has laid down that for all pre- 1959 entrants the principle of length of service shall determine the seniority. Seniority vests in length of service. Therefore, longer service should alone qualify the Inspectors to be brought in the zone of consideration for promotions. To say that confirmation would be a criterion for promotion, would, in the light of law laid down by the Supreme Court, amount to bringing in the principle of confirmation (for seniority) by back door. What cannot be done directly cannot also be done indirectly. The department ought to have appreciated that the Supreme Court in 1975 decision had saved the promotions made on the basis of confirmation up to 4-1-72 purely on the ground of equity. It was more for upholding equitable rights of the respondents than for condoning the wrong application of principles by the department. It was, Therefore, held that 1972 and 1973 Memorandums in so far as they try to impose the criterion of confirmation for promotion, are contrary to the letter and spirit of the law laid down by the Supreme Court.

(6) To treat the granting of senior grade as promotion is also erroneous. Promotional hierarchy is always created by statutory rules so as to ensure certainty and predictability in civil service. There is not even a general administrative order in this regard. The 1959 Memorandum cannot be made

applicable to the petitioner on the supposed ground that the petitioner entered the "promotional" post of Senior Grade Inspector in 1967. The writ petition was allowed and a direction was given to respondents to give a proper place to the petitioner in the seniority according to continuous length of service. The petitioner was further held entitled to the monetary benefit of higher pay and allowances in Superintendent post between the date when the first promotion after 4-1-72 was made and 1976 when he was actually promoted.