

(2022) 03 J&K CK 0013

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 849, 972, 1365 Of 2021, Civil Miscellaneous No. 3548, 3549 4016, 4017, 4814, 4815, 5527,, 5528 6747 Of 2021, Cav No. 1222 Of 2021

Arvind Samyal And Others

APPELLANT

Vs

UT Of J&K And Others

RESPONDENT

Date of Decision : 07-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16
Jammu And Kashmir Police Rules, 1960 — Rule 172, 172(4)
Administrative Tribunal Act, 1985 — Section 5, 16, 26

Citation : (2022) 03 J&K CK 0013

Hon'ble Judges : Dhiraj Singh Thakur, J;Puneet Gupta, J

Bench : Division Bench

Advocate : Sunil Sethi, Mohsin Bhat, Rahul Pant, Anirudh Sharma, Abhinav Sharma, Saba Atiq, Z. A. Shah, Rupinder Singh, Raman Sharma, D. S. Chauhan, Monika Kohli

Final Decision : Disposed Of

Judgement

Dhiraj Singh Thakur, J

1. The present batch of petitions have been preferred against the judgement and order dated 31.03.2021, passed by the full Bench of Central Administrative Tribunal Jammu Bench, whereby the Tribunal has dismissed the TAs filed by the petitioners, challenging the promotion of private respondents as Inspectors (Armed) in the J&K Police made by the PHQ vide order dated 21.07.2005. The petitioners also seek a certiorari for quashing the tentative seniority list of Inspectors (Executive/Armed) issued vide order dated 29.08.2013 and the final seniority list issued vide order dated 23.11.2015.

Briefly stated, the material facts are as under:-

2. The petitioners herein initially filed the writ petitions before the High Court, which upon creation of the Central Administrative Tribunal Jammu Bench, Jammu

were transferred to the Tribunal for disposal. The grievance of the petitioners, as set up in the petitions, was that an advertisement notice dated 20.11.1993 was issued by the official respondents inviting applications for the post of Sub-Inspectors in the J&K Armed Police without reference to any particular wing. The petitioners came to be appointed in the year 1995 as against the private respondents, who came to be appointed as Sub-Inspectors in the year 1998. It was asserted that upon appointment, the official respondents on their own accord placed the petitioners in the Executive Wing of the Police Department as against the private respondents, who were placed in the Armed Wing.

3. The grievance of the petitioners was that even when they had been appointed prior in point of time, the private respondents, who were junior to the petitioners were promoted as Inspectors prior in point of time on the basis of a separate seniority list of Sub-Inspectors posted in the Armed Wing, which was illegal and in violation of the statutory rules.

4. The case set up was that as per Rule 172 of the J&K Police Rules, seniority of Sub-Inspectors and Inspectors was to be maintained inter-range i.e. a common seniority list was to be maintained for the entire State of J&K, which rule was followed in breach. It was asserted that there ought to have been a common seniority list based upon the date of appointment as Sub-Inspectors. The petitioners also questioned the grant of benefits of promotion as Inspectors and DySPs in favour of the private respondents, which according to them was in violation of Rule 172 of the J&K Police Rules.

5. The defence set-up by the official respondents was that the seniority list upto the level of Sub-Inspectors in all the three cadres i.e. J&K Executive, Armed Police and SDRF was being maintained separately and further that the seniority of Inspectors was maintained at PHQ on the basis of date of promotions, which were made as per the vacancies available in the respective cadres. In addition to this, it was alleged that the petitions suffered from delay and laches, inasmuch as, the petitioners having been appointed in the year 1995 all along remained silent and did not question the final seniority list framed at the level of Sub-Inspectors issued by the PHQ vide order dated 04.12.1998. It was also asserted that the private respondents were promoted as Inspectors in 2005-06, whereas the petitioners were promoted in the year 2007 and having remained silent could not be permitted to challenge the same on account of delay and laches and must be presumed to have relinquished their rights as such.

6. A Division Bench of the Tribunal heard the matter in detail. However, there was a difference of opinion between the learned Judicial Member on the one hand and the learned Administrative Member on the other. The conclusions and the directions issued by the learned Judicial Member are briefly reflected herein:-

"65. Looking to the facts of the case and settled law, we would hold that two seniority lists at the SIs level and consequently drawing of a common seniority list of Inspectors are non est and void ab initio, being contrary to Rule 172 (4)

and challengeable at any point of time. So, we hold that the T.A.s are not barred by period of limitation or delay and laches.

66. Indisputably, drawing up of separate seniority lists of Sis in Armed and Executive Police has resulted in violation of the rights of applicants under Articles 14 and 16 of the Constitution of India. Had the official respondents followed the mandate of Statutory Rule 172 (4). in the preparation of the seniority list of Sis based on inter range, the applicants would have been placed as being senior to the private respondents since they were appointed earlier in time to the private respondents And it is the original seniority of applicants which must prevail otherwise any other view would be denial of equality of opportunity in the matter of public employment guaranteed under Article 16 of the Constitution.

67. It is admitted that on account of availability of vacancies in the Armed police, private respondents got accelerated promotions to the post of Inspectors. Consequent upon amalgamation of the separate seniority lists of Inspectors of both Armed and Executive Police, the impugned common seniority list was drawn up in which private respondents have been shown senior to the applicants. This is not a case where applicants were passed over at the time of selection or denied promotion on the ground of unsuitability. What was the Rule relied upon by the Administration to amalgamate the two seniority lists of Inspectors has not been revealed by the respondents. Therefore, private respondents cannot score a march over erstwhile seniors/ applicants only any valid principle of seniority. This would unquestionably be denial of equality under Article 16 of the Constitution.

68. In the background of the facts of the case as discussed above, it be kept in mind that in any case, the Government cannot amalgamate the two seniority lists of the Inspectors since the stand of Government is that there are different cadres of Armed and Executive police but it is also not case of Government that they have merged the cadres. As per, the J&K Police Manual and law laid down in LPA No. 28/1972 titled Inspector General of Police v/s Kanshi Nath Koul (Supra), there being one cadre of Sis and one cadre of Inspectors of the wings of the J&K police having inter range seniority or State wise, the Administration shall adopt as one time exercise, the following course of action, inter se the applicants and private respondents. The T.A.S are allowed with the following directions:

A. Respondents No. 1 and 2 to consider and promote the applicants to the posts of Inspectors of J&K Police as being senior to private respondents and retrospectively w.e.f. the dates their juniors have been promoted vide PHQ Order No.2136 of 2005 dated 21st July, 2005 with all consequential benefits of seniority;

B. Respondents No. 1 and 2 to treat the applicants senior to the private respondents as Inspectors in the J&K Police for the purpose of further promotion to the posts of Dy. Superintendents of Police in the Gazetted Cadre;

Consequently, all lists of promotion/seniority to the extent of and inter se the applicants and private respondents would stand quashed to the extent, they are

in conflict with the directions given above.”

7. The learned Administrative Member was also of the opinion that there ought to be a common seniority list, because the source of recruitment was common. However, it was observed that while rectifying the anomaly and while preparing the fresh inter se seniority list, based upon the length of service rendered since recruitment, the benefit of promotion already given to a particular wing would not be taken away, as the same would create numerous administrative complications. The learned Administrative Member, therefore, gave the following directions:-

“2) We, therefore, set aside the current practice of maintaining separate seniority of different wings and direct as under-

(a) Since Police Force has been treated as a single entity in the Rules, henceforth, there shall be a single seniority unit of all the wings such as "Executive", 'Armed Police" etc.;

(b) For the purpose of promotion to the post of Sub-Inspectors, the inter se seniority of all the wings will be prepared as per the length of service rendered since recruitment;

(c) Promotion to the posts of SI will be made as per the list referred to at (b) above, as per the rules governing such promotions.”

8. It, therefore, can be seen that whereas the learned Judicial Member had given the benefit of retrospective promotion from the dates their juniors had been promoted with all consequential benefits of seniority, the learned Administrative Member even when directed the maintenance of a common seniority list, had saved the promotions already made without any benefit of retrospective promotion, as was ordered by the learned Judicial Member.

However, on the issue of delay and laches both the learned Members were ad idem without any difference of opinion.

9. Since there was a difference of opinion between the learned Members, the same could be resolved only in terms of Section 26 of the Administrative Tribunal Act, 1985 (hereinafter referred to as the “Act”), which envisages as under:-

“26. Decision to be by majority—

If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Tribunal who have heard the case, including those who first heard it.”

10. The matter appears to have been then brought to the notice of the learned Chairman of the Central Administrative Tribunal and the matter was heard by him. It appears that on hearing the parties at some length, the learned Chairman was not able to agree with the conclusions arrived at by the learned Judicial Member or the learned Administrative Member and with the consent of learned counsel for the parties, the TAs were referred to a full Bench of the Tribunal, who vide judgement and order impugned dated 31.03.2021 dismissed the TAs by holding firstly that the TAs were barred by delay and laches, inasmuch as, the petitioners ought to have challenged the promotion of private respondents in the year 2008, when they were promoted as Inspectors or even in 2010 when a tentative seniority list was published by the official respondents.

11. It was also held that the petitioners took as many as five years to file the petitions after the official respondents had published the tentative seniority list in the cadre of Inspectors for purposes of promotions to the post of DySPs. On Rule 172, the full Bench held that the same was general in nature and did not refer to the existence of separate wings in the Police Department and that the practice of maintenance of a separate seniority list for the post of Sub-Inspectors and Inspectors of different wings was in vogue for the past several decades and therefore, had assumed the strength of law.

12. While dismissing the TAs, however, the full Bench directed the Government to consider the feasibility of framing the Recruitment Rules for the posts of Sub-Inspectors and Inspectors in various wings of Jammu & Kashmir Police for purposes of maintaining a common seniority list for Inspectors, while maintaining the proper ratio between Executive wing and the Armed wing. This exercise was directed to be completed within a period of three months from the date of receipt of a copy of the said order.

13. Having gone through the entire matter, we wish not to adjudicate upon the rights of the parties on merits in the present case, inasmuch as, we feel that the procedure adopted for deciding the present case by the learned Chairman was in gross violation of the procedure prescribed under Section 26 of the Act.

14. While the learned Chairman did have the powers in terms of Section 5 read with Section 26 of the Act to decide the issue on a point of difference referred to it by the learned members, he could have also directed the decision upon such a reference by one or more than other members of the Tribunal on the point so referred.

In the present cases, on a reading of the judgement and order impugned dated 31.03.2021, it appears that there was no specific reference on the points of difference made to the learned Chairman between the learned Judicial Member and the learned Administrative Member, as none of the counsel appearing for the parties could support the fact that there was infact any such reference made and the points of difference crystallized by the differing members of the Division Bench. The learned Chairman, therefore, ought to have asked the Division Bench

to first crystallize the points of difference and make a specific reference in that regard. Only thereafter, could the learned Chairman proceed to hear the matter on the points of difference so crystallized or refer it to a larger Bench. In the present case, that does not appear to have happened. Not only this, the learned Chairman appears to have not been satisfied with the decision of either of the members of the Division Bench and ignoring the procedure prescribed, with the consent of learned counsel for the parties decided to hear the matter afresh, which again was impermissible.

For facility of reference what was observed by the Full Bench is reproduced hereunder:-

“On hearing the parties at some length, the Chairman was not able to agree with the conclusions arrived at by the learned Judicial Member or the Administrative Member. With the consent of the learned counsel for the parties, these T.As, were referred to a Full Bench. Accordingly, the Full Bench was constituted and the matters are heard.”

15. The hearing by the full Bench so constituted could not have been permitted on issues on which the learned Judicial Member and the learned Administrative Member were ad idem. For example, on the issue of delay and laches, there was no conflict, yet the full Bench proceeded to decide the same and dismissed the petition on that ground. On the need of there being a common seniority also, there was no conflict between the members of Division Bench, yet the full Bench proceeded to decide the said issue by holding that the nature of duties discharged by the Armed wing and the type of training imparted to them was substantially different and the establishment was maintained separately and independent of the executive wing and further that Rule 172 of the Police rules was general in nature and did not refer to the existence of separate wings in the Police Department. It proceeded to further hold that the practice of maintaining of separate seniority list for the posts of Sub-Inspectors and Inspectors of different wings was in vogue for the past several decades and the same had assumed the strength of law. This, in our opinion, also could not have been decided, inasmuch as, there did not appear to be any conflict between the members of the Division Bench on this issue. Having justified the framing of two separate seniority lists, as a necessary consequence, the full Bench rejected the case of the petitioners in regard to the relief of promotions.

16. We are strongly of the opinion that the entire procedure adopted for adjudication of the disputes in the present petitions post the minor difference of opinion between the members of the Tribunal was contrary to the procedure prescribed by law. It is settled that “if law requires a particular thing to be done in a particular manner, it has to be done in that manner or not at all.” The mandate of Section 26 of the Act nowhere authorized the learned Chairman to adjudicate upon an issue on which there was no conflict of opinion and assumed to itself the role of an appellate authority.

17. Section 26 does not envisage a re-hearing of the case by a larger Bench as an appellate authority with a view to over-rule the judgment rendered by the Division Bench, on all issues on the basis of sheer strength of the members of the full Bench. Moreover, Section 16 mandates that upon reference the decision would be based to opinion of the majority of the members of the Tribunal who had heard the case, including those who first heard it.

18. Be that as it may, the judgement and order dated 31.03.2021 is set aside. The matter is remanded to the Central Administrative Tribunal, Jammu Bench. The points of difference expressed by the learned Judicial Member and the learned Administrative Member in its judgement and order shall be crystallized and a reference shall be made to the learned Chairman on such points of difference within ten days' from today. Upon such a reference being made on the points of difference, the learned Chairman, Tribunal shall proceed to decide the point or points of reference so referred in accordance with the provisions of Section 26 of the Act.

19. The writ petitions are, accordingly, disposed of, along with connected applications.