

(2019) 01 DEL CK 0286

In the Delhi High Court

Case No : Civil Writ Petition No. 6989 Of 2002, Civil Miscellaneous Application
No. 27515, 27516 Of 2018

Dayanand Sharma & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 24-01-2019

Acts Referred:

Citation : (2019) 173 DRJ 525

Hon'ble Judges : S. Ravindra Bhat, J; Prateek Jalan, J

Bench : Division Bench

Advocate : S. Sunil, Rajesh Kumar, Santwana

Final Decision : Disposed Off

Judgement

1. The present writ petition is directed against an order dated 17.04.2002 whereby the Central Administrative Tribunal [hereafter referred to as "the Tribunal"] dismissed the petitioner's application (OA No. 1061/2001) and consequently upheld the seniority list drawn by the respondent authorities for Head Constables, Assistant Sub-Inspectors (ASI), and Sub-Inspectors (SI), in the Central Bureau of Investigation (CBI).

2. The petitioners were directly recruited as Constables in the CBI in 1975 and were thereafter promoted as Head Constables and ASI. During the pendency of proceedings before this Court, they have been further promoted as SI and thereafter as Inspectors.

3. At the relevant time, Head Constables in CBI were promoted from the post of Constables, 90% being from directly recruited Constables, and 10% being from those who held the post of Constables on deputation/transfer (subject to a qualifying examination). By an amendment to the Recruitment Rules with effect 25.07.1980, the post of Constable was made a non-selection post to be filled to the extent of 60% by promotion (failing which, deputation/transfer) and 40% by deputation/transfer. In each mode, 10% of the posts were to be filled by

seniority and the balance were subject to a qualifying examination. A qualifying examination was held on 14.09.1980, as a result of which 96 Constables were promoted on 26.11.1980 and 22.01.1981. On 23.09.1985, a panel for promotion to HC was prepared from those who were eligible in the earlier panel of 1979 and 1980 but were not promoted. The recruitment rules were further amended in 1987, and promotions were again made from the list drawn in 1985. Although the petitioners had by then become eligible for promotion, they were not promoted as their names did not figure in the 1979 and 1980 panels. However, the respondents drew the seniority list of Constables on 02.05.1985 and 17.11.1988, wherein the petitioners were shown higher than those deputationists who had been absorbed as Constables in 1983 and 1985.

4. The genesis of the present controversy is in an application filed before the Tribunal by one Vikramaditya Singh, who was appointed as a Constable in the CBI on deputation in the year 1974. By an order dated 25.06.1991 passed on his application [OA No. 190/1988], the Tribunal directed re-fixation of seniority of Constables as on 09.10.1987, counting the deputationist's length of service in their parent departments. The Tribunal relied on the judgment of the Supreme Court in K.Madhavan vs. Union of India [(1987) 4 SCC 566], which was pronounced on 09.10.1987 and issued the following directions:

"(1) The applicant shall be deemed to have been promoted as Head Constable with effect from 9.10.87; and shall be given consequential benefits thereof within 3 months from the date of receipt of a copy of this judgment.

(2) The interim orders permitting him to appear at the qualifying examination for the post of Asstt. Sub Inspector of Police held on 6.5.89 are revoked and his results there at are set aside.

(3) The respondents 1 & 2 are directed to recast the seniority of the Constables as on 9.10.87 on the basis of counting the deputationists length of service in the parent department in the same or equivalent grade for seniority in the CBI and consider their cases for promotion as Head Constable in accordance with rules in other respects, but shall not interfere with the promotions of those constables who had already been promoted before 9.10.87; and shall be undertaken only after giving reasonable opportunity to persons who may be affected. Respondents 1 and 2 shall comply with these directions within nine months from the date of receipt of a copy of this judgment."

5. Pursuant to this judgment, a revised seniority list was drawn up on 03.03.1992. The first petitioner was finally promoted as HC on 07.04.1993 after a competitive examination held in October, 1992, 12 years after the last examination of 1980.

6. While matters stood thus, one Radhey Shyam, another deputationist Constable, moved the Tribunal challenging the fixation of his seniority, which he alleged had not taken into account his service in the parent department. Upon his application [O.A. No.1061/2001] being dismissed by the Tribunal, he moved

the Supreme Court against this order and his appeal [CA No.7112/1995] was allowed by the order of the Supreme Court dated 03.08.1995 holding as follows:-

"The appellants were employed as Police Constables in the State of Haryana. The Central Bureau of Investigation (C.B.I.) sent a requisition to State of Haryana requesting the services of Constables who were willing to work on deputation. The appellants opted for deputation with C.B.I. and subsequently they were absorbed with C.B.I. with effect from January 1, 1983. After such absorption the seniority of the appellants with C.B.I. was fixed by taking into account only the period of their services with C.B.I. from January 1, 1983 and their earlier service with State of Haryana was excluded for the purpose of seniority. On a petition filed by some of the Constables who were taken on deputation and subsequently absorbed with C.B.I., Lucknow Bench of the Central Administrative Tribunal directed that service rendered in the State prior to absorption with C.B.I. should be counted for the purpose of seniority. In pursuance of the said direction the seniority of Constables with C.B.I. was revised and the seniority of the appellants was also revised with effect from October 9, 1987. In the meanwhile, the matter of promotion of Constables to the post of Head Constables was considered on the basis of their earlier seniority in 1988 and the appellants could not be granted such promotion. The appellants filed a petition before the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the Tribunal"). The said petition was dismissed by the Tribunal as having become infructuous on the ground that seniority of the appellants had already been revised. The Tribunal, however, did not take note of the grievance of the appellants in the matter of review of promotion for the post of Head Constables on the basis of the revised seniority list.

Having regard to the fact that earlier the promotion of the appellants for the post of Head Constables was considered on the basis of the old seniority list which has now been revised with effect from October 9, 1987, the matter of promotion of the appellants to the post of Head Constables after October 9, 1987 has to be considered on the basis of the revised seniority list. The Constables who were promoted earlier would, however not be disturbed as a result of the reconsideration of the matter of promotion of the appellants.

The appeal is, therefore, allowed and it is directed that the matter of promotion of the appellants to the post of Head Constables after October 9, 1987 be reviewed and considered in the light of their seniority in the seniority list that has been revised with effect from October 9, 1987. Such review will not, however, disturb the promotion of the Constables who were promoted as head Constables earlier. No costs."

7. It is after this order of the Supreme Court that the respondent authorities passed the orders which were challenged by the petitioner before the Tribunal in the present proceedings. The first of these is an Office Order dated 14.03.1997 wherein several persons who had been promoted as HC between 1980 and 1995 were granted promotion to that grade from the dates their juniors were

promoted. Vikramatidya Singh's promotion was thus made effective from 03.12.1980. The second order of the respondents was dated 21.05.1998 by which a number of HCs were retrospectively promoted as ASIs and SIs. The effect of these orders was that several HCs who had been promoted before 09.10.1987, but were junior to the petitioner as Constables under the earlier seniority list, became senior to him.

8. The petitioner's challenge before the Tribunal has been rejected by the impugned judgment dated 17.04.2002 holding that similar issues have been decided by the Tribunal in Raghubhir Singh vs. UOI [OA No.1230/1999, decided on 04.02.2000] and Budhimal vs. Secretary, DOPT & Ors. [O.A. No.1210/2001, decided on 09.04.2002], purportedly following the order of the Tribunal in Vikramaditya Singh (supra) and the order of the Supreme Court in Radhey Shyam (supra). The relevant observations of the Tribunal in the impugned order are as follows:

"8. It is relevant to note that in para 6 of the Tribunal's order dated 9.4.2002 in Budhimal's case (supra), it had been noted that the present O.A. 1061/2001 which was filed by persons similarly placed as the applicant in that O.A. had been dismissed by order dated 18.2.2002, not only on the ground of non-appearance of the applicants on several dates but on the basis of the material on record that there was no merit in the O.A. However, for the reasons given in RA 82/2002, that review application was allowed, with a direction to list the O.A. for further hearing which has been done.

9. Having regard to the aforesaid judgment of the Lucknow Bench of the Tribunal in Vikramaditya Singh's case (supra) read with the judgment of the Hon"ble Apex Court in Radhey Shyam's case (supra), we find no justification to quash the impugned orders, including the impugned revised promotion orders, including the impugned revised promotion order issued by the respondents dated 14.3.1997. Similar issues raised in the present O.A. have also been dealt with in the aforesaid orders of the Tribunal in Raghubir Singh's case (supra) and Budhimal's case (supra) which have also been dismissed. Accordingly, the present O.A. also fails and is dismissed. No order as to costs."

9. Although the impugned order is, in our view, entirely bereft of reasons, we do not propose to remand it to the Tribunal for decision afresh. Keeping in mind the nature of the disputes and that the petition has been pending before this Court for long, we have instead heard learned counsel for the parties on merits.

10. Having heard learned counsel for the parties, we are of the view that the Tribunal has failed to appreciate the Supreme Court's order in Radhey Shyam, as also its own order in Vikramaditya Singh, in the proper perspective. The respondents had, pursuant to Vikramaditya Singh, drawn a seniority list on 03.03.1992. It is on the basis of the same decision of the Tribunal that Radhey Shyam's rights were asserted and accepted by the Supreme Court. The Supreme Court has noted that the seniority list for promotion to the post of Head

Constables had already been revised w.e.f. 09.10.1987 and directed that the promotion of the appellants before it would also be on the basis of the said revised seniority list. That seniority list concededly is the one which was drawn on 03.03.1992. The order of the Supreme Court did not mandate any further revision of the seniority list. Apart from a bald assertion to this effect, the respondents have not been able to show that the judgment in Radhey Shyam provided any foundation or basis for the revision made by them. Although the order dated 14.03.1997 is purportedly pursuant to the Supreme Court's order, we do not find any justification for the revised dates of promotion adopted therein.

11. In fact, it appears that the irregularities in the process of promotion to the post of Head Constable in the CBI had attracted the attention of the Cabinet Secretariat, during the pendency of the present petition before this Court. The petitioners have placed on record correspondence between the Cabinet Secretariat, the Department of Personnel and Training and the CBI, which were obtained under the Right to Information Act, 2005. Significantly, the Cabinet Secretariat in a communication dated 29.03.2004 had made the following observations:

"2. It is seen that certain irregularities had crept in the promotions made from the post of Constables to Head Constables over a period of several years which had a compounding effect on promotional prospects of a number of constables who have been agitating the issue for long. These irregularities include -

? Carrying forward of panels of Constables who had qualified in the Departmental Qualifying Examination in 1979 beyond one year,

? Clubbing and carrying forward the 1979 panel (when the post was a Selection post) in a common panel along with the 1980 panel (when the post became Non Selection).

? Not holding examinations for more than a decade and further depriving eligible Constables to be considered for promotion by utilising the 1979-80 panel even after the RRs were amended to provide for Departmental Competitive Examination. Those departmental Constables who had become eligible after 1980 to appear for DQE against 50% of the promotion posts, had to wait their turn to be promoted against the 10% promotion posts fixed to be filled by seniority.

? Extending the benefit of the VD Singh order by CAT, Lucknow, by re-fixing the seniority of all Constables as on 9/10/1987 taking into account the length of service of absorbed Constables in their parent cadre, when the Department of Personnel & Training had advised restricting the implementation to the applicants only.

? No advice of Department of Personnel & Training appears to have been taken while giving retrospective promotion to all Constables in pursuance of the Supreme Court direction that the promotion of the appellants to the post of Head

Constable after 9/10/87 should be reviewed and considered in the light of their seniority list that has been reviewed w.e.f. 9/10/87 without disturbing the promotion of those Constables who were promoted as Head Constable earlier."

12. In view of the above findings, the petitioners are entitled to relief in this petition. Having regard to the fact that the petitioners have all retired from service as have those affected persons, who have been impleaded as respondents, we direct that the petitioners would be entitled to all consequential benefits by considering their promotion to the posts of Head Constable, in terms of the seniority list dated 03.03.1992 and further promotions, in terms of their eligibility thereafter. This direction will not affect the seniority, retiral benefits or any other entitlement of those who had already been promoted. The Union of India and the CBI are directed to pass the orders required for this purpose, make the necessary computation towards fixation and re-fixation of salary at the relevant grades from the dates the petitioners became entitled to it, notionally and disburse the differential amounts with effect from 01.01.1996 and also give them the benefits of pay and pension revisions pursuant to Fifth, Sixth and Seventh Central Pay Commission recommendations applicable. Likewise pension revision orders too shall be issued. All arrears and the pay/pension revision orders shall be issued and released within three months from today.

13. The writ petition is disposed of, along with the pending applications, in terms of the above directions.