
(1996) 08 P&H CK 0181
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1434 of 1996

Kabul Singh and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-08-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1996) 114 PLR 159

Hon'ble Judges : V.K. Jhanji, J;A.S. Nehra, J

Bench : Division Bench

Advocate : R.K. Malik, for the Appellant; Anil Rathee, for Respondents 1 and 2, for the Respondent

Judgement

V.K. Jhanji, J.—In this petition filed under Article 226 of the Constitution of India, petitioners are seeking a writ in the nature of Mandamus directing respondents 1 and 2 to consider the case of the petitioners for promotion as Deputy Commandants with effect from the date private respondents No. 3 to 16 have been promoted-as such. Petitioners have also prayed that as a consequence of promotion, they be granted all consequential benefits.

2. Petitioners in their petition have averred that they were appointed as Platoon Commanders (G.D.) (Gazetted) on 23-6-1978 in the Indo Tibetan Border Police Force on 27-10-1978, the post of Platoon Commander was redesignated as Assistant Company Commander. Respondents 3 to 16 were appointed as Assistant Company Commanders on 12-6-1980, i.e. after about two years from the date of appointment of petitioners as such. Petitioners were promoted to the rank of Company Commanders in October, 1983. Petitioners 1 and 2 joined as Company Commanders on ad-hoc basis on 25-10-1983 and 12-10-1983 respectively. Respondents 3 to 16 were also promoted as Company Commanders on ad-hoc basis in the months of February /March / April,1984. Thereafter, vide order dated 1-9-1988, the ad-hoc promotions of the petitioners as well as private respondents 3 to 16 were regularised with effect from the dates they were

promoted as Company Commanders on ad-hoc basis. On 28-8-1990, petitioners as well as respondents 3 to 16 were promoted to the rank of Assistant Commandants. The post of Assistant Commandant has since been redesignated as Deputy Commandant. It is the case of the petitioners that in the seniority-list corrected upto 1-1-1986, petitioners have been shown at serial Nos. 177 and 179 respectively, while respondents 3 to 16 have been shown at serial Nos. 186, 187, 189, 191, 192, 194, 195, 196, 197, 198, 199, 200, 201 and 202 respectively. Likewise, in the seniority-list of Assistant Commandants (since redesignated as Deputy Commandants) as on 1-1-1993, petitioners have been shown at serial Nos. 41 and 43 respectively, while respondents 3 to 16 stand shown at serial Nos. 50, 51, 53, 55, 56, 57, 58, 59, 60, 61, 63, 64, 54 and 62 respectively. Similarly, in the seniority-list of Assistant Commandants (now redesignated as Deputy Commandants) as on 1-3-1994, petitioners stand shown at serial Nos. 32 and 34 respectively, while respondents 3 to 16 are at serial Nos. 41, 42, 44, 46, 47, 48, 49, 50, 51, 52, 54, 55, 45 and 53 respectively. It is further the case of the petitioners that on 6-5-1988, promotions to the rank of Assistant Commandants were made but the claim of the petitioners as well as respondents 3 to 16 was not considered on the ground that they had not completed five years service on the gazetted post. Having felt aggrieved, respondents 3 to 15 approached the Delhi High Court with the grievance that though they were duly eligible, yet their claim has been ignored arbitrarily. The writ petition filed by them was allowed, against which; Letters Patent Appeal was preferred by the Union of India, but it was dismissed by the Division Bench of the Delhi High Court on 2-12-1994. In compliance of the Division Bench judgment, claim of respondents 3 to 16 for promotion was considered from the retrospective dates and they were promoted to the post of Deputy Commandant with effect from 6-6-1988 and 27-6-1988. It is the grievance of the petitioners that not only respondents 3 to 16 have been promoted with retrospective effect from 6-6-1988 and 27-6-1988 as Deputy Commandants, but by showing their appointment as such w.e.f. 6-6-1988 and 27-6-1988 they have been made senior to the petitioners. Petitioners have averred that they represented to the official respondents and requested that since the claim of the persons junior to them has been considered for promotion from retrospective dates, their claim be also considered as such from retrospective dates. Petitioners have further averred that despite the representations made by them, the official respondents have not considered their claim. Thus, petitioners have called in question the action of the official respondents in not considering their claim for promotion as Deputy Commandants and on the other hand considering the persons junior to them for promotion from retrospective dates being illegal, unjust, unfair and arbitrary.

3. Respondents 1 and 2 and also respondents 3, 7, 10, 13 and 14 have filed separate written statements. The private respondents have not denied the material averments made in the writ petition. They have stated that they were initially appointed as Assistant Company Commanders by direct recruitment

whereas petitioners were promoted as such. However, they have not denied that the petitioners were senior to them and were also shown as such in the seniority-lists issued from time to time. They have contested the petition mainly on the ground that this Court has no jurisdiction to try the petition as their petition was decided by the Delhi High Court and that the petitioners have approached this Court belatedly. Official respondents No.1 and 2 in their written Statement have justified their action in not considering the claim of the petitioners by stating that though the petitioners were senior to respondents 3 to 16 at the level of Company Commanders but the Delhi High Court, in a writ petition filed by the officers who were directly recruited, gave judgment that they be considered for promotion to the post of Assistant Commandants (now redesignated as Deputy Commandants) as required under Rule 105 (iv) of the Rules. The official respondents have thus, stated that a review DPC was constituted to comply with the orders of Delhi High Court and the private respondents were considered whereas in the case of petitioners there was no such order from the Delhi High Court and as such they were not considered by the review DPC. Review DPC was constituted in compliance of the order passed by the Delhi High Court in the writ petition filed by the officers directly recruited as Assistant Company Commandants. The claim of the petitioners thus, has been denied solely on the ground that they had not approached any Court of law.

4. The main question to be considered in this case is whether the action of the official respondents in promoting the respondents 3 to 16 to the post of Deputy Commandant with retrospective effect is violative of Articles 14 and 16 of the Constitution of India insofar as it makes discrimination against the petitioners. As borne out from the pleadings of the parties, on 17-11-1995 when respondents 3 to 16 were promoted as Deputy Commandants with retrospective effect from 6-6-1978 and 27-6-1988, the petitioners were senior to them. The claim of the petitioners was not considered as they were not party to the writ petition filed by respondents 3 to 15 in the Delhi High Court. No justifiable reasons have been given by the official respondents as to why the claim of the seniors was not considered along with the claim of the juniors, particularly when there is no rule of promotion separately made for application to the direct recruits nor one has been pointed out by the private respondents in their written statement; rather counsel for the official respondents has fairly conceded that there is only one rule for promotion for departmental promotees and direct recruits. In this view of the matter, we are of the view that the petitioners being senior were entitled to be considered for promotion when the claim of respondents 3 to 16 was considered as such. Merely because directions were issued by the Court for considering the claim for promotion of respondents 3 to 15, did not mean that while considering their claim the claim of other eligible officers who were senior to the said officers was not to be considered. The action of the official respondents in not considering the claim of the petitioners in spite of the fact that they were senior to respondents 3 to 16 and were otherwise eligible has to be held to be violative of Articles 14 and 16 of the Constitution of India. In this regard, a reference may

be made to a judgment of the Apex Court in Ganga Ram and Others Vs. The Union of India (UOI) and Others, , wherein the Apex Court has held that the equality of opportunity in the matter of services takes within its fold all stages of service from initial appointment to its termination including promotion. In similar circumstances, a learned Single Judge of this Court in O.P. Yadav v. Haryana Kshetria Bank 1996 (1) S.L.R. 541, observed that it is the duty of the employer to ensure that there is no denial of equality of opportunity. The mandate of Articles 14 and 16 being clear, it is not to be deviated from on the pretext that the employer was merely carrying Out directions of the Court. In that case too, the claim of the petitioners therein was not considered in spite of the fact that they were senior and eligible to the persons who had gone to the Court, We are in respectful agreement with the view taken by the learned Judge in O.P. Yadav's case (supra).

5. The objection of the private respondents that the writ petition deserves to be dismissed on the ground of delay and laches is also without any substance. Admittedly, upto 17-11-1995 when order (Annexure P-14) promoting respondents 3 to 16 was passed, many seniority lists were issued by the official respondents and in all the seniority lists the petitioners were being shown senior to respondents 3 to 16, but now with the promotion of respondents 3 to 16 the petitioners have been made junior to them. It is not that the petitioners have made this grievance for the first time in the present writ petition; rather when in compliance of the judgment of the Delhi High Court the claim for promotion of private respondents was under consideration, petitioner No.1 filed a representation to the Department and also to the Home Secretary, Government of India, thereby requesting that if the claim of the persons junior to him is considered for promotion from retrospective effect then his claim should also be considered. Despite the representations made by him, the claim of the seniors was not considered. Therefore, the cause of action accrued to the petitioners only when by order dated 17-11-1995, respondents Nos. 3 to 16 were promoted. The writ petition having been filed on 23-1-1996 is not belated as alleged.

6. Consequently, the writ petition is allowed. Respondents 1 and 2 are directed to consider the claim of the petitioners and also of all others who were senior to respondents 3 to 16 with effect from the date their immediate Juniors were promoted as Deputy commandants, within two months from the date of receipt of order of this Court. They shall also be entitled to the consequential relief that may ensue from their promotion. There shall be no order as to costs.