
(1984) 08 DEL CK 0001

In the Delhi High Court

Case No : Civil Writ Appeal No. 1836 of 81

M. Bassi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-08-1984

Acts Referred:

Delhi Administration Seniority Rules, 1965 — Rule 7

Citation : (1985) ILR Delhi 375 : (1985) LabIC 526

Hon'ble Judges : Rajinder Sachar, J;Leila Seth, J

Bench : Division Bench

Advocate : S. Pappu, M.S. Mann, Y.K. Sabharwal, M.M. Sudan and G.D. Gupta, for the Appellant;

Judgement

Sachar, J.

(1) This petition challenges the seniority list of the Assistant Labour Commissioners of the Labour Department issued by Delhi Administration on 8-5-1981. By the impugned list respondent No. 4 is shown as senior to the petitioner. The petitioner claims that the seniority fixed is erroneous. Hence this petition.

(2) In exercise of powers conferred by proviso to Article 309 of the Constitution, the Chief Commissioner of Delhi notified on 15-2-1963 the Rules for regulating the method of recruitment and the qualifications necessary for appointment to the post of Conciliation Officer/Assistant Labour Commissioner. The method of recruitment provided in column No. 10 of the Schedule is by promotion 50% and by direct recruitment 50 per cent. After the coming into force of the Rules one Sh. M. M. Kher, had been appointed as Assistant Labour Commissioner by way of promotion. The next vacancy had been filled by one Harcharan Singh by direct recruitment. It is also common case that the next post thereafter had been filled up by one M. L. Dhawan, out of promotion quota. Thus in 1969, the next vacancy which had to be filled up was to be filled up at point No. 6, and by direct recruitment. Union Public Service Commission (UPSC) advertised the said post

reserved the same for Scheduled Castes only. The post was a temporary one. As the post had been advertised and reserved for Scheduled Castes neither the petitioner nor respondent No. 4 nor other officers who were not Scheduled Castes candidates were called for interview, though all of them had applied for the post. This led the respondent No. 4 and some others to file a writ petition being C. W. 90311969 in this court on the ground that this had been wrongly shown as a reserved vacancy. During the pendency of writ petition (90311969) another vacancy fell vacant which according to rules had to go to a promotion quota. The D.P.C. met and considered the eligible candidates. It selected petitioner and one Dutta who were senior to the petitioner. The petitioner being the senior was placed at point No., 7 and Dutta at No. 9. The petitioner joined as Assistant Labour Commissioner on 31-3-1970, vacancy at No. 6 is shown against direct recruitment post for which advertisement had been issued in 1969. Again another post fell vacant which was in the quota of direct recruitment. Advertisement was issued on 21-3-1970 (the last date for the receipt of the applications being 20-4-1970), the post being a permanent one, respondent No. 4 amongst others applied and was selected. On 29-7-1970 he joined the post of Assistant Labour Commissioner. This was obviously a selection after the petitioner and consequently respondent No. 4 was shown at No. 8 and this was reflected when on 28-10-1976 Delhi Administration issued a final seniority list of Assistant Labour Commissioners. The position shown in the seniority list of 1976 was as under:

S.No. Name of Officer. Date of Posted Regular substanti-appointment rely to the grade 1. Sh.S.P. Joshi (DR) 1.3.1954 Asstt. Labour Commissioner 2. Sh.G.B. Birdhi (DR) Sc do 3. Sh. M.M. Kher (PR) do 4. Sh.Harcharan Singh(DR) do 5.. Sh.M.L. Dhawan (PR) 5.6.1968 do 6. Vacant (DR) do 7. Smt. M. Bassi (PR) 31.3.1970 Labour O 8. Sh. B.P. Jain (DH) 28.7.1970 Gr.I. Executive. 9. Sh. R.P. Dutta (PR) 31.3.1970 10. Sh.S. C. Dhingra (DR) 14.10.1972 do _____

(3) It may be mentioned that the seniority amongst Delhi Administration employees is governed by Delhi Administration (seniority) Rules 1965. Rule 7 reads as under :

"7.RELATIVE Seniority Of Direct Recruits And Promotees : The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees. which shall be based on the percentage of vacancies reserved for direct recruitment and promotion respectively in the recruitment rules."..... Where the percentage is 50% each, every direct recruit shall be ranked below a promotee and the roster shall run as follows:

1.Promotion; 2. Direct Recruitment; 3. Promotion; 4. Direct Recruitment ,and so on.

Appointment shall be made in accordance with this roster and seniority determined accordingly. If for any reason a direct recruit or a promotee ceases to

hold the appointment in the grade of the seniority list shall not be re-arranged merely for the purpose of ensuring the promotion concerned."

(4) To complete the narration of facts, as during the pendency of the writ petition No. 90311969 no interim order had been passed, one Mr. Manmohan Tulsidas Acharya had been selected by the U.P.S.C. and a letter of appointment was issued to him on 31st May, 1971 offering the appointment to him. However, for reasons of his own he never actually joined. Ultimately C.W.903/1969 was allowed by Chadha, J. who by his order dated October, 5, 1978 held that in the year of recruitment i.e. 1969 there was only one vacancy and it could not have been reserved for Scheduled Castes. He also went on to declare that this vacancy should go to the first direct recruit subsequently recruited and that respondent No. 4 was entitled to have his seniority against the petitioner. As before the hearing of that petition, the petitioner herein had already been promoted as Deputy Labour Commissioner on 3-6-1978, he also directed the Administration to consider afresh the question of promotion to the post of Deputy Labour Commissioner. It is significant to note that the petitioner was not a party to C.W. 903/1969. She thereupon filed a Letters Patent Appeal being 79/1978 on 6-11-1978. She asked for interim stay of operation of Chadha, J.'s judgment. Only notice was issued on 8-11-1978 by the Court but no ex parte interim stay was given. That probably emboldened Delhi Administration to pass hurriedly (and if we may say not so gracefully) an order on 22-11-1978 reverting the petitioner from the post of Deputy Labour Commissioner, and instead promoting respondent No. 4, even when the Letters Patent Appeal was coming up for hearing on 24-11-1978. However, thereafter another post of Deputy Labour Commissioner having fallen vacant, the petitioner was again promoted as Deputy Labour Commissioner on 12-10-1979. The Letters Patent Bench disposed of the matter on 31-7-1980. Though it upheld the finding of the learned single Judge that the post could not have been reserved for "a Scheduled Caste, however it set aside that part of the order which disturbed or refixed the seniority of the petitioner viz. a viz. the respondent No. 4 and others. That part of the judgment of the learned single Judge was consequently reversed with liberty to the parties to take such action as they may be advised. The respondent No. 4 moved an application for review being C.M. 996/1980 praying that the direction of the Bench that the part of the Single Judge's judgment be "reversed" be substituted with the word "revised" but this plea was held to be misconceived and the application dismissed by the Bench on 12-8-1980. Thereafter the Delhi Administration issued the impugned seniority list dated 8-5-1981 which is as under :

S.No. Name of officer Date of Regular Post held substantively appointment in this grade
1.Sh. M.L.Dhawna (PR) 5-6-1968 Assistant Labour Commr.
2. Sh. B.P.Jain (DR) 29-7-1970 Grade I Executive.
3.Smt. M.Bassi (PR) 31-3-1970 Labour officer.
4. Shri S.C.Dhingra (DR) 14-10-1972 Grade I Executive.
5. Shri R.P.Dutta (PR) 31-3-1970 Labour officer.

It will be seen that by the said seniority list the petitioner has been shown junior to respondent No. 4 thus completely reversing the position as shown in the seniority list issued in 1976; and this has been done by placing respondent No. 4 at post No. 6 (of 1976 list which was shown vacant) by lifting him from the position at point No. 8. It is this action which is challenged by means of this writ petition.

(5) Everybody accepts that M. L. Dhawan at placing No. 5, promotee, has been correctly shown. As the roster has to be in the ratio of promotee : direct recruit, the next vacancy at No. 6 was to be filled by a direct recruit. It is this vacancy which was advertised in 1969 but was kept as reserved for a Scheduled Caste. Necessarily the next post at No. 7 had to be filled up by promotion against the post. The petitioner was selected at No. 7 and rightly shown as senior to respondent No. 4 who had been selected for post No. 8, which was advertised by the U.P.S.C. in March/April, 1970. It is relevant to note that Dutta who had also been selected by the same departmental promotion committee in March, 1970 as the petitioner was nevertheless placed at No. 9, though selected earlier than respondent No. 4, obviously on the ground that after the petitioner the vacancy had to be filled by a direct recruit. What has however, now been done by the impugned seniority list is that after the Judgment of Chadha, J. respondent No. 4 who though selected for vacancy at No. 8 has been placed at vacancy No. 6 (thus making him senior to the petitioner). This is sought to be justified by the respondents on the ground that as rotation of vacancies have to be distributed between a promotee and a direct recruit and as No. 6 vacancy for which though Acharya had been selected, was held by Chadha, J. to have been wrongly shown reserved, it is permissible to fill up this vacancy by the next direct recruit respondent No. 4. By what process is this action justified ?

(6) Now it is no body's case that respondent No. 4 was selected in pursuance of the advertisement issued in 1969 by the UPSC. In fact he was not even called for the interview just as the petitioner who had applied had not been called. We know it for a fact that one Acharya was selected by the U.P.S.C. against that post (namely No. 6). He, however, did not join.

(7) Now when Chadha, J. allowed C.W. 903/1969, various alternatives could possibly be resorted to by Delhi Administration. especially after the order was curtailed by the D. B. One alternative was to advertise the said post, invite applications again from all and make a fresh selection. Had that been done it would have been open to the petitioner as well as to others to apply for the same because even the petitioner would have known that any selection made in pursuance of that advertisement would make that person senior at No. 6 and the petitioner would be junior having been selected against the promotion quota at No. 7 But this was not done. We feel that in the circumstances of the case it was perhaps a proper and wise decision. More than 10 years have passed since 1969 vacancy. It would have been grossly inequitable to upset the seniority of persons like the petitioner and respondent No. 4, after a decade especially when in the

meanwhile they had even been promoted as Deputy Labour Commissioners. We can not fault Delhi Administration on that ground. Having decided to act fairly so far, the government unfortunately for unexplained reasons, has chosen to push up respondent No. 4, who had been selected in 1970 against a direct recruitment post at No. 8, and to place him at No. 6. The only justification for placing respondent No. 4 at No. 6 is that according to the roster, position at No. 6 had to go to a direct recruit, and as he was the next direct recruit candidate available he has been placed at No. 6. This course however, is seriously objected by the petitioner and with justification. Her contention is that when the 1970 advertisement was issued she had already been selected for the post of Assistant Labour Commissioner and, Therefore, there was no reason for her to apply in pursuance of that advertisement. Her further case is that she had been so selected by the Dpc when respondent No. 4 was also considered. Though no doubt, at that time, her tentative seniority may have weighed with the Dpc, but the fact remains that at that point of time she was selected in preference to respondent No. 4. She was selected much earlier than respondent No. 4 the question is by what process of reasoning or fair play can respondent No. 4 claim the vacancy at No. 6, for which he was not even interviewed and for which vacancy the petitioner and others were never given an opportunity to compete. Mr. Sabharwal and Mr. Gupta, the learned counsel appearing for the respondents however, urge that there was nothing to stop the petitioner from also applying in pursuance of 1970 advertisement and if she had been selected then she would have been placed at No. 6. But this begs the question. It also ignores a very vital fact that by the time of the closing date of advertisement i.e. in April 1970. the petitioner had already been selected as Assistant Labour Commissioner in promotion quota and it would have been pointless for her to apply for a similar job. The suggestion that she should have applied to improve her seniority is inapposite because she was the senior most amongst the departmental candidates and having been promoted there was no incentive because persons like respondent No. 4 would always remain junior, even if selected by direct recruitment, because he would be placed below her at No. 8. The only person who could be placed senior to her would be a direct recruit selected against No. 6 vacancy in pursuance of a 1969 vacancy; and she had applied for the same but was not called for interview because the post was treated as a reserved one. Simply because in 1978 (8 years after the petitioner's promotion) the reservation is held to be illegal is no reason to give this bonanza of upgrading the respondent No. 4 to point No. 6, without any competition and only for the fortuitous chance of his being the next direct recruit. Had that vacancy been readvertised after 1978, and the petitioner not applied, something could have been said. But no such eventuality arose and the question of her improving her position in the seniority could not arise because she had been selected for vacancy at No. 7. Much was made of the fact that R. P. Datta had applied in 1970 when the advertisement was issued. The short answer to that is that Datta even though selected in promotion quota was to be placed at place No. 9, and could hope to improve his position (at No. 8) if selected against Direct recruitment

quota. But this situation was not applicable to the petitioner's case and hence her not having applied in pursuance of 1970 advertisement cannot be held against her.

(8) Having wisely refrained from readvertising the 1969 vacancy, it did not automatically follow, as was suggested by Mr. Gupta and Mr. Sabharwal that the next direct recruit i.e. respondent No. 4 had necessarily to be pushed up to place No. 6. The argument is. that the roster between promotee and direct recruit cannot be continued until the vacancy at No. 6 was filled up. In our view, in the very peculiar facts & circumstances of this case, the argument is mis-conceived. A Rule No. 7 dealing with relative seniority of direct recruits and promotees itself envisages that if for any reason a direct recruit or a promotee ceases to hold the appointment in the grade the seniority list shall not be re-arranged merely for the purpose of ensuring the proportion concerned. It is conceded by Mr. Sabharwal that in case it had ultimately been held by Chadha, J., that this post at No. 6 was correctly reserved and the selected person Acharya, had joined this post even for a day and thereafter resigned, respondent No. 4 could not have been pushed up to the placing at No. 6 because Rule 7 forbids that.

(9) Rule 7 is not a mandate that at all times in the service there should be equal number of direct recruits and promotees. It only provides for filling up the vacancies if and when they arise in a certain quota posts,. By the very nature of exigencies of service like retirement, resignation, etc. it is not possible that at all times there should be equal number of incumbents holding various posts. All that the Rule requires is that when vacancies arise, they should be filled up in the order of promotee : direct recruit and so on. Once, Therefore, a person has been appointed against a particular place say at No. 6, the Rule has been satisfied. Thus if a direct recruit had joined at No. 6 and resigned even after a day it cannot be disputed that respondent No. 4 would have to remain content with the position at No. 8 and could not have possibly asked to be pushed up to No. 6 on the spurious reasoning that otherwise No. 6 will remain vacant. As we said before, one understandable course could have been to re-advertise the post and make it available for being competed by all including the petitioner and respondent No. 4 that course was advisely not followed because of the long period that had intervened. So in the peculiar circumstances, there was no other reasonable and fair course to adopt except to treat position No. 6 as if notionally filled i.e. as if a direct recruitment had joined and thereafter resigned immediately. Acharya had in fact been selected and appointed on 31-5-1971. Surely, the next direct recruit like respondent No. 4 cannot steal a march over the petitioner by the fortuitous and unfortunate position of the writ petition having remained pending in this court for about 10 years. In our view the petitioner who was selected at position No 7 would continue to remain senior to respondent No. 4 who undoubtedly was selected against the vacancy at No. 8.

(10) We may mention that some effort was made to show that the post which was advertised in 1969 was a post which was to fall vacant in August 1969 and

the advertisement was issued in anticipation of that; and further that the vacancy which had arisen on 1-2-1969, which was a newly created vacancy, was the one against which respondent No. 4 had been selected. The suggestion being that as respondent No. 4 was selected against an earlier vacancy of February, 1969 he had an independent right to be placed at No. 6. In any case, we feel it is unnecessary to go into the question of identification of particular posts because that is not relevant for the determination of the main question of seniority which is determined solely according to the quota rule. As a matter of fact it was conceded by Mr. Sabharwal and Mr. Gupta that the identification of any particular post for the vacancy was not of any relevance for the purpose of inter se seniority. We may however, note that this assumption does not appear prima facie to be correct because the advertisement issued in 1969 characterised the post as a temporary one, which it could not have done had the post advertised been of the vacancy arising on 5-8-1969, on the retirement one Harcharan Singh, because his was a permanent post. Respondent No. 4 was appointed against the advertisement issued in March, 1970, wherein it was stated that the post was a permanent one, one, and this apparently would refer to the later post i.e. the vacancy occurring on 5-8-1969. But as we said the identification of any particular post is of no consequence because of the roster principle where the vacancy has to be filled up in the ratio of promotes ;direct recruit. Now admittedly Dhawan at point No. 5 was the last promotee officer. The advertisement was issued in 1969 and against it Acharya was selected. So the post at No. 6 was the one in which only Acharya was selected. Respondent No. 4 could only and was in fact selected only against the post at No. 8 according to the roster. Thus the action of Delhi Administration on upsetting the seniority of the petitioner viz-a-viz. respondent No. 4 by seeking to place the later at point No. 6 is against the mandate of Rule 7 and is also without any principle and thus arbitrary and unjust. "Wherever, Therefore, there is arbitrariness in the State action whether it be of the Legislature or of the Executive or of an authority under Article 12, Article 14 immediately springs into action. In fact the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution." (See Ajay Hesla V. Khalid Mujib; Air 1978 Sc 596(1) at 624 para 56. Reference is made by the counsel for the respondents to Bishan Sarup Gupta and Others Vs. Union of India (UOI) and Others, (2). In our view it is of no avail to the respondents. In that case it was found that 73 promotees had been appointed in excess of their quota from 1959 onwards. That is why the rule was amended by which quota had been fixed from 1969 as 1 : 1 between promotees and direct recruits. As there were 73 promotees who were spilled over i.e. were in excess of their quota, the Govt. fixed the seniority, by allocating the posts and giving even Serial numbers to the promotees and odd Serial numbers to the direct recruits. The 73 promotees made a grievance that all of them should have been unblock placed senior to all appointees and treated on a priority basis and their seniority should be fixed from the date of their appointment and seniority determined on that basis viz-a-viz. direct recruits. This plea was rejected by the

Supreme Court which held that these 73 spillovers had no allocated posts and that when the rules require the quota to be divided equally between the promotees and direct recruits, the only manner of fixing seniority was to interpose the 73 promotees in their placing in terms of their respective quota. It was in that context that the Supreme Court held that though, this may result in, out of the 73 promotees, some of them, who were appointed in 1962, becoming junior to a direct recruit of 1966, but that that was inevitable because of the massive promotions over the quota in the years prior to 1963. We do not see the relevancy of this judgment. All that it lays down is that because of the quota rule it was lawful for a 1966 direct recruit to be shown as senior to a promotee of 1962 because of the reason that excess appointments had been made of the promotees than was warranted by their quota. In the present case the petitioner is not challenging in any way the rule relating to the relative seniority of direct recruits and promotees. The case of the petitioner rather is that the respondent/vacancy has to be filled up in the ratio of promotes ;direct Delhi Administration has applied this rule arbitrarily and without any principle.

(11) ONS objection sought to be raised by Mr. Sabharwal but not very seriously pressed thereafter, was that if the petition is allowed it will affect the seniority of other persons who are not parties to the writ petition. He pointed out that in the impugned seniority list issued on 8-5-1981 Dhingra is shown as senior to R. P. Dutta. But if the petitioner's contention is accepted and she is placed senior to Jain then Dhingra will have to be shown as junior to Dutta. We do not think that the non-impleading of Dhingra is of any consequence because the petitioner is not challenging the seniority of Dhingra. She is challenging her seniority viz-a-viz. respondent No. 4, who is represented. If as a result of the success of the writ petition there is an inter-change of the position between the petitioner and respondent No. 4 and she becomes senior, the placing of the other officers below them is automatic and in compliance with the Rules. It is to be noted that in the 1976 list Dhingra at No. 10 was shown as junior to Dutta, a promotee, because the placing at No. 9 was reserved for a promotee. This roster was worked, correctly by showing No. 6 as vacant. But when by the impugned action in 1981, respondent No. 4 who was at No. 8 was pushed up to No. 6, the inevitable result was of a vacancy being created at No. 8, thus pushing up Dhingra, a direct recruit from No. 10 to No. 8 How unfair and unjust this is, is shown by the fact that both the petitioner and R. P. Dutta were selected in a promotion quota in March, 1970. Dutta was placed junior to respondent No. 4 even though selected earlier, at No. 9 because of the quota rule. The petitioner having been placed at No. 7, the next vacancy was to go to a direct recruit which was given to respondent No. 4 at No. 8. Now Dhingra is direct recruit of 1972 and had been rightly placed at No. 10 in the earlier 1976 list because the placing at No. 9 was for a promotee which had correctly been given to Dutta. But by the impugned seniority list issued in 1981 not only the seniority of the petitioner has been upset, but Dhingra who had been selected in 1972, against a direct recruitment quota has been placed above Dutta who was selected by promotion as far back

as 1970. This is not in pursuance of the normal vacancy being filled according to the quota role, but by, artificially, giving respondent No. 4 (who was selected against vacancy No. 8) the vacancy at No. 6 for which he never competed and for which he has no claim in law or principle. The petitioner in this case only has a grievance against Delhi Administration and respondent No. 4. They have been imp leded as parties. She .does not have any conflict with Dhingra. It is true, that as a result of our decision there will be a change in the seniority of Dhingra and Dutta, but that is an automatic result of the correct principles of seniority being applied by Delhi Administration. It is, Therefore, no objection, that Dhingra and Dutta have not been imp leded as parties to the present petition. Such a consequential result flowing from the decision of any writ petition does not require all conceivable parties to be imp leded to the writ petition so long as the necessary parties i.e. respondent No. 4 and Delhi Administration have been imp leded. See in this connection A. Janardhana Vs. Union of India (UOI) and Others, .

(12) In the result we are of the firm view that the action of the respondent /Delhi Administration issuing the impugned seniority list on 8-5-1981 and placing respondent No. 4 at No. 6 is both unwarranted in law and equity. We would, Therefore, quash the seniority list issued in 1981 and hold that the earlier seniority list issued in 1976 was correctly prepared and should continue to be operative. In the special facts and circumstances of this case the post at No. 6 had not had to be filled up and can continue to be shown as vacant, as if held for a day, in terms of Rule 7.

(13) The result will be that the petitioner will rank senior to respondent No. 4 in the seniority list and will be shown at No. 7 immediately after the vacant post at No. 6. As indicated, in the seniority list issued on 28-10-1976, the seniority of other incumbents including respondent No. 4 will also have to be shown in the same manner indicated in the 1976 seniority list. The Delhi Administration is directed to take appropriate steps to carry out the directions immediately.

(14) We may also mention that the petitioner had been reverted on 22-11-1978, though she had been again promoted as Deputy Labour Commissioner on 12-10-1979. The Division Bench by its order of 31-7-1980 had directed that any reversion B on account of the single Judge's judgment will have to be reversed. It is not disputed that the reversion on 22-11-1978 was in pursuance of the learned single Judge's judgment. As mentioned above the petitioner had moved the L.P.A. Bench and the same had issued a notice for stay on 6-11-1978 which was to be heard on 24-11-1978. In the circumstances the action of the Delhi Administration in reverting the petitioner on 22-11-1978 so as to Stall the direction in this court was, to say the least, not in good taste and was certainly very suspicious. This appears even more so because ultimately the Letters Patent Bench had held that the direction by the learned single Judge which had upset the seniority of the petitioner was not warranted. In the circumstances it is clear that the petitioner's reversion for the period 22-11-1978 till 12-10-1979 was

really uncalled for. We however, do not wish to say anything more on this considering that she was promoted again on 12-10-1979 and has been continuing since then as Deputy Labour Commissioner. Though we do not wish to direct that the petitioner be paid the pay of a Deputy Labour Commissioner for that period, we wish to make it clear that this period i.e. between 22-11-1978 to 22-10-1979 would not be treated as a break for counting her continuous service as a Deputy Labour Commissioner for any purpose and that she would be entitled to claim that for all the period since she was promoted as a Deputy Labour Commissioner in June. 1978, onwards be treated continuously to be the period spent as a Deputy Labour Commissioner for all purposes of further promotion or for the purpose of seniority as a Deputy Labour Commissioner or for the purpose of pension or otherwise. However ,she will not be entitled to claim any arrears for this period. As a result the writ petition is allowed as above. In the circumstances there will be no order as to costs.

(15) We had directed on 1-6-1984 that Dpc to select the Deputy Labour Commissioner should not meet before a decision is taken by us. As we are now announcing the judgment it is open to Delhi Administration to take appropriate steps including the calling of Dpc for the purpose of promotion to the post of Deputy Labour Commissioner.