
(2012) 12 RAJ CK 0038
In the Rajasthan High Court
Case No : Civil Writ Petition No. 16293 of 2012

Mahipal Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-12-2012

Acts Referred:

Police Service (Appointment by Promotion) Regulations, 1955 — Regulation 5(3)

Citation : (2013) 2 CDR 995

Hon'ble Judges : Mohammad Rafiq, J; Meena V. Gomber, J

Bench : Division Bench

Advocate : Sanjeev Prakash Sharma and Mr. Sandeep Singh Shekhawat, for the Petitioner, for the Appellant; S.S. Raghav and Mr. S.K. Saini for Mr. S.N. Kumawat, Additional Advocate General for the Respondents, for the Respondent

Judgement

1. This writ petition is directed against judgment of the Central Administrative Tribunal, Jaipur Bench, Jaipur, dt. 07.09.2012 in original Application No. 484/2010. Petitioner filed the said original application before the Central Administrative Tribunal with the prayer that order of respondents dt. 16.02.2009, by which he was superseded and his juniors were promoted to Indian Police Service, be quashed and set aside and action of the respondents in not considering his candidature for promotion to Indian Police Service (for short, "the IPS") for selection year 2007 be declared illegal and they be directed to consider the petitioner, for promotion by treating him within age as on 01.01.2007 and grant him all consequential benefits.

2. It may be noted at the outset that original application filed by petitioner was earlier dismissed by the Tribunal vide judgment dt. 11.08.2011 as not maintainable being time barred. Petitioner, aggrieved thereby, filed Civil Writ Petition No. 13162/2011 before division bench this Court and that writ petition was decided vide judgment dt. 10.07.2012, whereby the matter was remitted to the Tribunal for deciding application for condonation of delay and with liberty to the petitioner to file such application. With that direction, the judgment of the

Tribunal dated 11.08.2011 was set aside and the Tribunal was directed to pass fresh order. It was thereafter that learned Tribunal has after condonation of delay again decided the original application by the judgment impugned in these proceedings, thereby dismissing original application on the premise that as per office memorandum issued by Government of India dt. 25.08.2010, case of petitioner cannot be reopened, as doing so would lead to opening up a Pandora's box.

3. Shri Sanjeev Prakash Sharma, learned senior counsel appearing for the petitioner, has argued that case of petitioner was exactly identical to that of Om Prakash Sharma, whose original Application was allowed by the Tribunal vide its judgment dt. 25.05.2011, albeit, in respect of selection of the year 2009. Core issue that was involved in the case of petitioner and that of Om Prakash Sharma was identical, which was that whether a person having crossed age limit of 54 years, at any time during the year of selection, can be, as per Regulation 5(3) of the Indian Police Service (Appointment by Promotion) Regulations, 1955 (for short, "the Regulations of 1955"), treated to have become over age and superseded by his juniors. Learned senior counsel argued that this issue was decided against respondents by a division bench of Punjab & Haryana High Court vide judgment dt. 01.02.2010 in Writ Petition No. 15798/2009-- Parveen Kumar vs. Union Public Service Commission & Ors. Learned senior counsel submitted that petitioner's date of birth is 06.03.1953. The respondents did not consider his candidature for select list prepared in the year 2008 on the ground that he has crossed age 54 years as on 01.01.2008. The promotion board met on 27.06.2008 for making recommendations under Rule 5(1) of the Regulations of 1955 and treated the petitioner as overage having crossed the age of 54 years as on 01.01.2008 and thereby deprived him of his rightful claim of promotion to IPS. It was argued that even though the select list was prepared in the year 2008 but the said list was prepared for the vacancies that became available and were determined for the period from 01.01.2007 to 31.12.2007. Since the petitioner was within the age limit in that year, for vacancies of which the promotion board made recommendations, he ought to have been treated within age.

4. Shri Sanjeev Prakash Sharma, learned senior counsel, in support of his arguments, has relied on the judgment of Punjab and Haryana High Court in Parveen Kumar, supra. He further argued that aforesaid judgment in Parveen Kumar, was challenged before the Supreme Court by filing Petition for Special Leave to Appeal (Civil) No. 14002/2010 -- Union of India vs. Praveen Kumar & Ors.. The Supreme Court vide order dt. 31.05.2010 upheld the said judgment of Punjab & Haryana High Court by dismissing the Petition for Special Leave to Appeal. Judgment of Punjab & Haryana High Court in Parveen Kumar was followed by Jaipur bench of the Tribunal in the case of Om Prakash Sharma in original Application No. 400/2010, decided vide judgment dt. 25.05.2010. Once the Tribunal had, in the present case, condoned the delay in filing Original Application, there was no valid justification for it for not allowing the Original

Application on merits as there was no difference between the case of petitioner and that of Om Prakash Sharma except the year of selection. The issue involved in both the cases was common. Learned senior counsel submitted that learned Tribunal was wholly unjustified in dismissing the original application by relying on office memorandum dt. 25.08.2010 issued by the Government of India in its Department of Personnel and Training and held that case of petitioner cannot be reopened according to aforesaid office memorandum. It was argued that such office memorandum had no binding effect on the Tribunal. In any case, the aforesaid office memorandum also, in Para 4(iv), provides that eligibility of State Service Officers in cases of Review Selection Committee meeting, would be reckoned on the basis of Regulations/Interpretation prevailing in that year unless otherwise directed by a Court of Law. The direction of the Tribunal/Court, therefore, would take a precedence over the interpretation placed by the respondents. Learned senior counsel cited a judgment of Principal Bench of Central Administrative Tribunal allowing Original Application No. 2758/2010 - S. Puttaswamy vs. Government of India & Ors., delivered on 23.12.2010, wherein also the judgment of Punjab & Haryana High Court in Parveen Kumar (supra), was followed. Learned senior counsel further referred to two more orders dt. 03.11.2011 and 09.01.2012 in identical O.A. No 1110/2011 G.S. Shivaswamy vs. Government of India, and O.A. No 1109/2011 -S Narasimhaiah vs. Government of India & Ors., respectively, passed by the Tribunal at its Principal Seat, New Delhi (Annexures 15 and 16 to writ petition), and argued that both, the Union of India and the Union Public Service Commission, agreed before the Tribunal by filing reply that judgment of Punjab & Haryana High Court, which has been affirmed by the Supreme Court, will be followed in those cases. Accordingly, the applicants withdrew the Original Applications. It is, therefore, prayed that writ petition be allowed and judgment of learned Tribunal be quashed and set aside.

5. Shri S.S. Raghav and Shri S.K. Saini, learned counsel for respondents, argued that subject matter of present writ petition primarily concern the Union Public Service Commission and, as such, it is for them to clarify the position. It was submitted that a meeting of selection committee constituted under Regulation 3 of the Regulations of 1955, for preparation of a list of members of Rajasthan Police Service, as were suitable, for promotion to the Indian Police Service for the year 2008, was held on 27.06.2008 with reference to date of eligibility i.e. 01.01.2008, and name of petitioner was not included in zone of consideration as he had crossed the age of 54 years as on 01.01.2008 because his date of birth is 06.03.1953. Since the select list was prepared for the year 2008, the cut-off date of eligibility was rightly taken as 01.01.2008. The process of appointment from select list of 2008 stood closed with the issuance of appointment notification on 16.02.2009. The Tribunal has rightly declined to reopen the matter in view of office memorandum issued by Department of Personnel & Training of Government of India, dt. 25.08.2010, condition no. 3 of which provides that where meetings have already been held and minutes have been approved, matter of selection will not be opened unless and until there is a specific direction

from a Court of law. In case the petitioner is given this benefit, others may seek this benefit for a select list prepared in respect of earlier years and there may not be any end of such litigation. It is argued that judgment of Punjab & Haryana High Court should be implemented from a certain cut off date. If relief, as prayed for by petitioner, is extended to him, it would tantamount to unsettling settled position. As far as case of Om Prakash Sharma is concerned, he approached the Tribunal well in time and, therefore, the Original Application filed by the petitioner was rightly dismissed.

6. We have given our anxious consideration to rival submissions and perused the material on record.

7. Core question that arises for consideration in present matter is whether age of eligibility should be determined with reference to 1st January of the year for which select list is prepared or of the year in which vacancies for preparation of such selection list became available. Regulation 2(1)(i) of the Regulations, 1955, defines the "year" to mean the period commencing on 1st January and ending on 31st December of the same year. Regulation 5(3) of the Regulations 1955 makes such members of the State Civil Service ineligible for promotion to Indian Police Service, who have attained the age of 54 years on the 1st date of January of the year for which the select list is prepared. As per case set up by petitioner, vacancies, for which his case was to be considered, arose between 01.01.2007 to 31.10.2007. This has not been disputed by respondents even before the Tribunal. Vacancies that became available during that period have to be considered the vacancies of the year 2007, which is precisely the interpretation placed on proviso to Regulation 5(3) of the Regulations 1955 by division bench judgment of the Punjab & Haryana High Court in Praveen Kumar, supra, and the Regulation 2(1)(i) defining "year". On that analogy, the vacancies, against which the case of petitioner was to be considered, should be taken to have been determined as on 31.12.2007 and accordingly the select list, that is to be prepared by the promotion board for those vacancies, should be held to be the select list of the year 2007 and not 2008, which interpretation has been erroneously taken by the respondents and has been held to be erroneous by catena of judicial pronouncements following the judgment of Punjab & Haryana High Court in Praveen Kumar, supra. If the same interpretation is adopted in the case of the petitioner, he would be deemed to be eligible for promotion against the vacancies that arose between 01.01.2007 to 31.12.2007 because his date of birth being 06.03.1953, he would be still less than 54 years of age as on 01.01.2007. Following the judgment of Punjab & Haryana High Court in Praveen Kumar in taking that interpretation, the Tribunal also relied on the amendment incorporated in 2000 in Regulation 5(3) of the Regulations 1955.

8. The unamended Regulation 5(3) provided that "the Committee shall not consider the cases of members of the State Civil services who have attained the age of 54 years on the first day of January of the year for which the select list is prepared". The word "for" was substituted by the word "in" immediately after

"the first day of January of the year...". We are in respectful agreement with the view expressed by the Punjab & Haryana High Court in Praveen Kumar, wherein it has been held that the purpose of this amendment was to keep the eligibility of members intact in respect of the year for which the select list is prepared regardless of the time or the delay in actually convening the meeting of the promotion board. Following discussion in Para 24 of the judgment in Praveen Kumar would make this amply clear:--

24. The intention of the framers of the Regulations further become discernible from the reading of un-amended Regulations, which have linked the age of 54 years to the 1st of April of the year of meeting. The framers of the Regulations must have found that the year of meeting has no relationship for determination of the age of eligibility as it was, wholly fortuitous. Therefore, to keep the eligibility, intact in respect of the year for which the select list is prepared, amendment has been incorporated in the year 2000 and an effort has been made to link "the age of eligibility to the occurrence of vacancies and to de-link the same from the year of meeting. If we construe the Regulation 5(3) to mean that age has to be determined by reference to the year of meeting then the mischief which is sought to be remedied would perpetuate and amendment would lose its object. The aspirations of a brilliant and meritorious officer working in the State cannot be defeated by any arbitrary method of fixing the age of eligibility, which has got nothing to do with the basic principles of service jurisprudence, namely occurrence of vacancy. Therefore, we find that the Tribunal has committed a grave error by presuming that the age of eligibility has to be determined in respect of the year when the Committee is supposed to meet, which is wholly unsustainable.

9. In our considered view there was no justification for the Tribunal in not applying the ratio of aforesaid judgment to the case of present petitioner, particularly when it had earlier allowed similar original Application filed by Om Prakash Sharma on the same premise and the Principal Seat of the Tribunal had also allowed similar Original Applications, some of which, in fact, on the concession by the respondents. We do not appreciate the stand of the respondents before this Court in contesting this matter whereas they have conceded before the Principal Seat of the Tribunal in some of similar matters cited supra. We are also not persuaded to agree with the view expressed by the Tribunal that office memorandum would in any manner create a bar for extending the similar benefits to petitioner. In the first place, everything in principle would follow on correct interpretation of Regulations 2(1)(i) and 5(3) of the Regulations 1955, which interpretation having already been enunciated by the Punjab & Haryana High Court in Praveen Kumar, and upheld by the Supreme Court, has attained finality in favour of the petitioner. Secondly, even otherwise Para 4(iv) of the aforesaid office memorandum clearly provides that the eligibility of State Service Officers in case of Review Selection Committee meeting would be reckoned on the basis of Regulation/Interpretation prevailing in that year unless otherwise directed by a Court of Law. Even if that clause would not have been

inserted in the office memorandum, the Tribunal would still not be bound by other stipulations contained therein providing that matters of selection wherefor meetings have been held would not be reopened. But then, the very same memorandum clearly postulates that if there is a direction to the contrary by a Court of law, it can be so reopened by following different interpretations than the one prevailing in the year, of selection. Such different interpretation would be the interpretation which a Court of law has adopted, on relevant provisions touching upon the eligibility of the officer. In the present case, the interpretation that was placed in regard to eligibility of the likes of petitioner, by the Punjab & Haryana High Court in Praveen Kumar, having been upheld by the Supreme Court, has attained finality with dismissal of Petition for Special Leave to Appeal by the Supreme Court. There was therefore no reason for the Tribunal in not applying the same to the case of present petitioner. A Court of law, for that purpose, would also include a Tribunal following dicta of the Supreme Court in L. Chandra Kumar Vs. Union of India and others, , holding that Central Administrative Tribunal would be the Court of first resort for those whose service matters are required to be brought before it by virtue of provisions contained in Administrative Tribunal Act, 1985.

10. In view of above discussion, we are persuaded to allow present writ petition. It is accordingly allowed. Consequently judgment of the Central Administrative Tribunal, Jaipur Bench, dt. 07.09.2012 in Original Application No. 484/2010 is set aside and Original Application filed by petitioner before the Tribunal is allowed. As a consequence, the notification dt 16.02.2009 and the select list of 2008 to the extent of exclusion of name of petitioner and inclusion of names of his juniors, is quashed and set aside. However, it is made clear that those promoted by aforesaid order/notification would continue to work in their present postings till fresh selection is made by promotion board as per Regulation 3 of the Regulations, 1955. The respondents are directed to reconsider names of all eligible candidates by determining the age of 54 years as on 01.01.2007 qua vacancies that occur between 01.01.2007 and 31.12.2007 by including the name of petitioner. Necessary compliance be made within a period of three months from the date a copy of this order is served upon the respondents.