
(2014) 01 P&H CK 0095
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 7699 of 2013

Nirmal Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 09-01-2014

Acts Referred:

Constitution of India, 1950 — Article 14 16

Citation : (2014) 01 P&H CK 0095

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : D.S. Rawat, for the Appellant; Aman Bahri, Additional Advocate General, Punjab, for the Respondent

Final Decision : Allowed

Judgement

Tejinder Singh Dhindsa, J.—The petitioners raise a challenge to the seniority list dated 26.03.2013 (Annexure P-5) of the Assistant Directors under the Department of Animal Husbandry, Fisheries and Dairy Development Punjab, wherein they have been shown junior to private respondent No. 4. Undisputed facts are that the petitioners who all belong to the general category were initially appointed as Fishery Officers on 28.09.1978 and 13.02.1980 respectively. Respondent No. 4 who belongs to the scheduled castes category was appointed subsequently as Fishery Officer on 23.06.1980. However, by enjoying the benefit of reservation, respondent No. 4 earned promotion as Senior Fishery Officer on 22.09.1987 and was further granted promotion as Assistant Director on 10.09.1990. In comparison the petitioners earned promotions as per their turn as Senior Fishery Officer on 19.12.1990, 15.10.1991 and 01.01.1992 respectively and thereafter were promoted as Assistant Directors vide order dated 29.07.2005.

2. A tentative seniority list of Assistant Directors was circulated on 16.11.2007 in which the petitioners were shown at seniority Nos. 10, 14 and 15 respectively whereas respondent No. 4 was shown junior at seniority No. 18. As such

tentative seniority list was not being finalized, the petitioners filed CWP No. 18115 of 2012 in this Court and the same was disposed of on 14.09.2012 in which directions were issued to the respondents to finalize the seniority inter se Assistant Directors within a period of six months strictly in accordance with law.

3. On 17.10.2012, a fresh tentative seniority list was circulated by the respondent-department in which private respondent No. 4 was shown senior to the petitioners. Objections were immediately submitted by the petitioners taking a stand that such tentative seniority list is in violation of the judgment rendered by the Hon''ble Supreme Court in Ajit Singh Janjua's case. However, the impugned final seniority list dated 26.03.2013 of the Assistant Directors has been issued in which respondent No. 4 has been shown at seniority No. 1 whereas the petitioners have been placed at seniority Nos. 2, 3 and 4 respectively.

4. Mr. D.S. Rawat, learned counsel appearing for the petitioners would refer to the judgment of the Hon''ble Supreme Court of India in Ajit Singh Januja and others Vs. State of Punjab and others, and would contend that even though a reserved category employee can be promoted on a higher post on the basis of reservation (roster point) but whenever a senior general category employee "catches up" with the reserved category junior employee on the higher post, then the senior general category employee has to be declared senior and is to be granted benefits accordingly. Counsel submits that the State of Punjab has issued Instructions dated 22.10.1999 (Annexure P-1) to implement the judgment of the Hon''ble Supreme Court in Ajit Singh Janjua's case (supra) but the respondent-department in terms of issuing the impugned seniority list dated 26.03.2013 has acted in violation of the judgment as also the Instructions dated 22.10.1999. Mr. Rawat would contend that insofar as the facts of the present case are concerned, the post of Fishery Officer is to be taken as Level-I, post of Senior Fishery Officer is Level-II, post of Assistant Director is Level-III and the post of Deputy Director would be the Level-IV. Accordingly, it has been argued that in the light of the judgment rendered in Ajit Singh Janjua's case (supra), the petitioners have "caught up" with respondent No. 4 at Level-III i.e. on the post of Assistant Director and respondent No. 4 having not been further promoted to Level-IV i.e. the post of Deputy Director, the seniority of the petitioners i.e. senior general category employees has to be fixed over and above respondent No. 4 in the cadre of Assistant Directors i.e. at Level-III.

5. Per contra, learned State counsel would submit that respondent No. 4 had been promoted from Level-I to Level-II and thereafter, from Level-II to Level-III i.e. to the post of Assistant Director at a point of time when the petitioners were still holding the post of Fishery Officer i.e. at Level-I. It has been contended on behalf of the State that since the petitioners did not "catch up" with respondent No. 4 at Level-II i.e. on the post of Senior Fishery Officer as such, the principle of "catch up" at Level-III would not be available. To such extent, a distinction is sought to be drawn so as to deny to the petitioners the benefit of "catch up"

principle evolved in Ajit Singh Janjua's case (supra).

6. It would be pertinent to note that in spite of having been served, no appearance has been caused on behalf of respondent No. 4 and even no reply has been filed.

7. Counsel for the parties have been heard at length.

8. In Ajit Singh Janjua (supra), the Hon''ble Supreme Court had held that seniority rules permitting seniority to be counted from the date of initial promotion, govern normal promotions made according to rules i.e. by seniority at basic level, by seniority cum fitness or by seniority cum merit or by selection but not to promotions by way of roster. The roster promotions, it had been held were meant only for the limited purpose of due representation of the reserved categories at various levels of service. In the present case, the petitioners were initially appointed as Fishery Officers prior in point of time to respondent No. 4. As such, they were senior to respondent No. 4 at Level-I. Respondent No. 4, thereafter, has enjoyed roster point promotions to Level-II i.e. to the post of Senior Fishery Officer and to Level-III i.e. the post of Assistant Director. The petitioners, who belong to the general category have "caught up" with respondent No. 4 at Level-III i.e. on the post of Assistant Director while he was still holding such post having not been promoted further to Level-IV i.e. to the post of Deputy Director. The benefit of "catch up" principle as such would be available to the petitioners and the determination of seniority holding the petitioners to be junior to respondent No. 4 in the cadre of Assistant Directors cannot be sustained.

9. Even otherwise, a similar issue came up for consideration before the Hon''ble Supreme Court in M.G. Badappanavar and Another Vs. State of Karnataka and Others, . The facts of the case were that the appellants therein were general candidates and their initial recruitment was to the post of Junior Engineers (Level-I). Promotions thereafter were to the post of Assistant Executive Engineer (Level-II) and then further to the post of Executive Engineer (Level-III). The appellants and the respondents (reserved category candidates) were initially recruited as Junior Engineers and the appellants general candidates were senior to one or the other of the reserved candidates at Level-I. The reserved candidates earned roster point promotions from Level-I to Level-II i.e. Assistant Executive Engineers and further from Level-II to Level-III as Executive Engineers. On the other hand, the senior general category candidates earned promotions as per rules i.e. either by seniority at basic level or by selection and ultimately reached Level-III i.e. were promoted as Executive Engineers. By such time the reserved candidates were still at Level-III. However, such reserved candidates were promoted to Level-IV i.e. Superintending Engineers by treating them as senior to the general candidates. This was done taking into account the fact that the reserved candidates reached Level-III i.e. the post of Executive Engineer earlier than the general category. Against such factual backdrop, the Hon''ble Supreme Court intervened and held that as per Ajit Singh Janjua's judgment, the general

candidates having already "caught up" with the reserved candidates at Level-III had treated as senior at Level-III i.e. on the post of Executive Engineer.

10. The dictum laid down in M.G. Badappanavar's case (supra) following the earlier judgment in Ajit Singh Janjua would apply squarely to the facts of the present case. The Hon'ble Supreme Court had held as under:

14. It is clear on facts of this batch of cases that the initial recruitment of these general candidates and the reserved candidates was as Junior Engineers (now called Assistant Engineers) and then the next promotion was to the post of Assistant Executive Engineer and then to the post of Executive Engineer. At both these levels admittedly, there has been a roster operating. Beyond Executive Engineer's post, there is no roster. The appellants and the respondents (reserved candidates) were recruited as Junior Engineers and the appellant-general candidates were senior to one or the other of the reserved candidates at level 1. The reserved candidates thereafter got promotion as per roster points from Level 1 to Level 2 (Assistant Executive Engineer). From Level 2 the roster promotees were promoted again to Level 3 as Executive Engineers by way of a further roster. The senior general candidates got promoted as per rules-either by seniority at basic level or by selection - and reached Level 3. By that time the reserved candidates were still at Level 3. But they were promoted to Level 4 treating them as senior to the general candidates. This was done taking into account the fact that the reserved candidates reached the category of Executive Engineers earlier than the general candidates. According to Ajit Singh II, if by the date when the reserved candidates were promoted as Superintending Engineers, the general candidates had already reached the said level by normal promotion system, then the general candidates must be treated as seniors as Executive Engineers to the reserved candidates. The general candidates had a right under Articles 14 and 16 to be considered for promotion as Superintending Engineers as seniors to the reserved candidates. This was unfortunately not done. After Ajit Singh II, this had to be rectified.

11. For the reasons recorded above, the writ petition is allowed. The impugned seniority list dated 26.03.2013 (Annexure P-5) to the extent of determination seniority inter se petitioners and respondent No. 4 is set aside. Directions are issued to issue revised seniority within a period of two months from the date of receipt of a certified copy of this order by granting benefit to the petitioners of the principle of "catch up" as enunciated in Ajit Singh Januja and others Vs. State of Punjab and others, It is also directed that further promotion to the post of Deputy Director shall be undertaken only after the issuance of such revised seniority position. The writ petition is allowed in the aforesaid terms.