

(2010) 08 SHI CK 0197
In the High Court Of Himachal Pradesh

Roshan Lal and Another

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 17-08-2010

Acts Referred:

Citation : (2010) 08 SHI CK 0197

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—There is no dispute that petitioners and private respondents were appointed as Junior Draftsman sometimes in the year 1973. There is also no dispute that at that time private respondents were senior to the petitioners. There is also no dispute that petitioners and private respondents were promoted to the next higher post i.e. Draftsman and their seniority was maintained as such. However for the next higher post i.e. Head Draftsman, which was further re-designated as Divisional Head Draftsman, by taking the advantage of the roster point fixed for the reserved category petitioners were promoted prior to the private respondents. There is also no dispute that private respondents were subsequently promoted as Head Draftsman and at that level petitioners were placed senior to private respondents in the seniority list. For the next higher promotional post i.e. Circle Head Draftsman, private respondents were promoted. It is thus the petitioners' grievance that even though as Head Draftsman they were senior to the private respondents but their claim was ignored and were wrongly left out from being considered for promotion for the said post. In this background, petitioners have filed the present petition praying that they be held entitled to promotion as Circle Head Draftsman w.e.f. 13.4.2000. They have assailed the promotion of private respondents.

2. From the record, it could not be shown as to how any legally enforceable right of the petitioners stands violated. In support of their claim, my attention has been invited to instruction communicated vide letters dated 27.5.1996 (Annexure

A-5), 27.3.1997 (Annexure A-5/1) and 4.9.1997 (Annexure A-5/2). The instructions are clear. There is no ambiguity in the same. The relevant portion of the instructions reads as under:

So far as the question of determining the seniority in the promoted category as between reserved candidates and general candidates is concerned, the Hon''ble Supreme Court of India in Civil Appeal No. 9272 of 1995 Union of India and Ors. etc. v. Virpal Singh Chauhan etc. (decided on 10.10.1995) has laid down that the seniority position in the promoted category as between the reserved candidates and general candidates shall be the same as their inter-se-seniority position in the initial entry grade/cadre at any given point of time provided that at that point of time both the general candidate(s) and the reserved candidate(s) are in the same grade. This rule operates whether the general candidate is included in the same batch of promotees or in subsequent batch. In other words, even if a Scheduled Caste/Scheduled Tribe candidate is promoted earlier by virtue of rule of reservation/roster than his senior general candidate and the senior general candidate is promoted later to the said higher grade, the general candidate shall regain his seniority over such earlier promoted Scheduled Caste/Scheduled Tribe candidate. The earlier promotion of the Scheduled Caste/Scheduled Tribe candidate in such a situation shall not confer upon him seniority over the general candidate even though the general candidate is promoted later. The general candidate shall be considered senior and his case shall be considered first for promotion applying either the principle of seniority-cum-merit (subject to rejection of unfit) or merit-cum-seniority as the case may be. This principle of determining the seniority position as between the general candidate and reserved candidate in a promoted category shall be operative. As such the seniority as stood on the date of issue of these instructions in respect of various categories in the promoted category/cadre/posts in the direct line of promotion shall be subject to change, if any, in view of the law laid down by the Hon''ble Supreme Court in the case of Ajit Singh Januja and Ors. v. State of Punjab and Ors. delivered on 1.3.96. From the date of issue of these instructions and thereafter, the seniority position in the promoted category as between reserved candidates and the general candidates shall be determined strictly in accordance with the law laid down by the Apex Court as explained above. The promotions to the next higher posts/grades shall be made on the basis of seniority arrived at by applying ratio laid down in the cases R.K. Sabharwal and others Vs. State of Punjab and others, ; Union of India and others etc. Vs. Virpal Singh Chauhan etc., and Ajit Singh Januja and Ors. v. State of Punjab and Ors., and in the following manner:

(a) A candidate(s) irrespective of the category to which he belongs, including the candidates belonging to the reserved categories shall be entitled for consideration for promotion on the basis of his seniority assigned to him in his entry grade/cadre, if he has not taken the benefit of reservation at any point of time in promotion.

(b) If a candidate has taken a benefit of promotion on account of reservation at any stage and has gained seniority above the senior general candidate in the promoted post, such reserved candidate will not be entitled to the consideration for the next promotion on the basis of such jumped up seniority till such time the representation of the said reserved category falls short of the prescribed percentage of reservation.

As such the seniority positions attained by the members of Scheduled Caste and Scheduled Tribes in the seniorities as stood on 27.5.1996 by way of accelerated promotions cannot be a basis of further promotions.

If on the basis of the seniority list prevailing on 27.5.1996 a junior SC/ST Officer is promoted to a higher post/grade because of the rule of reservation and his senior general/OBC Officer is promoted subsequently to that higher post/grade, the said senior general/OBC Officer will regain his original seniority over his earlier promoted SC/ST Officer in the immediate higher post/grade by virtue of this Department's instructions of 27th May, 1996.

(Emphasis supplied)

3. Other than these instructions nothing was brought to my notice on the basis of which petitioners base their claim.

4. Now, the instructions are absolutely clear. Undoubtedly, private respondents were senior to the petitioners at the entry grade. As such no fault can be found with the respondents-state in considering and promoting the petitioners for the posts of Circle Head Draftsman. The private respondents regained their seniority. There is no dispute that private respondents are otherwise not eligible or meritorious. It is also not disputed that there only three posts were required to be filled up and that too from general category. Hence, no case for interference is made out.

The present petition without any merit is dismissed.