

(2002) 03 DEL CK 0171
In the Delhi High Court
Case No : CWP 182 of 1999

Shri S.N. Dhusia and Another

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 15-03-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 03 DEL CK 0171

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : P.M. Ahlawat, for the Appellant; Jagjit Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—The petitioners are aggrieved by a judgment dated 28th August 1998 passed by the Central Administrative Tribunal whereby and whereunder a contempt application which had been converted into an Original Application, was dismissed.

2. The petitions, at the material point of time were working as Assistant Superintendent in the scale of 1600-2660. They were promoted on 1st January 1984. They were, however, not further promoted to the post of Superintendent in the scale of 2000-3200 on 7th November 1990.

3. An Original Application was filed by the petitioners before the learned Tribunal on or about 5th November 1990 which was marked as OA 2296/90 inter alias for a direction for their promotion as Superintendent in accordance with the purported rule and instructions contained in Railway Board's Order dated 14th March 1989.

4. After filing of the said Original Application, some persons junior to them were promoted. An interim order was passed restraining the respondents from promoting their juniors without considering the cases of the petitioners on 1st January 1991.

5. The said Original Application was disposed of by the learned Tribunal directing the respondents to take action in terms of the decision of the apex court in Union of India and others etc. Vs. Virpal Singh Chauhan etc., and R.K. Sabharwal and others Vs. State of Punjab and others, .

6. Pursuant to and in furtherance of the said direction, the petitioners prayed for grant of arrears of salary as Assistant Superintendent on 1st January 1984 to 16th May 1985 and Superintendent (Statistics) w.e.f. 7th November 1990 to their actual date of promotion on or about 15th July 1996. As the said prayer had not been acceded to, a contempt petition was filed, which, as noticed hereinbefore, was converted into an Original Application.

7. By reason of the impugned judgment, the said applications were dismissed, hence this writ petition.

8. Ms. Ahlawat, learned counsel appearing on behalf of the petitioner would submit that the learned Tribunal went wrong in passing the impugned judgment in so far as it failed to take into consideration that, after the afore- mentioned judgments of the apex court, the Railway Board issued a Memorandum dated 28th February 1997, from a perusal whereof, it would appear that the decisions of the apex court had been directed to be given effect to. According to the learned counsel, having regard to the fact that the petitioner had been promoted to the post of Assistant Superintendent as per Rules, they should have been considered for promotion in terms of the afore-mentioned judgment.

9. Our attention has also been drawn to an Office Memorandum dated 21st January 2002 bringing to our notice that an amendment has been effected in the Constitution by reason of Constitution (Eighty-fifth) Amendment Act, 2001.

10. Mr. Jagjit Singh, the learned counsel for the respondents, on the other hand, would submit that the promotion granted in favor of the petitioners as far back as 1984 cannot be subjected to a direction for grant of consequential benefits at this stage.

11. The only question which arises for consideration in this application is as to whether the petitioners are entitled to grant of the benefit of automatic promotion and benefits consequential thereto.

12. It is not in dispute that the decision of the apex court in R.K. Sabharwal and Ors. v. State of Punjab and Ors., (supra) was given a prospective effect. R.K. Sabharwal's case (supra) has been explained in Union of India and others etc. Vs. Virpal Singh Chauhan etc., in the following terms:

"46. While referring to the Railway Board's circulars/letters in civil appeals (arising from SLP (C) No. 6468 of 1987 and batch), we had referred to the Railway Boards circular/letter dated January 19, 1972 dealing with promotion to selection posts. (para-3 of the said letter is in the same terms as Para-4 of the Railway Board's circular/letter dated August 31, 1982 referred to supra.) The said Para-3 reads: "(3) The seniority of candidates belonging to Scheduled

Castes and Scheduled Tribes vis-a-vis others will continue to be determined as at present, i.e., according to the panel position in the case of categories where training is not provided and in accordance with the merit position in the examination where training is provided." But inasmuch as the post of Station Superintendent/T.I. in the scale of Rs. 2375-3500/- is a selection post, the panel referred to in the said circulars/letters would mean the panel prepared at the time of making selections for promotion to the said post (Rs. 2375-3500/-) and not the panel/select list prepared at the time of entry into the initial grade, viz., Assistant Station Master (Rs. 1200- 2040/-). It also means that members in one panel take precedence over the members in the next panel. The application of the rule of seniority referred to in the said circular/letter - and other circular/letters referred to supra most of which do not make any distinction between selection and non-selection posts-has to be subject to the said limitation.

47. It may be noticed that of the five grades in the Station Masters" category, two are non-selection posts while the remaining three are selection posts. While in the case of non-selection posts the rule enunciated in the main opinion (Virpal Singh Chauhan) would be applicable, in the case of selection posts, the rule explained herein has to be followed. We may clarify that Rules (i) and (ii) in Para 28 of Virpal Singh Chauhan apply to both selection and non-selection posts. Rule (iii) also applies to both but subject to the above rider. As explained in the main opinion, while there is no question of a "panel" being prepared at the time of promotion to non-selection posts, a panel has to be prepared for promotion to selection posts."

13. In Akhil Bhartiya Soshit Karamchari Sangh and Another Vs. Union of India, through its Secretary, Ministry of Railway and Others, , it was held that appointments according to roster made in R.K. Sabharwal's case (supra) would be legal and valid.

14. The promotions had already been made prior to 10th February 1995 when R.K. Sabharwal's case (supra) was decided by the apex Court. They being Scheduled Caste candidates, got accelerated promotion as Senior Clerk, Head Clerk and Assistant Engineer in the reserved quota.

15. It is not in dispute that the petitioners had been promoted on the basis of the seniority list which was recast. They retired from service even prior to the decision in R.K. Sabharwal's case (supra) and as such, in our opinion, the learned Tribunal has rightly held that they should not now be promoted on the basis of seniority which existed prior to the recasting of the seniority list.

16. Reference to Railway Board's circular letter dated 28th February 1997 is misplaced. The said Circular itself which was granted a retrospective effect from 10th February 1995 categorically states that the same would not disturb the seniority decided earlier as per Rules in force at the relevant time. Subsequent amendment in the Constitution by reasons of Constitution (Eighty- fifth) Amendment Act, 2001 also would not help the petitioner having regard to the

fact that they have already retired.

17. In this view of the matter, we are of the opinion that it is not a fit case where this court should exercise its jurisdiction under Article 226 of the Constitution of India having regard to the fact that the settled position should not be unsettled after long time.

18. For the reasons afore-mentioned, we are of the opinion that there is no merit in this writ petition. It is dismissed accordingly. In the facts and circumstances of this case, there shall be no orders as to costs.