

(2019) 02 DEL CK 0097

In the Delhi High Court

Case No : Civil Writ Petition No. 6222 Of 2002, Civil Miscellaneous No. 10600 Of 2002

Surendra Pal Singh

APPELLANT

Vs

Uoi & Ors

RESPONDENT

Date of Decision : 11-02-2019

Acts Referred:

Indian Railway Establishment Manual — Rule 321
Railway Protection Force Regulations, 1956 — Regulation 3

Citation : (2019) 02 DEL CK 0097

Hon'ble Judges : S.Muralidhar, J;Sanjeev Narula, J

Bench : Division Bench

Advocate : Rajan Sabharwal

Judgement

Sanjeev Narula, J

1. The Petitioner, who superannuated from the services of the Railway Protection Force (RPF) inter-alia seeks a writ of mandamus for granting ante-dated promotion to the post of Assistant Security Officer (ASO) and consequential benefits arising therefrom.

Factual Background

2. The writ petition has reference to several other writ petitions and it transpires that the Petitioner has been engaging in litigation with the Respondent - RPF since 1975 and as yet there is no effective conclusion to his grievances.

3. The Petitioner joined the RPF as Prosecuting Inspector in the year 1970. At that time, promotions to the next hierarchal post of Assistant Security Officers were being accorded to the Inspectors in the executive branch of the RPF, to the exclusion of the Inspectors of the Prosecution branch i.e Prosecuting Inspectors like the Petitioner. In order to create additional avenues of promotion for the Prosecuting Inspectors, who were stagnating, RPF created nine posts of Assistant Security Officers/ Prosecution (ASO/P) on 2nd November 1973.

4. On 25th October 1975, the Petitioner filed CWP bearing No. 1735/75 before the Rajasthan High Court for declaration of eligibility for promotion to all the posts of ASOs including ASO/P in the RPF. In the said petition, inter-se seniority dispute with one Sh. P.N. Midha, who was placed below him in the seniority list, was also raised. On 17th February 1976, an interim order was passed in favour of the Petitioner wherein the Respondents were directed to reserve a vacancy in the post of ASO for the selection in the year 1976.

5. Whilst the aforesaid writ petition was pending, an officer junior to the Petitioner, namely, Sh. I.P. Sharma, was promoted as ASO/P on ad hoc basis. On 29th November 1978, CWP No. 1735/75 was decided and partly allowed in favour of the Petitioner by declaring him eligible for promotion to all the posts of ASOs and ASO/P in the RPF. However, his seniority claim against P.N. Midha was rejected. Against the aforesaid judgment, both the Petitioner as well as the Respondent- RPF filed appeals. The appeal preferred by the Petitioner was registered as Civil Appeal No. 29/79 and the one filed by the Respondent was numbered as Civil Appeal No. 28/79.

No stay was granted in the said appeals.

6. In absence of any stay, the Respondents were required to comply with the judgment dated 29th November, 1978. Apparently, that was not done and when promotions were given to junior officers, ignoring the Petitioner, a Contempt Petition bearing No. 20/79 was filed and notice was issued to the Respondents.

7. During the pendency of the Contempt Petition, the Petitioner was called for the selection proposed to be held on 22nd March 1979 for the 9 posts of ASO/P (s) created on 2nd November 1973. The Petitioner participated and selection was finalized. However, in the contempt petition, the Respondents filed an undertaking before the Court, stating inter alia, that the judgment of the writ court would be complied with without prejudice and subject to the outcome of the appeal and the Petitioner would be considered for the selection in ASO panel for the year 1976 and 1978. With respect to the ongoing selection for the 9 posts, it was stated that the "action for formation of panel of ASO/P, on Northern Railway which was in progress had been dropped at present". Based on the Respondents' assurance given to the court, the Petitioner did not press for any further orders in the contempt petition. Thereafter, the Petitioner was considered for promotion for the year 1976 and 1978 but was not selected. In the meantime, on 6th August 1979, Sh. I.P. Sharma and other Prosecuting Inspectors, junior to the Petitioner, who qualified for promotion as ASO/P, in the selection held in March, 1979, were promoted on regular basis. On 10th March 1986, the Division Bench of the Rajasthan High Court decided the special civil appeals (28/79 and 29/79) wherein Petitioner's claim of seniority over Sh. P.N. Midha was decided in his favour. The appeal filed by RPF was dismissed and judgment dated 29th November 1978, was reaffirmed holding that the Petitioner was entitled for promotion against all post of ASO and ASO/P.

8. Finally, the Petitioner's name was approved for promotion as ASO/P on 11th April 1988 and he was promoted on ad hoc basis. This ad hoc promotion came along with a transfer order. The transfer was objected to by the Petitioner by making representations to the Respondents, followed by another Writ Petition bearing No. 2649/1990 before Rajasthan High Court. In the said petition, vide order dated 8th July 1990, the Respondents were restrained from transferring the Petitioner out of Delhi. Ultimately, the Petitioner accepted the promotion as ASO/P on ad hoc basis in Delhi on 13th May, 1991. He superannuated on 31st January, 1997. A DPC was held on 16th-18th August 2000, but the Petitioner was not considered for regular promotion, as he had already superannuated. The Petitioner also had a dispute with respect to the correction of his date of birth in the records of the Respondent. This dispute was also not resolved and has been raised in the present petition. Besides, the Petitioner, also has grievance that on his superannuation, the Respondents have wrongly calculated his retiral benefits by not giving him arrears of salary, leave encashment, provident fund etc. A comprehensive representation was made by the Petitioner to the Respondents listing out all his grievances. When the Respondents failed to take a decision on the same, the Petitioner was prompted to approach this court by way of Writ Petition bearing No. 3706/2000. The said petition was disposed off vide order dated 1st May 2002 directing the Respondents to decide the pending representation. In compliance with the aforesaid directions, the Respondents by a speaking order dated 30th July 2002, decided the representation and rejected the Petitioner's request. The said order is also impugned in the present petition.

Submissions of the parties

9. Although, the petition prays for several reliefs, the Petitioner, who argued in person, during the course of the arguments, confined his submissions to the limited prayer of the Respondent seeking antedated promotion to the post of ASO and other higher promotional posts and consequential benefits.

10. The Petitioner submitted that he was eligible to be promoted to the next promotional post of ASO or ASO/P under the applicable Recruitment Rules, but was wrongly not considered. He argued that the seniority is integrated on all India basis for promotion to ASO and ASO/P in terms of Rule 321 of Indian Railway Establishment Manual (hereinafter referred to as "Railway Manual") and all the Prosecution Inspectors are eligible for being appointed on the above stated post on all India Basis. He also submitted that he was senior to P.N. Midha and since he was placed below him, in the seniority list, he was constrained to file a petition before the Rajasthan High Court, challenging his seniority. In the said Petition he sought declaration that he was eligible for the promotion to the post of ASO and ASO/P. He further pointed out that an interim order was passed by Rajasthan High Court on 17th February 1976, directing the Respondent to reserve one vacancy in the post of ASO during the pendency of the Writ Petition. The Petitioner succeeded in the petition and the Rajasthan High Court, declared him eligible for promotion to all the posts of ASO as well as the ASO/P in RPF.

The Court also directed the Respondents to consider him for promotion for one post of ASO (against which promotions on ad hoc basis were made on 3rd February 1976) reserved pursuant to the interim order passed by the Court. He also urged that orders of the Rajasthan High Court were not implemented by the Respondent and on the contrary, Respondent continued to promote officers junior to him. He was thus constrained to file contempt petition against the Respondent. He also argued that he qualified for promotion in the selection held on 22nd March, 1979. He drew the attention of the Court to Exhibit P/6, the result sheet dated 24th March 1979 and by referring to the said results, he submitted that he was wrongly placed below Sh. P.N. Midha, despite having secured more marks than him.

11. The Petitioner further submits that he was senior to all the candidates in order of seniority determined in the initial training course and also by date of appointment and date of birth. He also argued that the seniority list should have been a combined list in accordance with Rule 321 of the Railway Manual and in absence of combined seniority list, he was deprived of promotion despite being more meritorious than the other candidates.

12. The appeals filed against the judgement of the Rajasthan High Court were decided in his favour and the Appellate Court upheld the impugned judgment and set aside the finding on the issue of seniority qua P.N. Midha and resultantly held the Petitioner to be senior to him. He argued that the Respondents were legally bound to implement the judgment dated 29th November 1978. The judgment was willfully disobeyed by the Respondents and he was never considered for promotion by the Respondents either on ad hoc or on regular basis. On the contrary, inspectors junior to him were promoted. He strongly contended Sh. I.A. Khan and Sh. I.P. Sharma were promoted as ASO w.e.f. 6th April 1972, pursuant to the orders of the Supreme Court and urged that similarly he is also entitled to be promoted as ASO at par with them.

13. The Petitioner also referred to the undertaking given by the Respondent by way of an affidavit dated 2nd May 1979 (in contempt petition no. 20/79), and emphasized that in view of said assurance given by the Respondents, he did not pursue the contempt petition. He also urged that as per the said undertaking, he was eligible for promotion in preference to his juniors if not in Northern Railway but surely in other zones of the Railways. He submitted that except for the selection of the above nine posts of ASO/P, the Respondents always maintained a seniority list of prosecuting inspectors (Grade I) in all the other promotions. He also highlighted the fact that the seniority list was ultimately combined and a circular for promotion to all posts was issued only on 23rd October 1989 despite the orders given by the Rajasthan High Court in 1978. In this regard, he also referred to Regulation 3 of Chapter XIII of RPF Regulations 1956. According to him, the Respondents deliberately did not place him in the panel for promotion to the nine posts of ASO on a frivolous pretext that the dispute of inter se seniority between him and P.N. Midha was pending.

14. Mr. Sabharwal, learned counsel appearing on behalf of the Respondents, on the other hand, opposed the petition on several grounds. He urged that the procedure and eligibility conditions for promotions from Inspector Prosecution to the rank of ASO/P (created in 1973) could be finalised only in the year 1978 and hence promotions against the said post could not be made earlier. He further submitted that ad hoc promotions on some of the zonal railways was given to senior most inspectors before a regular selection was held in 1979. Since, the seniority position of Inspector Prosecutions in Northern Railway was disputed and subjudice and was finally decided in March 1986 after the disposal of the appeals filed by the Petitioner and RPF, no ad hoc or regular promotions could be given in Northern Railway. He further argued that by the time the appeal was decided by the High Court of Rajasthan, the scenario had changed. As per the recommendations of the 4th Central Pay Commission, Group B posts in RPF were abolished w.e.f. 1st January 1989. It was decided that seniority of inspector Grade I should be on all India basis as the promotions were then to be given from Group 'C' service to group "A" posts directly.

15. He further disputed that the selection for the post of ASO/P held in 1979 was a composite selection. He urged that as per the provisions of Chapter XII of RPF Rules and Regulations 1979, applicable at the relevant time, a selection committee held the selection and considered candidates from each zonal railway separately so as to form a panel for each zonal railway. The selection board assembled at a common place and held zone wise selection simultaneously for the sake of convenience and the panel for each zonal railway was drawn separately. Since, the selection was held on zonal basis, there was no occasion to draw inter se seniority as per Rule 321 of the Railway Manual as claimed by the Petitioner.

16. He further urged that for Northern Railways, there were three aspirants for one post of ASO/Prosecution and the Petitioner was also in the consideration zone. However since, he had claimed seniority over Sh. P.N. Midha by filing Civil Writ Petition 1735/79, the panel for promotion to the rank of ASO/P in respect of Northern Railways was not drawn. He also submitted that for the years 1973 and 1974, the Petitioner was not eligible for promotion to the rank of ASO as he had not completed minimum of five years of service of Inspector Grade I failing Inspector Grade-II, (Superior Officers) as per Recruitment Rules-1968. As regards the contention of the Petitioner that retired officials should also be included in the panel drawn for the vacancy of the previous years is concerned, he argued that the Recruitment Rules of 1994 provide procedure for promotion from Group "C"

to Group "A" Junior Scale came into force w.e.f. 31st October 1994. The DPCs in this respect were held on 16th to 18th August, 2000 in which the Petitioner was considered but he was not given regular promotion as he had already retired in January 1997 much before the panel was made effective.

17. The learned counsel for the Respondent further submitted that the Petitioner

was granted ad hoc promotion to the rank of ASO (Prosecution) on his turn. He pointed out that the Petitioner was promoted as ASO/P on ad hoc basis, but he did not join the said post. Later, he was granted promotion as ASO/P on ad hoc basis and posted in Northern Railway in 1981 when he ultimately joined the said post.

Analysis and Findings

18. The short question before the Court is in respect of the Petitioner's entitlement to the promotion to the post of ASO. Since the Petitioner has superannuated, at this stage, he can be entitled only for ante- dated notional promotion for the said post and consequential monetary benefits.

19. The main plank of Petitioner's contention is the non-compliance of the orders passed by the Rajasthan High Court. These orders declared him eligible for promotion to the post of ASO as well as ASO/P and also directed the Respondent to consider him for the ASO panel for 1976. The judgment inter-alia directs as under:-

" In these circumstances it has to be held that prosecuting Inspectors are eligible for selection for appointment to all the posts of Assistant Security Officer and the eligibility of the prosecuting Inspector cannot be confined to selection for the post of Assistant Security Officer (Prosecution) only .

The result is that Writ Petition is allowed and it is declared that the Prosecuting Inspectors in the Railway Protection Force are eligible for selection to all the post of Assistant Security Officer in the Railway Protection Force and the petitioner was eligible for being considered for appointment to the post of Assistant Security Officer at the time when appointment were made in that post on 03.02.1976.

By order dated 17.02.1976 this court had directed the Respondents not to make substantive appointment in respect of one post of Assistant Security Officer during the pendency of Writ Petition. The Respondent No. 1 to 5 are directed to make appointment to the said post of Assistant Security Officer after taking in to consideration merits and suitability of the petitioner on the basis that the petitioner was eligible for appointment to the post on 03.02.1976."

20. The aforesaid judgment partly allowed in favour of the Petitioner was not implemented by the Respondents. If it would have been done, Petitioner's complaint and discontentment would have been redressed. It is also significant to note that during the pendency of the petition before the Rajasthan High Court, the Respondents were directed by way of an interim order dated 17th February, 1976 to reserve one vacancy for the Petitioner. Therefore, once he succeeded in getting a declaration of his eligibility for being considered for selection to the post of ASO and ASO/P, the specific directions to consider the Petitioner for promotion for the year 1976 should have been complied with, against the "reserved" vacancy. In absence of any stay order passed by the Appellate Court,

there was no valid reason for the Respondents not to implement the said decision. It is well settled law that mere filing of an appeal does not operate as a stay or suspension of the order appealed against.

21. The reasons propounded by the Respondents for justifying non-implementation of the judgment of the High Court are untenable to say the least. The Respondents contend that since the seniority position of Inspector Prosecution was in dispute and subjudice, no promotions could be given either on ad hoc or on regular basis in Northern Railway. This seniority dispute cited as a reason for not making any promotions is the one that the Petitioner had agitated in Writ Petition No. 1735/1975 against P. N Midha. If this indeed was a valid and legitimate ground for not making promotions, then the Respondents should have not made any promotions at all in the post of ASO. Moreover, for the reasons elaborated later, the pending dispute between P.N. Midha was irrelevant for making promotions under the combined seniority. The Petitioner, being senior most ought to have been promoted against the first vacancy available anywhere in India on the basis of combined seniority in accordance with Chapter XII of RPF Regulations and in view of the declaration given by Rajasthan High Court. The zonal seniority for the purpose of promotion as ASO/P would not have impacted the integrated seniority position of the Petitioner.

22. On 19th February 1979, the Petitioner and officers" junior to him received a call for selection to the post of ASO/P to be held on March 22-24/1979. When Petitioner brought the above fact to the notice of the Rajasthan High Court, the Respondents in order to circumvent the order of the Court, filed an undertaking before the Court on 2nd May 1979. The said undertaking reads as under:-

"IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

Contempt case No.20/ 1979.

Date of Hearing:- 4-5-1989.

REPLY TO SHOW CAUSE NOTICE:

I.S.P Shanna Asstt. Security Officer, Northern Railway, Jodhpur.

Age made oath and state:

1. That in accordance with the Judgment of this Hon'ble Court dated 29-11-1978 in the writ petition No.1973175, the following orders have been passed by the contempt authority without prejudice and subject to appeal and stay application already filed before the Division bench of this Hon'ble Court. In pursuant to High Court's direction a decision has been taken to fix up a date for selection of ASOs on Northern Railway, calling all eligible prosecuting Inspectors. If in the selection so held, any of the prosecution Inspectors, including the petitioner Shri Surendra Pal Singh is found suitable for promotion as ASO, their names will be interpolated in the ASOs panel of Northern Railway in the year 1976. (Sic)

2. That in case the petitioner gets selected in 1976, selection as stated para 1

above "without prejudice"& subject to appeal he need not appear in any further selection of 1978 or thereafter, but in case he fails to be selected in 1976 selection he will again be given a chance, to appear in 1978 selection and his name will be interpolated in provisional panel of 1978 again subject to the decision of the appeal and "without prejudice". The question of holding the selection for the year 1978 Qua the petitioner does not arise until the result of selection of 1976 Qua the petitioner is declared. (Sic)

3. That the respondent always held the court in high esteemed and disregarded the orders of the court, the panel annexure-J was provisionally issued and was subject to interpolation after the selection of the petitioner for 1978 was held if necessary. The of the administration could not stop and the provisional promotion were made vide annexure-II in accordance with annexure-I. Some was taken in filing the appeal and stay application and taking decision for further course of action which was unavoidable. Appeal could not be heard for admission and the same has been for hearing after summer vacations.

4. That the action for formation of panel of Asstt. Security Officer (Prosecution) on Northern Railway which was in progress has been dropped at present.

5. That all the Prosecuting Inspector who are eligible for Asstt. Security Officer's selection on 24-11-75 according to judgment of this Hon 'ble Court are being informed about the selection without prejudice and subject to appeal. A letter has been issued [0 the General Manager by the Ministry of Railway, Railway Board, New Delhi in his respect.

That in view of the averments in this affidavit, it is submitted that no contempt has been committed and the respondent are only following the lawful remedies available to them . In any case even if it is found that any inadvertent disregard has been made un-knowingly the respondents tender unqualified appeal for same.

I, above named S.P. Sharma Asstt. Security Officer Northern Railway, Jodhpur solemnly affirm that the contents of this Affidavit are true to my personal knowledge, based on official record, nothing is false. Nothing has been conceal so help me God.

Sd/-

Dt. 2-5-79 DEPONENT"

23. Since the Respondent had given an undertaking that the panel for ASO/P for Northern Railways had been dropped at present, the Petitioner did not press the Contempt Petition. The undertaking unambiguously states that selection in March 1979 (for the year 1978) against the nine posts is being kept in abeyance qua the Petitioner. It further confirms that he would be considered for the year 1976 and if he is selected, his name would be interpolated in the ASO panel of the Northern Railways for the year 1976 and 1978. This undertaking was perhaps given only to avoid adverse orders in the contempt proceedings. This becomes

evident from the content of the letter dated 9th May, 1979, written by the Deputy Director, Railway Board wherein it is admitted that the directions given by the Rajasthan High Court were not taken into consideration while making the formation of the panel for promotion for ASO in 1975 and 1978. The said letter reads as under:-

"New Delhi - 110001

Dated: 9.5.1979

NO. 75 Sc(E)/130/20

The General Manager,

Northern Railway,

New Delhi.

Sub: Special Appeal No. 28/79 In the High Court, Jodhpur U.O.1. V/s Surendra Pal Singh. P.I., arising out of Civil VI Jrit Petition No. 1735/75.

Ref: Your CSO's letter No. 220-E/I(U-67-RPF Dt. 7.4.79.

The selection for promotion to the post of Asstt. Security Officer from amongst Inspectors (Pros) who were eligible on 24.11.75 is to be held on 21 st & 22nd May, 1979 as advised in this office letter of even number dated 2.5.79. All eligible candidates may please be advised accordingly and the information/documents required in the Board's letter mentioned above be sent to them, as early as possible.

While going through this case, the Board have, however, observed that no intimation on the Board's letter dated 21.3.76 has so far been received from the Railway Administration though more than 3 years have passed. The reasons for this may please be intimated very early.

It is also noticed that while forwarding recommendations/nominations for formation of the panel for promotion as A.S.O in 1975 and 1978 no mention was made to a post reserved to Shri Surendra Pal Singh in view of the direction given by the Rajasthan High Court, and this has created complications. The reasons for this omission may please be intimated very early, as the selection is to be finalised shortly.

Sd/-

(Baljit Singh)

Deputy Director (Security)

Railway Board

NO. 75 Sec.(E)/130/20 New Delhi Dated 9.5.1979"

24. From the above it becomes clear that in absence of any vacancy, Petitioner

was being considered for selection only for the sake of formality. Though the Petitioner was not selected and the non- selection has been challenged on several grounds, we feel that it is not necessary for us to examine the same, as Petitioner was admittedly selected in March, 1979 and was at the top rank in the results. The Petitioner also pointed out that against the selection for the nine posts of ASO/P (created on 2nd November 1973), one Sh. Dharamvir Singh and Sh. I.P. Sharma, officers junior to him in the integrated seniority list were promoted as ASO/P on ad hoc basis. This was again a complete violation of the orders passed by the Rajasthan High Court. The order of the Rajasthan High Court specifically declared the Petitioner to be eligible for both ASO and ASO/P and therefore promotions given to officers junior to the Petitioner on 8th January 1979 after the final judgment in Writ Petition No. 1735/1975 was in complete disregard to the directions of the Rajasthan High Court.

25. The Petitioner has rightly placed reliance on a judgment passed by the Supreme Court in the case of Food Corporation of India v. S.N Nagarkar AIR 2002 SC 808. The case of the Respondent in the writ petition, was that he being senior to Respondent No. 4 in the writ petition, his case could not be over looked when Respondent No.4 was promoted as Assistant Grade I(D) and later promoted as Assistant Manager (D). His case was that on account of the deliberate omission of his name from 1971 panel, he was deprived of his chances of promotion, and the authorities had acted arbitrarily and in an illegal manner. Consequently the Writ Petition was allowed and the judgment was challenged by the Respondent therein before the Supreme Court. The relevant part of the judgment reads as under:

"19. Having regard to the facts and circumstances of the case, the Court was satisfied that the respondent was not only to be considered for promotion to the promotional posts, but was also entitled to arrears of pay and allowances since he had been deprived of those benefits not on account of any fault of his but on account of the fault of the authorities concerned. It is well settled that in exercise of writ jurisdiction, the Court may mould the relief having regard to the facts of the case and interest of justice."

26. In terms of Rule 321 of the Railway Manual, the Respondents were required to maintain a combined/integrated seniority list. Concededly, the Respondents prepared an integrated list, but that was subsequent to the decision of the Division Bench of Rajasthan High Court dated 10th March 1986.

27. It is undisputed that in the integrated seniority, the Petitioner was senior to Sh. I.P. Sharma and other prosecuting officers who were promoted by virtue of merit at the initial training course and length of service. It thus becomes evident that Sh. I.P. Sharma who was junior to the Petitioner was promoted, superseding the Petitioner, in contravention of Rule 321 of the Railway Manual.

28. The Respondents' stand that the inter se dispute between the Petitioner and Sh. Midha was a reason for not forming a panel for Northern Railway appears to

be incorrect. Pursuant to the orders of the Rajasthan High Court, the Petitioner was entitled to be considered against the first vacancy of ASO and ASO/P in RPF. In terms of Rule 3 (VIII), chapter XII of RPF Regulations, the Petitioner was entitled to promotion in terms of the seniority position in the combined seniority, being senior most on the basis of the marks and other factors. Thus the inter se seniority dispute between the Petitioner and P.N Midha is not a tenable ground for depriving the Petitioner from being considered for promotion as admittedly he was senior to I.P Sharma and others in the combined seniority. The contention of the Respondents that selection in March 1979 was made zone wise and the Petitioner's seniority was confined to Northern Railway would be clearly in conflict with the directions of the Rajasthan High Court and relevant rules discussed above. Moreover, even if the stand of "separate zone wise seniority" is accepted to be correct, there is no convincing explanation for not promoting the Petitioner when the Appeals before the Rajasthan High Court were decided in his favour and he was declared senior to P.N. Midha. The only plausible reasoning is that, post 1st January, 1986, there was reorganization of Group B post is also contradicted with the later communication of DG/RPF who while deciding the representations of the Petitioner in its letter dated 8th August 1989, has stated as under:-

"As regards item No. 3 (iii) his promotion to the rank of ASO/P on Northern Railway as per selection in March 1979, it is stated that the selection had to be dropped in view of the court case filed by Shri Singh himself; regarding his seniority over Shri Midha, which was decided by Hon'ble High Court only in 1986. This fact that selection proceedings were dropped was also mentioned in affidavit filed by Northern Railway."

29. The above stand gives an impression that the selection made in March 1979 qua the Petitioner was annulled. This is in complete contradiction to the undertaking filed by the Respondents in the contempt petition. The Respondents did not aver that the selection of the Petitioner to the rank of ASO/P was dropped. On the contrary, the affidavit states "that the action for formation of panel of Asstt. Security Officer (Prosecution) on Northern Railway which was in progress has been dropped at present." This only meant that the action for formation of panel had been kept in abeyance. Thus in 1986, when the Petitioner succeeded in the Appeals, the action for formulation of the Panel suspended in March 1979 should have been resumed and completed. The Petitioner who was at top of the list would still have succeeded in getting his promotion at par with other Inspectors who got promotions against the 9 posts.

30. We also note that a DPC was held on 16th August 2000, but Petitioner was not given regular promotion as he had superannuated on 31st January, 1997. However, his claim for antedated notional promotion with all the benefits of service could have been considered in the DPC. On the date of DPC, I.P. Sharma who was promoted as ASO/P on 6th August, 1979 had been given notional promotion along with all other benefits of service at par with Sh. I.A. Khan w.e.f.

06th April, 1972. Since promotion of Sh. I.P. Sharma has been both antedated on notional basis, we see no reason why the Petitioner should be deprived of the same benefit. More so, in view of the fact that the Petitioner was senior to Sh. I.P. Sharma in the integrated seniority and as discussed above, he should have been considered against any position of ASO/P on all India basis.

31. In view of the above discussion, the Writ Petition is partly allowed to the extent that the Petitioner would be entitled to the antedated notional promotion w.e.f. 06.04.1972 on the post of ASO. The consequential orders to give effect to his antedated notional promotion along with consequential monetary benefits be passed within a period of eight weeks from the date of the order. The benefits and the arrears should be paid to the Petitioner within four weeks thereafter, failing which the Respondents shall also be liable to pay the interest at the rate of 8% per annum on the amount due and payable to the Petitioner. Petitioner's claim for notional promotion as SO, JAG, DIG and IG cannot be granted in view of the fact that the Petitioner was never promoted to any of the aforesaid post during his service and no DPC was held to consider him for promotion to the said post and more than two decades have lapsed since he has superannuated. The remaining prayers, as noted at the outset, have not been pressed by the Petitioner.

32. The Writ Petition is allowed in the above terms with no orders as to cost.

C.M APPL. 10600/2002 in W.P.(C) 6222/2002

33. In view of the aforesaid discussion, the application praying for a direction to the Respondents for grant of retirement benefits during the pendency of the writ petition, is rendered infructuous and is disposed of.