

(2010) 12 DEL CK 0048
In the Delhi High Court
Case No : Writ Petition (C) 4269 of 2008

Union of India (UOI)

APPELLANT

Vs

A.K. Singh and Another

RESPONDENT

Date of Decision : 23-12-2010

Acts Referred:

Police Service (Appointment by Promotion) Regulations, 1955 — Regulation 5
Police Service (Regulation of Seniority) Rules, 1988 — Rule 3, 3(3)
Recruitment Rules — Rule 9

Citation : (2010) 12 DEL CK 0048

Hon'ble Judges : Siddharth Mridul, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : R.V. Sinha, for the Appellant; Geetanjali Mohan and Ketan Madan, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The facts are not in dispute and thus we note the agreed statement of facts. First Respondent Sh.A.K. Singh was an officer of the "Goa Police Service" and in terms of the Indian Police Service (Appointment by Promotion) Regulations 1955 was entitled to be considered for appointment by promotion to the Indian Police Service in the Goa Quota allocable in the IPS Service pertaining to the state of Arunachal Pradesh, Goa, Mizoram and the Union Territories. On being appointed by promotion as an officer of the Indian Police Service, his seniority was liable to be fixed in accordance with Rule 3 of the "Indian Police Service" (Regulation of Seniority) Rules 1988.

2. Regulation 5 of the 1955 Regulations in force till it was amended in the year 2000 when the second proviso was added thereto, reads as under:

5. PREPARATION OF A LIST OF SUITABLE OFFICERS:

(1) Each Committee shall ordinarily meet every year and prepare a list of such members of the State Police Service as are held by them to be suitable for

promotion to the Service. The number of members of the State Police Service to be included in the list shall be determined by the Central Government in consultation with the State Government concerned, and shall not exceed the number of substantive vacancies as on the first day of January of the year in which the meeting is held, in the posts available for them under Rule 9 of the Recruitment Rules. The date and venue of the meeting of the Committee to make the selection shall be determined by the Commission;

Provided that no meeting of the Committee shall be held, and no list for the year in question shall be prepared when:

(a) there are no substantive vacancies as on the first day of January of the year in the posts available for the members of the State Police Service under Rule 9 of the Recruitment Rules; or

(b) the Central Government in consultation with the State Government decides that no recruitment shall be made during the year to the substantive vacancies as on the first day of January of the year in the posts available for the members of the State Police Service under Rule 9 of the Recruitment Rules.

3. The second proviso which was added in the year 2000 to the Regulation in question reads as under:

Provided further that where no meeting of the Committee could be held during a year for any reason other than that provided for in the first proviso as and when the Committee meets again, the Select List shall be prepared separately for each year during which the Committee could not meet as on the 31st December of each year.

4. Thus, as of the year 2000 Regulation 5 of the 1955 Regulation reads as under:

5. PREPARATION OF A LIST OF SUITABLE OFFICERS:

(1) Each Committee shall ordinarily meet every year and prepare a list of such members of the State Police Service as are held by them to be suitable for promotion to the Service. The number of members of the State Police Service to be included in the list shall be determined by the Central Government in consultation with the State Government concerned, and shall not exceed the number of substantive vacancies as on the first day of January of the year in which the meeting is held, in the posts available for them under Rule 9 of the Recruitment Rules. The date and venue of the meeting of the Committee to make the selection shall be determined by the Commission;

Provided that no meeting of the Committee shall be held, and no list for the year in question shall be prepared when:

(a) there are no substantive vacancies as on the first day of January of the year in the posts available for the members of the State Police Service under Rule 9 of the Recruitment Rules; or

(b) the Central Government in consultation with the State Government decides that no recruitment shall be made during the year to the substantive vacancies as on the first day of January of the year in the posts available for the members of the State Police Service under Rule 9 of the Recruitment Rules.

Provided further that where no meeting of the Committee could be held during a year for any reason other than that provided for in the first proviso as and when the Committee meets again, the Select List shall be prepared separately for each year during which the Committee could not meet as on the 31st December of each year.

5. Rule 3(3) of the IPS (Regulation of Seniority) Rules 1988 reads as under:

3. ASSIGNMENT OF YEAR OF ALLOTMENT:

(3) The year of allotment of a promotee officer shall be determined with reference to the year for which the meeting of the Committee to make selection, to prepare the Select List on the basis of which he was appointed to the Service, was held and with regard to the continuous service rendered by him in the State Police Service not below the rank of a Deputy Superintendent of Police or equivalent, upto the 31st day of December of the year immediately before the year for which the meeting of the Committee to make selection was held to prepare the select list on the basis of which he was appointed to the Service, in the following manner:

(a) for the Service rendered by him upto twenty one years, he shall be given a weightage of one year for every completed three years of service, subject to a minimum of four years;

(b) he shall also be given a weightage of one year for every completed two years of service beyond the period of twenty one years, referred to in Sub-clause (a), subject to a maximum of three years.

Explanation: For the purpose of calculation of weightage under this clause, fractions, if any, are to be ignored. Provided that he shall not be assigned a year of allotment earlier than the year of allotment assigned to an officer senior to him in that select list or appointed to the Service on the basis of an earlier select list.

6. An anticipated vacancy on retirement of Sh.V.R. Kadam, Deputy Inspector General on 30.4.1995 was known and it was also known that for the vacancy in question, since it pertained to the promotion quota for Goa, Petitioner would be entitled to be considered for appointment by promotion into the Indian Police Service the requisite process was commenced in the year of the vacancy i.e. the year 1995-96 but due to bureaucratic delays the Committee met on 16.2.1996 and the promotion order was issued on 4.2.1997. Thereafter the issue of fixation of the seniority of Respondent No. 1 was taken up. There being no dispute that under Rule 3 (3)(a) and (b) of the IPS (Regulation of Seniority) Rules 1988, Respondent No. 1 was entitled to a weightage of 4 years as per sub-para (a) of

the Rule, 4 years" weightage was given and treating the appointment by promotion to be effected in year 1997, seniority of Respondent No. 1 was assigned by treating the year of induction as 1993.

7. The dispute arose at this stage inasmuch as Respondent No. 1 claims that since the vacancy arose in the year 1995, as per Regulation 5 of the IPS (Appointment by Promotion) Regulations 1955, the Committee had to meet and make the recommendations in the year of the vacancy, his appointment by promotion had to relate to the date when the vacancy accrued i.e. 30.4.1995 and notwithstanding the Committee meeting on 16.2.1996 and final decision being taken on 4.2.1997, giving him the benefit of 4 years" weightage his seniority was to be fixed as of the year 1991.

8. Since the department was not agreeing to the stand urged by the Respondent he was constrained to approach the Central Administrative Tribunal by and under OA No. 286/2007 and vide impugned decision dated 10.12.2007 the Tribunal has held in favour of the Respondent and for which the Tribunal has heavily relied upon Regulation 5 of the 1955 Regulations as was in force when the Tribunal decided the matter and needless to state the fulcrum of the decision of the Tribunal is the second proviso inserted by way of amendment to the existing resolution; the amendment being in the year 2000. The Tribunal has additionally noted that the view taken by the Tribunal is in conformity with the law laid down by the Supreme Court in the decision Devendra Narayan Singh and others Vs. State of Bihar and others,

9. It would be apparent to the reader of our decision that the argument advanced before us was: how could the Tribunal adjudicate an issue of seniority with reference to a proviso which was inserted in the statute book in the year 2000; the dispute being relatable to the seniority fixed by the department by treating entitlement relatable to the year 1993 and the Respondent claiming entitlement relatable to the year 1991. Needless to state as per the proviso in question, if no meeting of the Committee could be held during the year when the vacancy arose, when the Committee meets again the Select List has to be prepared separately for each year. It is thus apparent that vacancy for the year 1995-96 required the select list to be prepared for the year in question irrespective of whenever the Committee met. At this stage it may be relevant to note that as per IPS (Appointment by Promotion) Regulations 1955 the word "year" has been defined to mean the period commencing on the 1st day of April and ending on the 31st day of March of the subsequent year. Thus, the vacancy caused due to superannuation of Sh.V.R. Kadam on 30.4.1995 related to the year 1.4.1995 - 31.3.1996. Relevant would it be to note that the Committee had met on 16.2.1996 i.e. within the year in question.

10. Ignoring the second proviso inserted when Regulation 5 of the 1955 Regulations was amended in the year 2000, relevant would it be to note the ratio of law culled out from the decision of the Supreme Court in Devender Narayan Singh's case (supra). Devender Narayan and others were appointed to Bihar

State Police Service on 1.9.1969. They became eligible for appointment by promotion to the Indian Police Service. Needless to state, Regulation 5 of the IPS (Appointment by Promotion) Regulations 1955 stood attracted. As noted by the Supreme Court the Committee required to be constituted to prepare the Select List did not meet and hence no contemporaneous Select List was prepared in the year 1977, 1978, 1979 and 1980. In the year 1981 a Select List was prepared to fill up 7 existing vacancies but it was ignored that anticipated vacancies during the year were also to be filled up. It was apparent that the Select List did not include the anticipated vacancies for the year 1981. The Committee which met on 14.10.1981 ignored the increase in the cadre strength in the IPS Cadre and treated 123 posts as against the actual number of 137 which were available. Devender Narayan had filed a writ petition which was disposed of by the High Court vide order dated 30.7.1984 and noting that neither existing nor anticipated vacancies being correctly taken into account it was directed that a fresh Select List be prepared. The decision of the High Court was upheld by the Supreme Court and as a result the Select List was re-prepared and approved in the year 1986. Promotions were effected in the year 1987. Devender Narayan Singh and others were assigned the year of allotment as 1981 and they claimed that the year of allotment qua them should be 1979. The Tribunal rejected their claim. Devender Narayan Singh and others filed an appeal before the Supreme Court which was decided by the Supreme Court. Giving benefit of the weightage required to be given as per para (a) of Rule 3(3) of the Seniority Rules 1988, and treating the panel as relatable to the year 1987 Government assigned the seniority in the cadre by treating the year of allotment as 1981 and the rival claim was that since the year of vacancy qua which Devender Narayan and others were empanelled had to be 1983, seniority for purposes of treating the year of allotment had to be 1979. The Supreme Court noted that the issue before it had to be decided in light of Rule 3(3)(b) of the IPS (Regulation of Seniority) Rules and Regulation 5 of the IPS (Appointment by Promotion) Regulations 1955 and opined as under:

6. Having given our anxious consideration to the relevant provisions, rules and regulations for appointment and for determination of the year of allotment and the earlier directions of the Patna High Court as well as of this Court, we find sufficient force in the contentions of Mr. P.P. Rao, the learned Senior Counsel appearing for the Appellants and we come to the conclusion that the Union Government has committed error in treating the Appellants to have been included in the Select List only from the year 1986 which is the factual year of their inclusion in the list and thereby determining the year of allotment. We also come to the conclusion that the Tribunal committed error in ignoring the fact of the earlier direction of this Court and the legal fiction by which it must be held that the Appellants were included in the Select List of the year 1983. It is not disputed that the Patna High Court as well as this Court had issued directions to consider the question of inclusion of Appellants' names in the Select List for the year 1983 and pursuant to such directions the State Government having

reconsidered the matter included the names of the Appellants in the Select List for the year 1983 and pursuant to such directions the State Government having reconsidered the matter included the names of the Appellants in the Select List. Though the list in question was made in the year 1985 pursuant to the direction of this Court and was approved by the Union Public Service Commission in 1986 but in the eye of law it must be deemed to be a list for the year 1983. When the appropriate authorities committed error in not preparing the Select List for the year 1983 and the Appellants being aggrieved assailed the same and ultimately this Court directed to reconsider the matter, thereafter, the appropriate authority reconsidered the matter and included the Appellants' names in the Select List for the year 1986, in the eye of law the said Select List can be held to be the Select List for the year 1983. Consequently the year of allotment of those who were included in the said list has to be determined on the basis that they were in the Select List of the year 1983 though factually the list was prepared in the year 1985 and was approved by the Union Public Service Commission in February 1986. The Union Government, therefore, in our considered opinion committed serious error in determining the year of allotment of the Appellants on the basis that they were in the Select List from the date of approval of the list by the Union Public Service Commission i.e. February 1986. The impugned order of the Tribunal as well as the order of the Union Government determining the year of allotment of the Appellants are hereby set aside and the Union Government is directed to re-determine the year of allotment of the Appellants on the premise that they were included in the Select List of 1983. Further the Appellants are entitled to consequential benefits and the same may be given to them. This may be done within three months from the date of receipt of this order. The appeal is accordingly allowed but in the circumstances without any order as to costs.

11. It is thus apparent that irrespective of the second proviso inserted in the year 2000 to Regulation 5 of the 1955 Regulations the law was as correctly understood by the Tribunal and thus notwithstanding the Tribunal making the fulcrum of its decision the said second proviso, the legal position continues to be the same.

12. It is thus apparent that the second proviso in question is merely clarificatory of the legal position which flows out of a reading of the existing Rule and Regulation as interpreted by the Supreme Court and as held by the Supreme Court, in para 52 of the decision Commissioner of Income Tax, Bombay etc. Vs. M/s. Podar Cement Pvt. Ltd. etc., , an amending act which is clarificatory would always be retrospective in operation.

13. Thus, even on said count i.e. legal position we do not find any error committed by the Tribunal in referring to the second proviso inserted in the statute book in the year 2000 notwithstanding the controversy decided pertaining to years preceding the year 2000.

14. Before concluding we may note, although no argument was advanced on said count, the Respondent did not implead any private individual as a Respondent

before the Tribunal and there are decisions that issues of seniority cannot be adjudicated without impleading such persons as are likely to be affected by the decision. This law is subject to an exception extracted in the decision of the Supreme Court *A. Janardhana Vs. Union of India (UOI) and Others*, wherein the Supreme Court held that where the claim is not to be granted seniority over an individual but is on account of the grievance that relevant rules are not being followed and the mandamus sought is against the government to abide by the rules, it is not necessary to implead those individuals who may be impacted by the decision of the Court. We note that in the instant case the Tribunal has lodged a caveat requiring the Petitioner to put to notice such person(s) whose seniority may be impacted when corrective action is being taken and thus we find that third party rights, if at all impacted, are well taken care of by the Tribunal.

15. We find no merit in the writ petition which is dismissed.

16. No costs.