
employed will have to be retrenched if the members of the petitioner-union are allowed to join in the midst of the season and this will create further labour problem. The question whether the said workmen did not join after the settlement in the year 1999 or where not allowed to join is again disputed question of fact to be decided. This also cannot be decided in this writ petition. The proper remedy, therefore, would be only under the Industrial Disputes Act and not by filing this writ petition.

(11) Various authorities have been cited regarding maintainability of the writ petition. I don't go into the discussion regarding the same in view of the fact that even if the writ petition is held to be maintainable, necessary relief cannot be granted in this writ petition because the disputed questions of fact cannot be decided in this writ petition.

(12) Counsel for the respondent-management has argued that the settlement was for that particular season and not for subsequent periods. When I am holding that the writ petition is not the proper remedy (because of the factual aspects to be considered), I do not delve into this point which may be considered by the appropriate forum, if so approached.

(13) *As a result, this writ petition is dismissed however, with the observation that the petitioners may result to the remedy under the Industrial Disputes Act, 1947 if so advised.

R.N.R.

Before N.K. Sodhi & R.C. Kathuria, JJ

TULSI RAM—*Petitioner*

versus

STATE OF PUNJAB & OTHERS—*Respondents*

C.W.P. No. 16419 of 2000

26th April, 2001

Constitution of India, 1950—Art. 226—Punjab Police Service Rules, 1959—Rls. 6, 8, 10 & 14—Recruitment to the posts of D.S.P.—Rule 6 (i) (a) provides eligibility for promotion to the rank of DSP as 6 years continuous service in the rank of Inspector—Govt. making temporary promotions by relaxing the condition of experience of 6 years

to 4 years—Delay in sending the names for approval to the Commission—Commission granting approval to the promotees w.e.f. the date of their promotion—State Govt. granting retrospective confirmation to the promotees thereby making senior to the petitioner, a direct recruit—Promotees continued on the post of DSP uninterrupted, entitled to the benefit of temporary service towards counting of their seniority—Writ dismissed.

Held, that when the Inspectors belonging to the 1989 batch were promoted to the rank of DSP, their names had not been brought on list 'G' nor was their promotion approved by the Commission but this was a procedural lapse on the part of the State Government for which the promotee Officers could not be made to suffer. Moreover, this lapse was rectified when the Commission accorded its approval subsequently which necessarily related back to the date of their promotion. After their promotion, the promotees continued on the post uninterrupted till their services were regularised by the Commission when it accorded approval to their names being brought on list 'G' with effect from the dates they were promoted. They are, therefore, entitled to the benefit of their temporary service which they rendered as DSP and that service has to count towards their seniority.

(Paras 9 & 10)

Sanjiv Bansal, Advocate for the Petitioner

Gurminder Singh, DAG Punjab for respondents no. 1 to 3.

Balbir Singh, Advocate for respondents no. 6 and 24.

P. S. Patwalia, Advocate, for respondent no. 9.

S.S. Shergill, Advocate for respondent no. 21

Manisha Berry, Advocate for respondents no. 16, 23, 27, 35, 37 and 39.

Puneet Jindal, Advocate for respondent no. 29

R.R. Dhawan, Advocate for respondent no. 40.

S.S. Saron, Advocate for respondents no. 41 to 43.

ORDER

N.K. Sodhi, J.

(1) The dispute herein relates to the seniority of a police officer directly appointed as Deputy Superintendent of Police vis-a-vis others who were promoted to that post. Facts giving rise to this petition lie in a narrow compass and may first be noticed.

(2) The State of Punjab through its Home Department sent a requisition to the Punjab Public Service Commission (for short the Commission) for filling up, amongst others, 23 posts of Deputy Superintendents of Police (DSP for the sake of brevity). In pursuance to this requisition the Commission issued a public notice inviting applications from eligible candidates as per the conditions contained therein. Petitioner was one of the candidates who applied for a post and after successfully competing in the written examination and also in the interview and physical fitness test he was selected by the Commission and his name was recommended for appointment as per letter dated 17th October, 1989. However, because of a stay order granted by a civil court in a suit filed by one of the unsuccessful candidates the appointment to the advertised posts had been stayed. Stay was later vacated and it was on the vacation of the stay order on 30th March, 1990 that the selected candidates including the petitioner were issued appointment letter on 6th April, 1990 and the petitioner joined the post on 21st April, 1990. It is common case of the parties that the petitioner was put on probation for a period of two years with effect from the date of his appointment and that on successful completion of the probationary period he was confirmed as DSP on 21st April, 1992.

(3) Recruitment to the Punjab Police Service is regulated by the Punjab Police Service Rules, 1959 (hereinafter called the Rules). All appointments to this service are made by the Government. As per Rules 80% of the posts are filled by promotion from the rank of Inspectors and 20% by direct appointment. Inspectors (both promoted from subordinate ranks and directly recruited) are eligible for promotion to the rank of DSP provided they have six years continuous service (officiating as well as substantive) in the rank of Inspector. Many posts of DSP were created in the State of Punjab to meet the operational necessity of terrorist violence but these were lying vacant because eligible Inspectors having six years service were not available. The Director General of Police by his memo dated 23rd October, 1989 sent a proposal to the State Government to relax the condition of experience so as to reduce the period from six years to four years of service for promotion of Inspectors to the rank of DSP as a one time exception under Rule 14 of the Rules. This proposal was accepted by the Government on 3rd November, 1989 and the condition of six years service as contained in Rule 6(1)(i)(a) of the Rules was relaxed and the same was reduced to four years. This relaxation was extended up to 31st December, 1994 on year to year basis. The State Government

then promoted on 23rd November, 1989, 44 Inspectors of Police as DSPs who had more than four years of service but less than six years. Subsequently, some more promotions were made in the year 1989 and in all 85 Inspectors of Police with less than six years of service were promoted as DSPs from November 1989, to December, 1989. All these promotions were made under the 80% quota prescribed for the promotees and there was no promotion in excess of the quota. These promotions were made on temporary basis subject to the approval of the Commission. Since the promoted DSPs had not been brought on list 'G' and the approval of the Commission to their promotion had yet to be obtained, the Director General of Police by his letter dated 12th November, 1992 wrote to the State Government that the approval be obtained from the Commission so that the names of the promoted DSPs could be brought on list 'G'. It appears that on receipt this communication the State Government addressed a letter dated 9th February, 1993 to the Commission seeking its opinion/approval regarding the promoted DSPs of 1989 batch so that their names could be brought on the select list 'G'. A reminder to this effect was also sent to the Commission on 22nd November, 1993. The Commission by its letter dated 14th September, 1998 accorded approval to the promotion of the DSPs of 1989 batch with effect from 11th February, 1993 the date on which the request from the State Government dated 9th February, 1993 had been received. Some of the promotee Officers were not satisfied with their promotion with effect from 11th February, 1993 and they wanted the approval to be accorded by the commission with effect from the date they were actually promoted as DSPs. They filed Civil Writ Petition No. 5259 of 1998 in this Court with a prayer that they be brought on list 'G' with effect from the date they were promoted as DSPs and the approval be accorded accordingly. During the pendency of writ petition the Commission accorded approval to all the DSPs of 1989 batch with effect from the date of their promotion except in the case of some officers whose confidential record was not good and with whom we are not concerned in the present writ petition. That writ became infructuous and the same was disposed of as such on 7th November, 2000. The Commission accorded its approval by considering the promotee officers fit for promotion with effect from the date of their promotion on the basis of their confidential record. The Commission, however, made it clear that the approval was being accorded as a one time exception so that the promoted Officers could be saved of the hardship they were facing and that in future the Commission would consider only those cases which are sent with complete confidential record prior to the promotion of the concerned Officers. On receipt of this approval the names of the DSPs who were promoted during the year 1989 were brought on list 'G' with effect from the date of their promotion and the

Director General of Police then addressed a communication dated 1st February, 2000 to the State Government to consider them for confirmation in the rank of DSPs in accordance with the Rules as they had become eligible for confirmation in that rank. The State Government by its order dated 10th October, 2000 confirmed the DSPs of 1989 batch after they had successfully completed the probationary period of two years. The dates of their confirmation have been mentioned against their names in the order dated 10th October, 2000. It is against this order that the present petition has been filed under Article 226 of the Constitution challenging the action of the State Government in granting retrospective confirmation to the private respondents who were promoted as DSPs in the year 1989 thereby making them senior to the petitioner who was appointed to the service as a direct recruit. The petitioner has also impleaded some of the Officers who were promoted as DSPs in the Years 1987 and 1988 because they along with some of the officers of the 1989 batch have become eligible for consideration for further promotion to the Indian Police Service. The primary contention of the writ petitioner is that the private respondents were temporarily promoted as DSPs in contravention of rule 6(2) of the Rules in as much as their names were neither brought on list 'G' nor was the approval of the Commission obtained at the time when they were promoted and, therefore, the benefit of the temporary service rendered by them as DSPs which was de hors the Rules could not be given to them. It was also contended that the Commission having once rejected the recommendation of the State Government to grant approval to the promotees retrospectively could not subsequently reconsider the matter and grant approval to them with effect from the date of their promotion.

(4) In response to the notice issued by this Court the respondents have filed their separate written statements and the contentions advanced by the petitioner have been controverted though the factual position is by and large admitted.

(5) From the rival contentions of the parties, the sole question that arises for our consideration is whether the promotion of the private respondents to the post of DSP was de hors the Rules and whether they could be given the benefit of that service for the purpose of their seniority.

(6) Before we deal with the main contention of the writ petitioner, let us first dispose of an ancillary issue as to whether the recommendation of the State government seeking retrospective approval to the promotion of the private respondents had ever been rejected by

the Commission as was contended by the petitioner and controverted by the respondents. In support of his contention the learned counsel for the petitioner referred to the order dated 23rd November, 1989 whereby as many as 44 Inspectors were promoted as DSPs on temporary basis subject to the approval of the Commission. He also referred to the letter dated 20th December, 1989 addressed by the Secretary of the Commission to the State Government whereby the proposal of the State Government was rejected. Having heard counsel for the parties on this issue, we are unable to subscribe to the contention of the learned counsel for the petitioner. No doubt, in the letter dated 20th December, 1989 the Commission had rejected the proposal of the State Government but the question is what that proposal was. The Secretary had also mentioned in this communication that a "detailed letter follows". That letter is dated 12th January, 1990 (copy of which is Annexure P-9 with the writ petition). A perusal of this letter shows that the State Government was considering the proposal to amend Rule 6(1)(a) of the Rules so as to reduce the continuous service of an Inspector from six years to four Years for the purpose of making him eligible for promotion to the rank of DSP. As noticed, earlier the State Government had created a large number of posts of DSPs in the State of combat terrorism but those posts remained vacant because eligible Inspectors having six years service were not available. It was then that the Government decided to amend the rules and reduce the period from six years to four years. It was this proposal which was sent to the Commission with which it did not agree. There is nothing on the record to show that the proposal of the State Government to grant approval retrospectively to the promotion of the private respondents who were promoted in the year 1989 was ever rejected by the Commission. In this view of the matter, we have no hesitation in holding that the proposal of the State Government had never been declined as alleged by the petitioner.

(7) Now coming to the main grievance of the petitioner. It would be necessary to refer to the relevant provisions of the Rules which are reproduced hereunder for facility of reference :—

"APPOINTING AUTHORITY

5. All appointments to the service shall be made by the government.

METHOD OF RECRUITMENT

6. Recruitment to the service shall be made
 - (i) Eighty per cent by promotion from the rank of Inspector and twenty percent by direct appointment .

Provided that only those Inspectors will be eligible for promotions who—

(a) in the case of Inspectors (both promoted from subordinate ranks and directly recruits) have got six years continuous service (officiating as well as substantive) in the rank of Inspectors : and

(b) xxx xxx xxx

“(2) Appointment by promotion shall be made by the government from Inspectors, brought on list ‘G’ which will be list of officers considered fit for promotion to the rank of Deputy Superintendent of Police, prepared by Government in consultation with the Commission, the name in this list prepared at one time shall be arranged according to their *inter se* seniority. This list while be mentioned in two parts : Part I (for officers from the Executive line) and Part II (for officers from the Prosecution line).

(3) xxx xxx xxx

PROBATION OF MEMBERS OF SERVICE.

8. (a) Members of the service shall be on probation for two years, which shall include the period of training at the police training school, Phillaur and in the Districts and in the case of members recruited by promotion, the Government may, by a special order in each case, permit periods of officiating appointment to the service to count towards the period of probation.

(b) XXX XXX XXX

(c) XXX XXX XXX

SENIORITY OF MEMBERS OF SERVICE

10. The seniority of members of the service shall be determined by the date of confirmation in the service. :

XXX XXX XXX XXX

GERNERAL POWERS TO RELAX RULES

(14) Where the Government is satisfied that the operation of any of these rules causes undue hardship in any particular case, it may, by order, dispense with or relax the

requirements of that rules to such extent and subject to such conditions, as it may consider necessary for dealing with the case in a just and equitable manner ; provided that the case is not dealt with in a manner less favourable to the person concerned than that provided by the relevant rules.”

(8) The argument of Shri Sanjeev Bansal, learned counsel for the petitioner is that when the private respondents of the 1989 batch were promoted, their names had not been brought on list ‘G’ —the list of officers considered fit for promotion to the rank of DSP which list the State Government was required to prepare in consultation with the Commission. This, according to the learned counsel, was in violation of mandatory provisions of Rule 6(2) of the Rules and, therefore, the promotions were *de hors* the Rules and the benefit of that temporary service could not be given to the promotees. He also referred to the orders of promotion wherein it is stipulated that their promotion was purely on temporary basis subject to the approval of the Commission and that it was without prejudice to the rights of the senior Inspectors. The argument, in deed, is that till their promotion was approved by the Commission they could not be deemed to have been promoted to the rank of DSP. Learned counsel for the petitioner cited *Rudra Kumar Sain and others vs. Union of India and others* (1), *U.P. Secretariat U.D.A. Association and others vs. State of U.P. and others* (2), *Keshav Chandra Joshi and others vs. Union of India and others* (3) and *The Marathwada University vs. Seshrao Balwant Rao Chavan* (4) in support of his contentions.

(9) Having given our thoughtful consideration to the arguments of the learned counsel for the petitioner, we find no merit in the same. It is true that when the private respondents belonging to the 1989 batch were promoted to the rank of DSP their names had not been brought on list ‘G’ nor was their promotion approved by the Commission but this, in our opinion, was a procedural lapse on the part of the State Government for which the private respondents could not be made to suffer. Moreover, this lapse was rectified when the Commission accorded its approval subsequently which necessarily related back to the date of their promotion.

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- (1) (2000) 8 SCC 25
 - (2) (1999) 1 SCC 278
 - (3) 1992 Suppl. (1) SCC 272
 - (4) AIR 1989 SC 1582

(10) The cases of the promotee officers were sent to the Commission alongwith their service record on 9th February, 1993 on the basis of which the approval was initially accorded with effect from 11th February, 1993 the date on which the communication from the State Government was received by the Commission. The promotee officers then represented to the Commission that approval to their names in list 'G' should be granted with effect from the date of their promotion as the State Government for no fault of theirs had delayed the sending of their names. Civil writ petition No. 5259 of 1998 was filed by some of the promotee officers and during the pendency of that petition the Commission accorded approval to the names of the promotee Officers in list 'G' with effect from the dates of their promotion as DSPs. The approval having once been granted by the Commission related back to the date of their promotion. In this view of the matter, it cannot be said that the promotee Officers of 1989 batch could not be given benefit of their temporary service towards seniority. The question as to when can the benefit of temporary service be given towards seniority, came up for consideration before a Constitution Bench of the Apex Court in *The Direct Recruit Class-II Engineering Officers' Association and others vs. State of Maharashtra and others* (5) wherein their Lordships after examining the issue thread bare laid down the following two propositions with which we are concerned :—

- “(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only *ad hoc* and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.
- (B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.”

When we consider the case of the private respondents in the light of the aforesaid two propositions it become crystal clear that their case is covered by proposition (B). Their initial appointment was no doubt not made in accordance with sub-rule (2) of Rule 6 of the Rules inasmuch the approval

of the Commission had not been obtained when they were promoted nor their names were brought on list 'G' but the promotees of the 1989 batch after their promotion continued on the post uninterruptedly till their services were regularised by the Commission when it accorded approval to their names being brought on list 'G' with effect from the dates they were promoted. They are, therefore, entitled to the benefit of their temporary service which they rendered as DSPs and that service has to count towards their seniority. We have carefully gone through the judgments cited on behalf of the petitioner and find that they are different on facts and do not advance the case of the petitioner.

(11) Before concluding, we may mention that the writ petitioner also pleaded in his writ petition that he was entitled to confirmation in the service from the date when the Commission recommended his name for appointment as a DSP and that the respondents were in error in not giving him that benefit but this plea was not pressed at the time of arguments.

(12) No other point was raised.

(13) In the result, the writ petition fails and the same stands dismissed with no order as to costs.

R.N.R.

Before Jawahar Lal Gupta & N.K. Sud, JJ

RAVINDER KAUR—*Petitioner*

versus

CHANDIGARH HOUSING BOARD & OTHERS—*Respondents*

C.W.P. No 8787 OF 2000

9th May, 2001

Constitution of India, 1950—Art. 226—Chandigarh Housing Board (Allotment, Management and Sale of Tenements) Regulations, 1979—Reg. 17—Allotment of two flats by making wrong statements—Cancellation of allotments after duly considering replies to the show