

Prabhakar Singh Vs. Union of India and ors.

Prabhakar Singh Vs. Union of India and ors.

SooperKanoon Citation : sooperkanoon.com/1161663

Court : Delhi

Decided On : Aug-07-2014

Judge : S.Ravindra Bhat

Appellant : Prabhakar Singh

Respondent : Union of India and ors.

Judgement :

\$~1 * IN THE HIGH COURT OF DELHI AT NEW DELHI + Date of Decision:

07. 08.2014 % W.P.(C) 11995/2009 PRABHAKAR SINGH Through: Petitioner Mr. Manoj Prasad, Sr. Adv. with Mr. Prakash Kumar Singh and Mr. Ashutosh Dubey, Advocates versus UNION OF INDIA AND ORS Through: Respondent Mr. Rajesh Katyal, Adv. for R-1 Mr. Naresh Kaushik with Ms. Amita Singh, Adv. for R-2 CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE VIPIN SANGHI S. RAVINDRA BHAT, J.

(OPEN COURT) C.M. No.7969/2014 For the reasons stated in the application, the application for early hearing is allowed. The writ petition is taken up for hearing with the consent of the parties. W.P.(C) 11995/2009 1. The writ petitioner challenges the order of the Central Administrative Tribunal (CAT/ Tribunal) dated 20.08.2009 passed in O.A. No.1071/2002. The impugned order rejected his claim for seniority over the fourth respondent (hereafter Dr. Sanjay Singh) in the cadre of Deputy Legislative Counsel (DLC).

2. Briefly, the case concerns the Indian Legal Service (ILS) a Central Government Group-A Service. The dispute relates to recruitment to, promotion and seniority in the grades of Assistant Legislative Counsel (ALC) and DLC a post which is higher than the former in the ILS.

3. The petitioner joined as ALC with effect from 28.12.1989 as a direct recruit. It is not in dispute that the Dr. Sanjay Singh joined as ALC on 18.06.1991, again as a direct recruit. The recruitment to the higher post of DLC is by two channels, i.e. by promotion and direct recruitment, alternatively as mandated under Rule 6(2) of the Indian Legal Service Rules, 1957 (the Rules).

4. In terms of the rules, the petitioner was eligible for promotion to the post of DLC in December 1992. Likewise, Dr. Sanjay Singh would have been eligible for promotion some time in 1994. On 01.03.1994, a seniority list was published in which the petitioner was shown as senior to Dr. Sanjay Singh. One of the petitioners claims is that this crystallised his position as ALC over that of Dr. Sanjay Singh, and that this position ought to have been followed in the higher cadre.

5. On 29.06.1994, on account of the retirement of Mr.Chaturvedi from DLC, a vacancy arose in that grade. A subsequent vacancy arose likewise on 02.01.1995. Apparently, the official respondents advertised one of these vacancies for direct recruitment through the Union Public Service Commission (UPSC) by Advertisement No.921/1994. Dr. Sanjay Singh competed for the post and was selected. He was, accordingly, appointed on 04.07.1996 to the post of DLC as a direct recruit. The petitioner did not choose to participate in the direct recruitment process. On 06.09.1996, the petitioner was promoted to the post of DLC apparently on application of Rule 6(2) as against a promotional vacancy.

6. The petitioner approached the Tribunal by filing O.A. No.1668/1997 claiming a declaration that he is deemed to have been promoted as against a vacancy which arose upon the promotion of Sh. Chaturvedi in 1994; this relief was, however, declined vide order dated 30.07.1997, wherein the Tribunal observed:

4. We are of the view that the argument is misconceived. Even in *Chandra Gupta v/s Secretary, Govt. of India, Ministry of Environment & Forests and others*, (1995) 1 SCC23 relied on by the learned counsel, no such right as contended was conceded to an employee by the Supreme Court. Other cases relied on by the learned counsel were also misplaced. Without selection, how could the applicant claim promotion and without actual work, how could he acquire experience by notional promotion are questions without plausible explanation. In none of the cases cited, any such relief as prayed for in this application was granted. It, therefore, does not appear necessary to detail or discuss the various cases cited before us.

7. Thereafter, he approached this Court. The petitioner claims that during the pendency of this writ petition, the respondent produced an amended seniority list of ALCs, amended on 08.07.1996, which was not communicated by the respondent. By this amendment, one Sh. V.K. Bhasin was placed below another one Sh. P.C. Roy one direct recruit and other a promotee. Consequently, by the judgment and order dated 16.03.2002, this Court disposed of his writ petition being W.P. (C) No.3152/1997 holding that the Tribunal ought to go into the matter, since Dr. Sanjay Singh had not been impleaded before it in the earlier proceedings, and the seniority position had undergone a change in the cadre of ALC. It was in these circumstances, that upon remand, Dr. Sanjay Singh was, in fact, impleaded. The matter reached this Court again, at an intervening stage when, on 23.10.2008, it was required to be decided on merits.

8. Ultimately, by the impugned order dated 20.08.2009, the writ petitioners claim was rejected. The Tribunal held as follows:

13. The contention of the learned senior counsel for the applicant is that the vacancy, which arose on 29.06.1994 had to be filled by promotion. As per Rule 6(2) of the Rules, there can only be three direct and three promotees in 6 posts of LDC at any point of time, but in the seniority list on 01.03.1994, there were four direct recruits and three promotees. We do not agree. It may not be possible that the balance of 50% direct and 50% promotees should always be maintained. Such balance can be disturbed on retirement of a promotee officer or any officer

from either stream leaving the service.

9. So far as the other aspect, i.e. the retrospective amendment of seniority was concerned, the impugned order held as follows:

15. The learned counsel for the respondents would, on the other hand, contend that the appellant became eligible for promotion only on 27.12.1992. One vacancy in the grade of DLC arose on 31.01.1991 and the other on 01.01.1992. The first vacancy as per the roster fell on direct recruitment point and Shri V.K. Bhasin was appointed against that vacancy. The second vacancy on promotion point fell on the promotion point and Sh. P.C. Roy was promoted against that. The next vacancy on 29.06.1994 fell on direct recruitment quota and Dr. Sanjay Singh was appointed against that post on 04.07.1996. The next post, which fell vacant on 02.01.1995 went to the applicant in the promotion quota.

16. We are in agreement with the contention of the respondents. The applicant is basing his claim on the seniority list as it existed on 01.03.1994 without amendment. In the un-amended seniority list, Sh. V.K. Bhasin, direct recruit was at serial number 6 and, therefore, on the promotion of Shri K.N. Chaturvedi, the next vacancy would have gone to the applicant in promotion quota. The seniority underwent a change in 1996 and the inter se seniority of Shri V.K. Bhasin and Shri P.K. Roy was changed, with Sh. P.K. Roy from promotion quota coming at serial No.6. Therefore, according to Rule 6(2) of the Rules, the next vacancy would go to direct recruit. Shri Sanjay Singh was available to fill up the post. The inter se seniority of the applicant in the grade of ALC is immaterial because Sh. Sanjay Singh has come as a directly recruited DLC and a vacancy was available in direct recruits quota.

10. It was urged on behalf of the petitioner that the impugned order is an error of law. Learned senior counsel highlighted the fact that since the petitioner entered the feeder category, i.e. ALC earlier than Dr. Sanjay Singh almost two years before him he had to be shown as his senior. Elaborating on the submission, learned counsel contended in the context of the prevailing seniority list that the vacancy that arose on the promotion of Sh. Chaturvedi ought to have been filled by a promotee, and that the mere circumstance of that Dr.Sanjay Singh was

directly recruited against it, even though he was a departmental candidate, could not confer any higher right or advantage on him.

11. Learned counsel for the first respondent/ Union of India argues that the order of the Tribunal does not call for any interference. He relied upon Rule 11(2) to say that the seniority of an officer or incumbent is fixed on the date he enters the grade substantively. Highlighting that the fourth respondent was appointed against a regular vacancy on direct recruitment basis, learned counsel submitted that there was no manner known to law by which his date of appointment could be postponed, as the petitioner suggests. He also submitted that the findings of the Tribunal with respect to the availability of the direct recruitment vacancy, which was filled upon the retirement of Sh. Chaturvedi, does not call for any interference.

12. The relevant rules governing the ILS in this regard are extracted herein below:

6. Filling up Duty Posts: (1) A duty post in Grade-I or Grade-II shall be filled by promotion of a member of the Service in the next lower grade unless the Central Government decides to fill any such post by direct recruitment. (2) A duty post in Grade III shall be filled alternatively by direct recruitment and by promotion of a member of Service in Grade IV. (3) A duty post in Grade IV shall be filled by promotion of persons holding any post specified in the Third Schedule and by direct recruitment in the ratio of 1:1 (namely 50% by promotion and 50% by direct recruitment) (4) Notwithstanding anything contained in sub rules (2) and (3), a vacancy required to be filled by promotion or direct recruitment may, if a suitable person is not available to fill such vacancy, be filled by direct recruitment, or, as the case may be, by promotion.

11. Seniority (1) A list of members of Service shall be maintained separately for each Department in order of their seniority. (2) Seniority of members of the Service in each Department shall be determined in accordance with the following principles, namely:- (i) a member of the Service appointed to a duty post in a substantive capacity in any grade shall be senior to a member of the Service appointed to a duty post in an officiating capacity or on probation in that grade; (ii) seniority of members of the Service appointed to duty posts in any grade in a substantive capacity shall be determined in accordance with the date of

appointment to a duty post in that grade in substantive capacity, and where two or more members of the service are appointed in a substantive capacity to duty posts in the same grade on the same date, their seniority shall be determined in accordance with their seniority while holding such duty posts in an officiating capacity or on probation; (iii) subject to the provisions contained in clause (iv) seniority of the members of the Service appointed to duty posts in any grade in any officiating capacity or on probation shall be determined in accordance with the order of selection for appointment to a duty post in that grade or to a post in the Ministry of Law, which in the opinion of the Central Government, corresponds to that duty post; and (iv) the relative seniority of direct recruits and of promotees should be determined according to the rotation of vacancies between direct recruits and promotees.

13. There is no dispute that the petitioner was, in fact, senior to the fourth respondent, Dr. Sanjay Singh in the grade of ALC, having joined that cadre earlier to that respondent. However, the question here is whether the said fourth respondent ought not to be given the benefit of seniority over the petitioner as a direct recruit in the cadre of DLC.

14. The materials on record unequivocally point out that in 1994 itself, an advertisement was issued and notified through the UPSC calling for applications from the concerned eligible candidates, who wished to compete for direct recruitment to the post of DLC. This is apparent from the following uncontroverted averment of the first respondent in the affidavit:

7. The contention of the applicant is vehemently denied. As per Rule 11 of the Indian Legal Service Rules, 1957, the relative seniority of direct recruits and of promotee shall be determined according to the rotation of vacancies between direct recruit and promotees. As submitted above, the vacancy in the post of Deputy Legislative Counsel which arose in the year 1994 fell on direct recruitment quota as per the rotation roster. The post was advertised by the Union Public Service Commission vide its advertisement No.21 (Item No.9) in the year 1994. The name of Dr. Sanjay Singh was, duly, recommended by the Union Public Service Commission and he was, accordingly, appointed to the post of Deputy

Legislative Counsel with effect from 04.07.1996. The vacancy in the post of Deputy Legislative Counsel, against which the applicant was promoted, arose in the year 1995 and hence, as per the rotation of vacancies, the relative seniority of the applicant was placed below that of Dr. Sanjay Singh, a direct recruit Deputy Legislative Counsel.

15. The petitioner, for reasons known to him, chose to keep quiet at that stage, and allowed the recruitment to proceed. Possibly, he represented equally possibly, he did not. But the fact remains that at the relevant stage, no attempt was made by him nor was alleged in these proceedings to the contrary that the direct recruitment ought not to have been resorted to; the vacancy sought to be filled up through UPSC was indeed a promotional one. In other words, at that time when the advertisement for the post of DLC was issued in 1994, which subsequently the fourth respondent went on to fill the petitioner never protested. This aspect assumes significance for two reasons.

16. The first, obviously, that it was equally open to the petitioner to compete which he did not, and that if he did not protest at the relevant time, he ought not to be allowed to say to the contrary to the distinct disadvantage of the fourth respondent. The second is that instead of the fourth respondent, there was a possibility of a rank outsider joining the cadre of DLC. There is, as rightly contended by the counsel for the respondent, no method known to law to cause the recruitment and appointment which occurred on a particular date, being deemed to have been substantively made from a later date. In that sense, the petitioner, in our opinion, missed the bus having not sought appropriate remedies at the relevant time. Consequently, his claim for seniority over the fourth respondent had to, and did fail before the CAT. Thus, we are of the opinion that there is no infirmity with the findings of the Tribunal on this aspect.

17. So far as the availability of vacancies and the treatment of a particular incumbent is concerned, we are of the opinion that the findings of the Tribunal recorded in para 15 and 16 of the impugned order are sound and reasonable. The CAT analysed the vacancy position not only as existed in 1994, but also for prior period and noted how it was essential to treat the incumbents in the lower cadre

as they in fact were shown in the list. Furthermore, inter se seniority of incumbents in the lower cadre of ALC is really of an academic significance once the basic claim of the petitioner that he ought to be treated as senior to the fourth respondent on account of the latter not being entitled to a promotional vacancy, fails.

18. For the foregoing reasons, the present writ petition is without merit and is, accordingly, dismissed. S. RAVINDRA BHAT, J VIPIN SANGHI, J AUGUST07 2014 sr

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com