

**Dr. Than Singh Sharma Vs. Govt. of Nct of Delhi and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/1169972](http://sooperkanoon.com/1169972)

**Court :** Delhi

**Decided On :** Oct-14-2014

**Judge :** S.Ravindra Bhat

**Appellant :** Dr. Than Singh Sharma

**Respondent :** Govt. of Nct of Delhi and ors.

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

22. 09.2014 Pronounced on:

14. 10.2014 + W.P.(C) 7284/2011 DR. THAN SINGH SHARMA .....Petitioner Through: Ms. Amita Kalkal Chaudhary and Ms. Aditi Gupta, Advocates. Versus GOVT. OF NCT OF DELHI AND ORS. .... Respondents Through: Ms. Noornisha, Advocate, for Resp. No.5. Sh. S.K. Gupta, Advocate, for Resp. Nos. 8 and 10. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE VIPIN SANGHI MR. JUSTICE S. RAVINDRA BHAT % 1. This Petition challenges an order of the Central Administrative Tribunal (CAT) dated 14.07.2010 in OA10222010. The CAT allowed the claim of the applicants there (hereafter private respondents), that they were entitled to seniority over the Petitioners, in the cadre of Divisional Officer, Delhi Fire Service.

2. The question involved for decision by the Court is whether the benefit of seniority can be given where retrospective promotion on notional basis is given to

an official. The private respondents W.P.(C) 7284/2011 Page 1 approached CAT challenging the seniority list of Divisional Officers in the Delhi Fire Service (DFS), issued by the Home Department of Government of NCT of Delhi (GNCTD) on 22.3.2010. That list showed 24.5.2005 as the date of promotion to the post of Divisional Officer. The first applicant had been given notional promotion to the grade from 1.11.2001, and the second applicant was given the notional promotion to the same grade with effect from 24.5.2003. When they had joined DFS, the service was under the administrative control of the erstwhile Municipal Corporation of Delhi (MCD). Promotions were regulated by the rules and regulations framed by the MCD. The control of the DFS was transferred to the GNCTD with effect from 10.11.1994. Before that, the private respondents, who were working as Station Officers in DFS, were entrusted current duty charge of the post of Assistant Divisional Officer (Fire) (ADOs). GNCTD later notified the recruitment rules in respect of ADOs as well as Divisional Officer (DO), in September, 1998. A Departmental Promotion Committee (DPC) had to necessarily be convened for promotion from the feeder post on the basis of year-wise vacancies. Since this step was not taken, the first private respondent (first applicant) and some others from DFS approached CAT in O.A. No.562/2001 and other connected proceedings. During the pendency of these proceedings, the official Respondents convened the meeting of DPC in February, 2002 and on its recommendations, both the Applicants (private respondents) were promoted as ADOs with effect from 1.4.2002. O.A. No.562/2001 was decided on 25.9.2002, when the following directions were given: W.P.(C) 7284/2011 Page 2

5. Therefore, the O.A. 562/2001 succeeds and is accordingly allowed in Part. Respondents are directed to hold review DPCs of the concerned eligible officers for promotion to the post of ADOs (Fire) in continuation of the aforesaid order issued by them dated 1.4.2002 for vacancies arising year wise, in accordance with relevant rules and instructions. This shall be done within four months from the date of receipt of copy of this order with intimation to the Applicants. Accordingly, in the facts and circumstances of the case, all the eligible officers who are found fit for promotion to the post of ADOs by the review DPC shall be entitled to all consequential benefits, including differences of pay and allowances in the higher post from the due dates, in accordance with law.

In R.A. No.290/2002, filed by the first applicant (private respondent) and three others, resulted in addition of the following directions to the order in O.A. No.562/2001:

Accordingly, the Respondents shall also re-consider the claims of the eligible applicant (s) in accordance with law with regard to the promotion to the post of Divisional Officers (Fire) (DOs- Fire) having regard to the aforesaid observations and pass appropriate orders.

3. This Court was approached against the order of CAT in OA5622001, through writ petition (W.P. (C) No.678/2005); that was dismissed on 26.5.2006. This Court upheld the directions of CAT. A review petition against this Courts order too was rejected on 20.4.2007. The Supreme Court rejected the Special Leave Petition on 12.11.2007. Consequently, the order of the CAT in O.A. No.562/2001 (and R.A. 290/2002) achieved finality. The official respondents had, in the meanwhile, convened a DPC in the month of May 2005, during pendency of the litigation and promoted the private respondents with effect from 24.5.2005. Yet, consequent to directions of CAT in O.A. W.P.(C) 7284/2011 Page 3 No.562/2001 as amended in R.A. 290/2002, the order dated 18.02.2009 resulted in the first applicant being promoted in the grade of DO with effect from 1.11.2001, and the second applicant with effect from 24.5.2003. The provisional seniority list of DOs, issued on 14.07.2009, showed the private respondents as having been promoted to that cadre as on 24.5.2005. They represented against that provisional seniority. A final seniority list was issued reflecting the same position, as to their appointment with effect from 24.05.2005; they were shown as junior to the present Petitioners. The seniority list was impugned in the present round of litigation. The private respondents contention was that the previous orders of the CAT - as affirmed by this Court and the Supreme Court, meant that their appointment and seniority had to be reckoned from the date they were given that benefit, in 2001 and 2003 respectively. According to them, the previous orders having achieved finality, the official respondents had no choice but to give full benefit to it.

4. The official respondents and the petitioners contested the proceedings arguing that seniority can only be reckoned from the date of substantive promotion, which,

according to them was 24.5.2005. Reliance was also placed on the Office Memorandum (O.M.) Number 20011/2006-Estt. (D), issued by the Departmental of Personnel and Training (DoP&T) dated 3.3.2008 in which, stated:

3. Some references have been received seeking clarifications regarding the term 'available' used in the preceding para of the O.M. dated 3.7.1986. It is hereby clarified that while the inter-se seniority of direct recruits and promotees is to be fixed on the basis of the rotation of W.P.(C) 7284/2011 Page 4 quota of vacancies, the year of availability, both in the case of direct recruits as well as the promotees, for the purpose of rotation and fixation of seniority, shall be the actual year of appointment after declaration of results/selection and completion of pre-appointment formalities as prescribed. It is further clarified that when appointments against unfilled vacancies are made in subsequent year or years either by direct recruitment or promotion, the persons so appointed shall not get seniority of any earlier year (viz. year of Vacancy/panel or year in which recruitment process is initiated) but should get the seniority of the year in which they are appointed on substantive basis. The year of availability will be the vacancy year in which a candidate of the particular batch of selected direct recruits or an officer of the particular batch of promotes joins the post/service.

5. The Petitioners additionally argued that the private respondents were given the correct seniority from the year 2005 because they were substantively appointed to the post from that date. It was submitted that they could not have been promoted retrospectively as DOs. The Petitioners contended that they were senior to the private respondents. The further submission was that the seniority had to be determined on rota-quota basis and on that consideration also, the private respondents could not become senior to the direct recruit Petitioners. The first Petitioner submitted that he was entitled for counting of his seniority as Deputy Commandant (Fire) in CISF, where he worked earlier before joining the DFS. It is contended that the private respondents had worked under the Petitioners and for that reason too, they could not be entitled to seniority after such long lapse of time. Additionally, it was argued that the private respondents claim had to be dismissed for non-joinder of persons likely to be affected by the decision. W.P.(C) 7284/2011 Page 5 6. After considering the submissions of the parties, the CAT, in its findings

held that the question of date of appointment of the private respondents was no longer open to debate in view of the finality attached to its previous orders particularly when it had been affirmed by this Court, and further challenge to the Supreme Court had failed. The CAT relied on the decisions of the Supreme Court in Paluru Ramkrishnaiah and Ors. v. Union of India and Anr (1989) 2 SCC541 and Telecommunication Engineering Service Association (India) and Anr. v. Union of India and Ors 1994 Supp. (2) SCC222 and Union of India v. B.M. Jha (2007) 11 SCC632 and held that the private respondents claim for seniority on the basis of their entitlement to appointment with effect from the prior dates had to prevail. The CATs operative directions are as follows:

19. In the light of the above, we hold that the Applicants would be eligible for seniority with effect from 1.11.2001 (first applicant) and 24.5.2003 (second applicant). The impugned seniority list of 22.3.2010 is, therefore, quashed and set aside. The Respondents will draw a fresh seniority list wherein the Applicants would be shown at suitable places by taking date of appointments as 1.11.2001 (first applicant) and 24.5.2003 (second applicant). These directions would be complied with within three months from the date of receipt of a certified copy of this order. There will be no order as to costs.

7. The Petitioner relies on the OM of 03-03-2008 which ruled out grant of any seniority benefit prior to the date of promotion, in the judgment reported as B.S. Mathur v Union of India 2008 (10) SCC271 The Supreme Court held, in that judgment, that seniority of a promotee cannot be granted from a date prior to entry into the cadre W.P.(C) 7284/2011 Page 6 (through promotion). It was submitted that since the private respondents were regularly promoted as DOs pursuant to DPC recommendations only on 24.05.2005, they could not claim seniority over the Petitioners direct recruits who had joined the cadre prior to that date. It was also submitted that it is well settled that retrospective promotion cannot be given merely because vacancies exist on a particular date or the concerned employee became eligible.

8. From the above narrative, it can be seen that the private respondents had to approach the CAT earlier in 2001 because despite GNCTD taking over the reins of

the DFS in 1994, no attempt had been made to fill promotional posts in the cadre of ADOs and DOs. In 1998, the GNCTD had framed rules governing DFS; yet the exercise of holding DPC after determining year-wise eligibility of suitable candidates had not been carried out. By the time the application could be decided, the private respondents entitlement for consideration to the post of DO had arisen. Consequently, in the final order and the order made in review proceedings, the GNCTD was directed to consider year-wise eligibility and issue consequential promotions to the post of ADOs and DOs. That order became final, the writ petition to this Court and the special leave petition to the Supreme Court, having been dismissed. Whilst the private respondents were, no doubt, promoted as DOs on 24.05.2005; the implementation of the CATs previous order meant that notional anterior dates had to be given to them for doing complete justice. This is evident from the order of the DFS dated 18.02.2009, which implemented the previous orders of the CAT and this Court; that order/notification specifically indicated W.P.(C) 7284/2011 Page 7 deemed anterior dates of promotion in the case of the private respondents- who were shown at Sl. Nos. 10 and 12 of the list, with clear anterior notional dates of promotion. Such being the case, the GNCTD could not have either in the provisional or the final seniority list- resiled from that order, and assigned seniority to the Petitioners over the private respondents. No doubt, the Petitioners were direct recruits and entitled to count seniority from the date they entered service. At the same time, the private respondents promotion from anterior dates was based on existence of vacancies and their independent eligibility to hold those posts. They had been unfairly denied those posts on account of inaction and omission of the DFS which was remedied by the previous order of CAT and later this Court. The reliance on the OM of 03-03-2008 of the Do PT, in the opinion of the Court, in the circumstances of this case is inapt. Likewise, the Petitioners reliance on B.S. Mathur (supra) is misplaced. This Court is of the opinion that the CAT quite correctly understood the law declared by the Supreme Court in Paluru Ramkrishnaiah (supra) and Telecommunication Engineering Service Association (India) (supra).

9. So far as the plea of non joinder goes, this Court notices that all those likely to be affected had been impleaded. The officer at serial number 20 in the impugned seniority list was not made a party since he resigned from service. The private

respondents are at serial numbers 18 and 21 of the seniority list, and all those above serial number 21 have been made parties. W.P.(C) 7284/2011 Page 8 10. In view of the foregoing discussion, this Court is of opinion that the petition lacks in merit. It is accordingly dismissed without any order as to costs. S. RAVINDRA BHAT (JUDGE) VIPIN SANGHI (JUDGE) OCTOBER14 2014 W.P.(C) 7284/2011 Page 9

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