

Attar Singh Vs. Union of India and Ors.

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Court : Delhi

Decided On : Dec-03-2014

Judge : Kailash Gambhir

Appellant : Attar Singh

Respondent : Union of India and Ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on:

3. d December, 2014 + W.P.(C) 2816/2013 ATTAR SINGH Through Petitioner Mr. Ankur Chhibber, Advocate versus UNION OF INDIA AND ORS. Respondents Through Dr. Ashwani Bhardwaj, Advocate AND + W.P.(C) 3240/2013 JASWANT SINGH Through Petitioner Mr. Ankur Chhibber, Advocate versus UNION OF INDIA AND ORS. Respondents Through Mr. Vikas Mahajan, Central Government Standing Counsel with Mr. S.S. Rai & Ms. Ruchika Mahajan, Advocates CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MR. JUSTICE NAJMI WAZIRI

JUDGMENT

% KAILASH GAMBHIR, J.

1. By these writ petitions filed under Article 226 of the Constitution of India, the petitioners seek a writ of mandamus to the respondents to grant promotion to the petitioners to the rank of Sub-Inspector alongwith seniority and financial benefits

from the date their juniors had been promoted; and (ii) a writ of mandamus to the respondents to grant the same relief as granted vide order dated 09.11.2010 in W.P.(C) 4112/2010 from the date their juniors had been promoted alongwith arrears of pay and other consequential and financial benefits.

2. The common grievance raised by the petitioners in these two Writ Petitions is that they were not detailed to undergo the W.T. (P) Promotional Course for promotion to the post of Sub-Inspector along with their batchmates so as to qualify the criteria for promotion to the next rank of Sub-Inspector before the completion of 47 years of age and this nondetailing of the petitioners has adversely affected these petitioners apropos their seniority and promotions to the next rank.

3. Mr. Ankur Chhibber, the learned counsel appearing for these petitioners submits that it is not on account of any lapse or fault on the part of these petitioners that they did not undergo the said W.T. (P) Promotional Course, rather, it was the respondents lapse and inaction for not timely detailing these petitioners to undergo the said course. He also submits that the batchmates of the petitioners who are younger in age were detailed for the said test in the years 2009 and 2010, but, by that time the petitioners had become overage. He also submits that both these petitioners were detailed for the said examination in April, 2011 and this decision was taken by the respondents keeping in view the directions given by this Court in a case being W.P.(C) No.4112/2010, titled as Desh Raj v. Union of India.

4. The learned counsel further submits that the petitioner in W.P.(C) 3240/2013 had made his representation to the respondents with a request for detailing him to undergo the said course before his completing 47 years of age, but his request was not acceded to by the respondents.

5. The learned counsel further submits that for their promotion to the next rank, these petitioners who were Head Constables were required to complete five years of service in the rank of Head Constable and also qualify the said promotional courses. He also submits that on 1st April, 2011 pursuant to the recommendations of the 6th Central Pay Commission, a rank between Head Constable and Sub-Inspector, i.e. ASI was introduced and both these petitioners were promoted to the rank of ASI after having completed the requisite promotional courses. He further

submits that the batchmates of the petitioners were promoted to the rank of Sub-Inspector as they had completed the said promotional course w.e.f 15th June, 2009 to 8th September, 2009, but these petitioners could not be promoted to the next rank of Sub-Inspector, because by the time they were detailed for the said examination, they had become overage. He also submits that had these petitioners been detailed either along with their batchmates or before the completion of 47 years of age then they would have been promoted to the next rank of Sub-Inspector, in the year 2010 and so far as the next rank of ASI is concerned, the same was introduced later i.e. in the year 2011.

6. Dr. Ashwani Bhardwaj, the learned counsel for the respondents in W.P.(C) 2816/2013 and Mr. Vikas Mahajan, the learned counsel for the respondents in W.P.(C) 3240/2013 submit that on completion of five years in the rank of Head Constable the detailment for undergoing the said course is not automatic and the batches to undergo the said promotional course are detailed as per their respective seniority. They further submit that so far as the case of these petitioners is concerned they could only be detailed along with their batchmates and no priority could be given to these petitioners by culling out these petitioners from their batchmates. They submit that it is a sheer coincidence that when these petitioners reached the stage of consideration for undergoing the said courses along with their batchmates, they had become overage. They further submit that it is not a lapse or fault on the part of the respondents that they did not detail these petitioners to undergoing the said course prior to their completing 47 years of age. They also submit that on 15th September, 2010, the policy itself was changed and promotional courses were merged into one course and the age criteria was also done away with and it is thereafter that these petitioners were detailed to undergo the said examination and on having qualified the said exam, both these petitioners got their promotions to the next rank of ASI, as by that time the rank of ASI was introduced.

7. We have heard the learned counsel for the parties at a considerable length and have given our thoughtful consideration to the arguments advanced by them.

8. The grievance raised by these petitioners is that they were fully eligible to be promoted to the next higher rank of Sub-Inspector after having completed five years of service on the post of Head Constable, but were denied promotion to the said rank because they were not detailed for undertaking the W.T.(P) Promotional Course before becoming overage on the completion of 47 years of age.

9. The two fold contentions raised by the learned counsel for the petitioners was that it was incumbent upon the respondents to have detailed the petitioners for the said mandatory course, well before the petitioners completed 47 years of age and having not done so the petitioners cannot be deprived of their right to promotion to the said rank of Sub-Inspector, whereas their juniors got promoted, simply because age was on their side. Another contention raised by the learned counsel for the petitioners was that the case of these petitioners is squarely covered by an order dated 09.11.2010, of the Division Bench of this Court in the case of Desh Raj v. Union of India & Ors. (supra).

10. In P.U. Joshi v. Accountant General, Ahmedabad & Ors., reported in (2003) 2 SCC632 the Honble Supreme Court held that the question relating to constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy and the same is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunal, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may

be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service. The relevant paras of the said judgment are reproduced as under:

10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service. 11.....

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13. The plea based on the denial of equal opportunity and equal protection of laws has rightly been rejected in the light of the principles laid down by this Court in the decisions noticed by the Bench of the Tribunal, which rendered the decision in respect of the appellants, who serve in the State of Gujarat. Likewise, it was impermissible for the Bench of the Tribunal at Cuttack to have further directed to give the promotional monetary benefits and other benefits flowing from such promotion when they will not be entitled to any such relief under the statutory rules, which the Tribunal itself could not, on its own, either bypass or alter or give a go-by too or direct the department to ignore and contravene.

11. The petitioners herein have not challenged the promotional policy of the respondents wherein the persons after reaching the age of 47 years were made ineligible to undertake the said mandatory W.T.(P) Promotional Course to become eligible for promotion to the next higher rank of Sub-Inspector. Undoubtedly, the said embargo was lifted in the subsequent policy of the respondents and due to which the petitioners could undertake to qualify the said course and ultimately got promoted to the next higher rank of Assistant Sub-Inspector.

12. It is a settled legal position that there is no vested right which can be claimed by any employee for promotion to the next higher rank and the right even to be considered for promotion to the next higher rank has to be in terms of the applicable policy and guidelines laid down by the Government. As per the plea taken by the learned counsel for the respondents these petitioners could be detailed for undertaking the said course only alongwith their batchmates and no priority could be given to these petitioners for undertaking the said course, by taking them out from their category merely because they were heading towards the completion of 47 years of age.

13. We find considerable merit in the submissions made by the learned counsel for the respondents, that it is not the case of the petitioners that their batchmates were detailed for the said mandatory course earlier in point of time and in so far as these petitioners were concerned, they were deprived of the opportunity although they were well within the age limit of their rank, as it happened in the case of Desh

Raj (supra), where Mr. Desh Raj was deployed for a duty for the Lok Sabha election for the relevant period during which he became overage and was not sent for the said course by the respondents.

14. There is no merit in these Writ Petitions and the same are hereby dismissed.
KAILASH GAMBHIR, J.

NAJMI WAZIRI, J.

DECEMBER 3 2014 v

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