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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision: 24.07.2014**

% **W.P.(C) 3724/2003**

BHAGWAN SINGH & ORS. Petitioners

Through: Mr. Sarvesh Bisaria and Mr. P.C.
Sharma, Advocates

versus

UOI & ORS. Respondents

Through: Ms. Geeta Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE VIPIN SANGHI

S. RAVINDRA BHAT, J. (OPEN COURT)

1. The petitioners are aggrieved by the common order of the Central Administrative Tribunal ("CAT/Tribunal") dated 06.03.2003 in O.A. No.695/1993 and other connected cases with regard to their complaint of wrongful assignment of seniority and the dates of entry into the grade of UDC and Assistant, and in the subsequent promotional posts.

2. The brief facts are that the petitioners were recruited as LDC on various dates in the 1960s and 1970s. At the time of their entry into service, candidates from another channel of recruitment, i.e. Ex-service men were

entitled to compete for the post. Initially, the respondent (UOI) adopted the practice of assigning seniority to the latter category (i.e. Ex-service men appointed) from the date of their clearing the typing test – an essential condition. This was questioned, and ultimately the matter was considered and settled by the Supreme Court in its judgment in ***Union of India v. O.P. Gupta & Ors.*** Civil Appeal Nos.3489-3491/1996 dated 25.04.2001. The Court once and for all ruled that seniority is to be reckoned from the initial date of entry into service, and not from the date a particular candidate or employee cleared the typing or other tests. While disposing the cases before it, the Supreme Court proceeded to issue the following directions:

“... ... In that view of the matter, the reverted employees, who had joined the Army Headquarters being selected by the Union Public Service Commission cannot claim to be belonging to a different category so as to be excluded from the purview of the judgment of this Court in Sharma and Khosla. The criteria for promotion from the post of LDC to UDC and from the UDC to that of the Assistant being on the basis of seniority, once the seniority in the LDC is re-determined, it may necessitate reversion of some of those who might have got accelerated promotion on the basis of erroneous seniority. The reversion in question alleged to be on that score. We see no force in the reasoning of the Tribunal that the reverted employees were entitled to an opportunity of hearing at that stage. We therefore set aside the conclusion of the Tribunal on the aforesaid two grounds. We would have ordinarily disposed of the matter by allowing this appeal, but for the contentions raised and noticed in paragraph 45 of the impugned judgment of the Tribunal to the effect that the reverted employees did claim that their promotion to the post of UDC and Assistant was on the basis of reservation and against the roster point,

and that question the Tribunal has not considered or answered. In the aforesaid premises, while we set aside the impugned reasonings and judgment of the Tribunal, we remit the matter to the Tribunal for re-consideration of the question as to whether, if any one of the reverted employees were in fact promoted to the post of UDC or Assistant or got any higher promotion against any roster point as a reserved candidate, and in such an event whether they could be directed to be reverted notwithstanding their re-determination of seniority in the cadre of LDC in implementation of the judgment of this Court in Sharma or Khosla. The Union of India as well as reverted employees may place necessary materials in this regard and the Tribunal may re-consider the same and dispose of in accordance with law. This being an old matter, the Tribunal would do well in disposing of the matter as expeditiously as possible”.

3. It would, thus, be clear that the matter was remanded to the Tribunal for fresh consideration on the limited aspect, of whether and if so to what extent candidates belonging to various reserved categories had to be reverted or accommodated at lower positions of the seniority list in different cadres. The respondents’ publication of the seniority list of 1992 was the occasion for consideration by the Tribunal to the limited extent directed by the Supreme Court.

4. Before the Tribunal, the petitioners contended that they could have been reverted from the higher grade i.e. Assistant to that of UDC only if they were in excess of the reserved candidates quota, and furthermore that they could have at all been replaced only by any other eligible SC/ST candidates. The respondents, on the other hand, contend that the eligibility

for promotion from the post of LDC to UDC was 8 years and that the petitioners, or at least some of them, have not fulfilled that condition. They also argued that for some of the promotional vacancies in the grade of Assistant, no eligible candidate was available from amongst the SC/ST candidates.

5. Learned counsel for the petitioner urges that the Tribunal proceeded on an erroneous premise in that the eligibility condition for promotion to the post of UDC did not require 8 years continuous service in the lower grade, but in fact it is 5 years. It is also highlighted that for the post of Assistant, 5 years continuous service in the lower grade (of UDC) was essential. Learned counsel submitted that the Tribunal's decision is based upon this fundamental mistake with respect to the eligibility condition. It was also urged that even though the petitioners had clearly pointed out that they were not replaced by SC/ST candidates, the Tribunal did not take note of the materials placed before it, and without discussing the same rejected the said contention.

6. Learned counsel for the respondent urged that this Court should take note of the fact that an additional affidavit was filed before the Tribunal by the Joint Director in the Ministry of Defence sometime in January 2002, which clarified the total extent of vacancies as well as the relative breakup of reserved categories. It was submitted that the affidavit also enclosed a chart showing the promotion against the roaster points – in accordance with the existing circular containing 40 point roaster. It was argued that the petitioners could not be considered against the post of Assistant because at the relevant time no eligible candidates existed. This aspect was seriously

disputed by the petitioner.

7. The Tribunal discussed the background of the case and noticed that the controversy was a limited one. It thereafter went on to hold that the petitioners could not succeed in the following terms:

“14. The perusal of the above quoted passage would show that the promotes were reverted since they were rendered ineligible because of introduction of another Government OM dated 4.8.76 which had a retrospectively effect and the Hon’ble Court quashed the OM dated 4.8.76 and has held that the vested rights cannot be taken away by change in eligibility criteria having retrospective effect and reversion on such a ground is illegal. But in the case in hand the reversion is not being done by way of amendment in the OM which has retrospective effect but it is being done by way of amendment in the OM which has retrospective effect but it is being done in compliance of the order passed by the Hon’ble Apex Court and as held in the case of Sharma, Khosla and Gauba, applicants seniority list had been directed to be revised and if on the basis of revised seniority list promotions are to be considered again on the basis of the then applicable rules, the applicants cannot have any grievance about their reversion if they do not fulfil the eligibility conditions or if they lose their seniority or that they were not in the consideration zone at the time when promotions were considered by the DPC.

15. So the next question is whether the applicants who had got promotion against any reserved point on the basis of a seniority list which had been quashed cannot retain their promote post if on the direction of the Hon’ble Supreme Court the seniority list is redetermined and after redetermination if it is found that at the time of consideration of promotion the candidates were not eligible or were away from the zone of

consideration so in that event they cannot retain the higher post on promotion which they had got on the basis of erroneous seniority list. They will have to make way for the eligible candidates who were entitled for promotion because of the erroneous seniority list they cannot take away the rights of other who are eligible and are deserving to be promoted to the next grade.

16. In view of the above discussion and particularly the observation made by the Hon'ble Supreme Court that they would have allowed the appeal against the earlier order passed by the Tribunal in this very OA wherein they had observed as follows:-

“After examining the judgment of this Court in D.P. Sharma Vs. Union of India as well as R.K. Khosla Vs. U.O.I, we have no manner of doubt that the seniority of all those employees, who had been in the Army Headquarters prior to 1968 has to be determined/ redetermined on the basis of continuous length of service irrespective of their date of confirmation in accordance with the office Memorandum then in force. In that view of the matter, the reverted employees, who had joined the Army Headquarters being selected by the Union Public Service Commission cannot claim to be belonging to a different category so as to be excluded from the purview of the judgment of this court in Sharma and Khosla.”

17. Further the Hon'ble Supreme Court had also in clear terms set aside the earlier judgment and reasoning given by the Tribunal, so in view of that the OA cannot be allowed and the department is justified to redetermine the seniority as per the

judgment given by the Hon'ble Supreme Court in the case of D.P. Sharma, R.K. Khosla and the judgment given in Gauba's case by the Tribunal.

18. Consequently after the redetermination of the seniority, the position of the applicants in the seniority list would also change and they cannot retain their promotions on the basis of their earlier seniority list. Their eligibility for promotion and zone of consideration is to be considered on the basis of revised seniority list."

8. It is evident that the general rule or principle indicated by the Supreme Court in the ***O.P. Gupta*** (supra) case was that the date of initial entry into a grade or cadre is to be the determinative point of time for reckoning seniority. However, the Supreme Court was alive to the fact that the application of this rule would result in wholesale reversion that such a consequence might affect the reserved category employees; it was likely to disturb the ratio between general candidates and those in the reserved categories. In these circumstances, it directed the respondents to review the promotion so as to ensure that the reservations in accordance with the existing roster allocations were maintained. This necessarily implied that while re-working the seniority for each post, i.e. LDC,UDC and Assistant, the respondent had to also ensure that reversion of SC candidates could be resorted to only if the vacancy slots were filled by another identically placed reserved category candidate.

9. This exercise had to be clearly and demonstrably established by the respondents. Although, an attempt appears to have been made in the additional affidavit referred to us during the course of the proceedings, (filed in January 2002 before the Tribunal) – there is no discussion on this aspect

at all in the impugned order.

10. We are also of the opinion that the question as to consideration of the eligibility condition has to be examined in the peculiar circumstances in which the remand was directed. Firstly, the premise of the respondent that the eligibility service for promotion to the post of LDC is 8 years is erroneous; this condition was imposed by an amendment in 1988 and not at the relevant time when the petitioners were eligible to be promoted to the post of UDC, i.e. sometime in 1970s. Likewise, the eligibility for promotion to the post of Assistant was 5 years in the grade of UDC. If the second premise which the Tribunal would have to examine as in the context of reserved vacancies, the eligibility or the zone of consideration would relate to the candidates concerned; it cannot be mixed up with the eligibility of general candidates. In other words, if there are two vacancies in a particular cadre, one reserved and other unreserved, for the first post the existing guideline might require consideration of five candidates. In such an event, even if the SC/ST candidate is lower or beyond the zone of consideration, since he is only eligible being a reserved candidate, he has to be considered for the other vacancy. No other interpretation can be adopted because any other consideration would defeat the object of reserved post.

11. In the light of the above discussion, we are of the opinion that the matter has to be re-examined by the Tribunal. It has to take into consideration the seniority list drawn up by the respondent pursuant to the directions of the Supreme Court; it has also to render specific findings with respect to the principle of notional reversion in the seniority list and vis-a-vis reserved category candidates, as also the rival submissions made in that

regard. The impugned order is, accordingly, set aside.

12. Considering that many of the petitioners are of advanced age, we are of the opinion that the Tribunal should endeavour to complete the proceedings at its earliest convenience, preferably within four months from today.

13. The writ petition is allowed in the aforesaid terms.



S. RAVINDRA BHAT, J

VIPIN SANGHI, J

JULY 24, 2014

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