

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

Reserved on: 22.08.2014
Pronounced on: 26.09.2014

+ **W.P.(C) 346/2014, C.M. NOS. 678/2014, 679/2014 & 1259/2014**

DR. C.P. SINGH Petitioner
Through: Ms. Usha Mann and Ms. Vijayata. M.
Bhalla, Advocates.

Versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Through: Sh. Rajiv Nanda, ASC and Sh. Manish
Vikkey, Advocate, for Resp. Nos. 1 and 2.
Sh. Naresh Kaushik with Ms. Amita Singh Kalkal,
Advocates, for Resp. No.2.
Sh. C. Mohan Rao with Sh. Lokesh Kumar
Sharma, Advocates, for Resp. Nos. 5 to 8.
Sh. Girijesh Pandey, Advocate, for Resp. No.9.

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

MR. JUSTICE S. RAVINDRA BHAT

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1. The petitioner is aggrieved by an order of the Central Administrative Tribunal (CAT) dated 11.09.2013 by which his application, (O.A. No. 261/2012) was rejected. He had claimed seniority in the cadre of Assistant Director, Forensic Science Laboratory, Delhi, the third respondent (hereafter "FSL"), above Respondent Nos. 5 to 8. Although the Respondent No.9 was originally not a party to the CAT proceedings, she has now been impleaded. In short, the petitioner's grievance is that the said Respondent Nos. 5 to 9 (hereafter called "the private respondents") are junior to him.

2. Briefly the facts are that the petitioner had joined the Central Forensic Science Laboratory (CFSL), Chandigarh as Junior Scientific Officer on regular recruitment basis on 08.04.1999. The private respondents were working in different organizations when, on various dates (i.e. 13.03.1996 in the case of the fifth respondent; 05.01.1999 in the case of the sixth respondent; 11.02.1994 in the case of the seventh respondent; 22.12.1997 in the case of the eighth respondent and 05.01.1999 in the case of the ninth respondent), they were appointed to the FSL. The FSL was a newly constituted organization. Consequently, the private respondents initially joined the FSL on deputation. The recruitment rules for the post of Senior Scientific Officer (SSO) and Additional Director were framed by the FSL on 09.04.1998. Whilst this was the position, the private respondents continued to work as SSOs from the dates when they were initially posted on deputation. Despite their continuing to work as SSOs, the FSL did not accept their claim for promotion as Assistant Directors on the ground that they did not meet the eligibility condition of *"possessing five years' regular service in the grade"*. This was because the FSL felt that the period spent on deputation could not be counted as *"regular service"*. To say so, the FSL took the position that the private respondents could not claim any benefits of service within the department prior to their date of absorption. The absorption of the said private respondents in the cadre of SSO had, in fact, occurred through an order dated 10.05.2002. That order mentioned that the private respondents would be treated as absorbed employees in the grade of SSO with effect from 29.04.2002.

3. The private respondents approached the CAT through O.A.

No.1611/2005; this application was rejected at the threshold on 28.07.2005. In these circumstances, they approached this Court under Article 226 of the Constitution by filing W.P.(C) 14097-100/2005. After considering the submissions of the parties, this Court, in its judgment and order dated 11.10.2006 (*Dr. Rajendra Kumar and Ors. v. GNCTD of Delhi*, W.P.(C) 14097-14100/2005) rejected the FSL's stand (that since the private respondents retained a lien to their post in their parent department), and held that they could not be denied consideration for promotion. The Division Bench held that the appointments made to the post of SSO were in accordance with the rules and could not be treated as fortuitous or *ad-hoc* employment. In these circumstances, by that judgment dated 11.10.2006, following directions were issued:

“A writ shall issue to the respondent to consider the case for promotion of the petitioners as Assistant Directors in their respective disciplines, duly taking into account the service rendered by them as Senior Scientific Officers with the respondent from the dates of their respective appointment on deputation for the purpose of fulfilling the condition of 5 years' service as Senior Scientific Officers for the post of Assistant Director. Petitioners be considered for notional promotion from the date the post of Assistant Directors in their respective discipline fell vacant with consequential benefits from the date petitioners have been discharging the functions of Assistant Directors.”

4. The judgment of this Court was sought to be appealed against by the official respondents. However, the Supreme Court, by its order dated 13.10.2011 dismissed the Govt. of NCT of Delhi's plea in C.A. No.1735/2007 and *inter alia* observed as follows:

“The sole question before the Division Bench was

whether earlier period of service rendered by them in other Departments on similar posts should be taken into consideration or not for the purpose of deciding their eligibility for promotion. It has not been disputed before us that all the respondents possessed requisite academic qualifications. The details of their other experience have been reflected in the impugned order of the Division Bench. For promotion to the post of Assistant Director from the feeder post of Senior Scientific Officer is 'five years regular service' in the cadre.

Even though they might have been absorbed in the said Laboratory in the year 2002, but the fact of the matter is that they had already been working in the said Laboratory for a period ranging from 7 to 12 years, which meets the requirement of experience of five years. The ground taken by the learned counsel appearing for the appellant that their experience has to be reckoned only from the year 2002, when they were absorbed in the Department, is neither logically correct or legally tenable in view of the decision of this Court in S.I. Rooplal and another versus Lt. Governor through Chief Secretary, Delhi and Others" reported in AIR 2000 SC 594."

5. The petitioner had applied for recruitment in the direct recruitment quota for the higher post of Assistant Director; after his selection, he was appointed to that grade on 14.05.2007. On 11.02.2009, the private respondents were promoted as Assistant Directors in different disciplines in FSL with immediate effect.

6. In these circumstances, on 17.09.2009, a tentative seniority list in the post of Assistant Director was issued by the FSL. The private respondents approached the CAT challenging this seniority list by filing O.A. No.2882/2009. This proceeding did not have a direct bearing on the seniority position of the petitioner. While so, the 9th

respondent filed O.A. No. 881/2011, for a direction to hold DPC in the post of Director in FSL with effect from July 2009. In these circumstances, on 16.03.2011, a tentative seniority list of Assistant Directors of all divisions of the FSL as on 31.12.2010 was published. This showed the petitioner at higher position than the private respondents but below the 9th respondent. The private respondents represented against their positions through their letters to the FSL. On 03.10.2011, the official respondents, including the FSL, while implementing the judgment of this Court in W.P.(C) 14097-14100/2005, granted notional promotions to the private respondents in the post of Additional Directors on dates prior to the actual dates of promotion. These were in 2002, 2004 and 2005. Consequently, a revised tentative seniority list of Additional Directors was published on 10.10.2011, in which the petitioner was shown below the private respondents. The petitioner felt aggrieved and represented against this list and later his application, being O.A. No.3862/2011, was withdrawn on account of the pendency of his objections. After considering all the materials and representations, the Govt. of NCT of Delhi finalized the seniority list on 19.01.2012, whereby the position of the petitioner did not improve; the private respondents were shown senior to him. This list was the subject matter of challenge before the CAT in O.A. No.261/2012. By the impugned order, that application was rejected.

7. The petitioner contends that given the fact that the private respondents were promoted, who entered the grade of Assistant Director after him, i.e. in 2009, they could not be granted seniority on the basis of retrospective promotion. It was submitted that the order

dated 03.10.2011 whereby the notional or deemed dates of promotions were assigned to the private respondents, is illegal and arbitrary. Learned counsel Ms. Mann emphasized that in any case the petitioner had entered the cadre of Assistant Director on 14.05.2007, i.e. before the private respondents, and his seniority position could not be changed. Furthermore, being a direct recruit, the question of the petitioner's date of entry into the service and the necessary corollary of seniority could not be altered.

8. Learned counsel relied upon the judgments reported as *State of Bihar v. Sri Akhouri Sachindra Nath and Ors.* 1991 (Supp) 1 SCC 334; *Vinod Yadav and Ors. v. State of Bihar and Ors.* 1994 (Supp) 2 SCC 44 and *Uttaranchal Forest Rangers Association v. State of U.P. and Ors.* 2006 (10) SCC 346. It was contended that the date of substantive appointment or absorption of the private respondents was 29.04.2002 in the grade of SSO. Therefore, the question of their eligibility for consideration to the post of Assistant Director would have arisen much later, i.e. after 2007. Having regard to the vacancy position and the slots available for promotees, their regular promotion was indeed given in 2009. Consequently, the petitioner could not have been shown as their junior. Learned counsel also submitted that the deemed dates of promotion or granting retrospective promotion was of no consequence for the purpose of seniority in the grade of Assistant Director. Learned counsel relied upon the decision reported as *Nirmal Chandra Sinha v. UOI* 2008 (14) SCC 29.

9. It was next contended by Ms. Mann that the CAT ignored the circumstance that in terms of the Department of Personnel and

Training (DOPT) Office Memorandum dated 25.09.1986, the question of granting any benefits for prior service upon absorption of deputationists could arise only if substantive rank held by them was equivalent to deputation post. Learned counsel emphasized that no such parity existed and that on the other hand, blanket weightage given to past service for the purpose of absorption of the private respondents and the reckoning of their eligibility for promotion of Assistant Director was unwarranted. Learned counsel also relied upon the terms of the said DOPT Office Memorandum to say that the period of deputation itself could not be indefinite. Here it was emphasized that the existing DOPT circulars and memorandum together with the conditions of deputation, based on which the private respondents entered the grade of SSO in the FSL, established that they could not continue as deputationists for more than one year. However, they continued in that capacity for at least 5-6 years before their absorption. No rule or provisions of any executive orders authorize the reckoning of their service in the substantive rank or grade for the purposes of seniority, promotion etc. As a result, the impugned order is unsustainable.

10. Learned counsel for the respondents – including the private respondents argued that the CAT's order has taken note of the relevant facts, and does not call for interference. It was submitted that the purpose of approaching this Court in writ proceedings in 2005 was to ensure that the private respondents' legitimate claim for promotion as Assistant Director was taken into consideration. By the time they had approached the CAT and subsequently this Court in 2005, the order giving the benefit of absorption with effect from 29.04.2002 had

already been issued. That order, however, did not address their grievance because the period spent on deputation was ignored by the FSL. The Division Bench of this Court, in the previous judgment held that the contentions of the FSL were unwarranted and that since the private respondents entered the grade in a regular manner after following the procedure prescribed by the rules for such recruitment, they too were entitled to reckon the past service. The question of their not working in equivalent grades in the parent organization could not have arisen at all because the private respondents were recruited on deputation basis.

11. Expanding on the arguments, learned counsel submitted that the entry to the cadre of SSO, which is regulated by the rules brought into force with effect from 07.04.1998 – and framed under proviso to Article 309 of the Constitution, expressly provided for transfer on deputation of individuals holding analogous posts on a regular basis with three years' service. It was submitted that for the cadre of SSO, the recruitment was through two channels, i.e. promotion from Senior Scientific Assistant to the extent of 33.33% and transfer on deputation – to the extent of 66.66% - from amongst eligible candidates with the requisite service in analogous posts. Such being the case, the private respondents – who entered the organization in the normal manner through proper channel after facing interview and other selection procedures, could not be treated as *ad-hoc* or fortuitous employees. Upon absorption with effect from 29.04.2002, they were entitled to reckon the entire period of service – including the period spent on deputation prior to their absorption, for the purpose of eligibility for promotion to the post of Assistant Director. It was submitted that

consequently, the order granting notional promotion from anterior dates and the assignment of seniority on that basis, cannot be termed as irregular or arbitrary. It was submitted that for the post of Assistant Director, there are only two channels, i.e. “promotion”, failing which by “transfer on deputation” and that if both those modes do not evoke any response, or the appointing authority is unable to select any candidate, either on promotion or transfer basis, only then can direct recruitment be resorted to. Consequently, the assignment of deemed or notional dates of promotion prior to 2009 in implementation of this Court’s directions, were justified and called for. Learned counsel underlined the fact that the directions of this Court were affirmed by the Supreme Court.

12. It was argued that since the entry grade of SSO itself was through normal channel, the tag of “regular service” or “deputation” was unfairly labelled in the first instance and that if the private respondents are not assigned seniority on the basis of the notional dates of promotion, the entire purpose of the directions issued by this Court in the previous proceedings, would be defeated.

Analysis & Conclusions

13. The recruitment rules for the post of Senior Scientific Officers (Chemistry) in the Govt. of NCT of Delhi were framed under proviso to Article 309 of the Constitution of India on 07.04.2009. They deal with the method of recruitment and related conditions, such as essential qualifications to hold such post (SSO). The column dealing with method of recruitment, for Senior Scientific Officers, reads as follows:

"33.33% Promotion failing which by transfer on deputation (including short term contract)/failing both by direct recruitment.

66.66% Transfer on deputation (ISTC)/Transfer failing which by direct recruitment."

The column dealing with sources of essential conditions, i.e experience reads as follows:

"Promotion

Senior Scientific Assistant (Chemistry) with 7 years regular service in the grade.

TRANSFER ON DEPUTATION (INCLUDING SHORT TERM CONTRACT) TRANSFER:

Officers under the Central/State Governments/UTs/Public Sector Undertakings/Recognized Research Institutions Semi-Government/Autonomous Organizations.

a. (i) Holding analogous posts on a regular basis: or

(ii) with 3 years regular service in posts in the scale of Rs. 2000-3200/3500 or equivalent: or

(iii) with 7 years regular service in posts in the scale of Rs. 1640-2900 or equivalent

AND

b. Possessing the educational qualifications and experience prescribed for direct recruits under Column B."

14. Likewise, for the post of Assistant Director, the relevant rules read as follows:

“Promotion failing which by transfer on deputation (ISTC)/Transfer failing both by direct recruitment.”

Senior Scientific Officers (Chemistry) with five years regular service in the grade are entitled to be considered for promotion. Interestingly, the qualifications and experience prescribed- apart from those relating to the promotional channel, are in respect of transfer/deputation. No separate qualifications or experience, however are indicated in regard to direct recruitment.

15. The petitioner first argues that assignment of private respondents' seniority above him is unsustainable in law. To support this, his submission is that having entered the grade of Assistant Director in 2006, the right to his seniority crystallized not only from the date of entry into the cadre, but also as to the position which he stood in then. This argument is not sound, as would be shown presently.

16. There is no dispute that the FSL was constituted with personnel drawn from different sources. Deputation and transfer was a known channel of recruitment at different levels given that the institution was a new one and had to create its own cadre. Not strangely, it drew upon the expertise of other organizations; willing candidates who opted for deputation were drafted in to serve it. It was in these circumstances that the private respondents joined the FSL. Having so joined, on different dates, their claim was that the period spent within the FSL could not have been ignored for the purpose of reckoning the eligibility for promotion as Assistant Director, in the promotion quota. Their employer, the FSL, resisted and stated that only experience

gathered as SSO after their absorption could be counted. They approached the CAT, and upon meeting with no success, this Court. In *Dr. Rajendra Kumar (supra)*, this Court held that they were entitled to reckon their period of deputation service, irrespective of absorption, for the purpose of eligibility to be considered for promotion as Assistant Director. That view was affirmed by the Supreme Court. Apart from the fact that we are bound by precedent, in this instance, with regard to the same post and the same personnel, the logic underlying the decision cannot be cavilled. After all, experience was gained by these officers in the cadre of SSO. The insistence of their employer that post-absorption service and no other experience counted, was illogical, since no condition was shown controlling absorption of such employees, in terms of number of years served within the organization, etc.

17. This court is of the opinion that the argument about the private respondents not holding “analogous” posts in their erstwhile parent departments (a condition spelt out by the rules for deputation to the post of SSO for their entry) or the contention that their deputation tenure exceeded instructions of the Department of Personnel and Training (DOPT) is tenuous. Whether the posts held by the private respondents (in their erstwhile parent organizations) at the time of their deputation- over 15 to 17 years ago- were analogous or not cannot now be questioned or gone into. The borrowing organization, i.e. FSL was satisfied about the analogous nature of their posts and recruited them on deputation, a known method of recruitment to the cadre of SSO, under the 1998 Rules. Their absorption, *ipso facto* entitled them to count their entire service both in their parent cadre, as

well as FSL, as a matter of right, for both seniority and eligibility (for promotion) to the higher post of Assistant Director. This entitlement is based on the authority of several Supreme Court decisions. In *K. Madhavan v Union of India* (1987) 4 SCC 566 this was underlined in the following manner:

"It has been observed by this Court that it is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new service that their pre-existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre. See R.S. Makashi v. I.M. Menon; Wing Commander J. Kumar v. Union of India"

Later, *K.Anjaiah v K. Chandraiah* (1998) 3 SCC 218 re-stated the principle in the following terms:

"7. We find considerable force in this argument and reading down the provision of Regulation 9(2) we hold that while determining the inter se seniority of the deputationists in the new cadre under the Commission after they are finally absorbed, their past services rendered in the Government have to be taken into account. In other words the total length of service of each of the employees would be the determinative factor for reckoning their seniority in the new services under the Commission. Mr Ram Kumar, learned counsel appearing for the appellants, vehemently urged that length of service under the Commission should be the criteria for determining the inter se seniority but we are unable to persuade ourselves to agree with the aforesaid submission of the learned counsel. It is not known that when the persons were brought over to the Commission from the Government on deputation whether their option had been asked for or not. Further such a principle if accepted then the inter se seniority would be dependent upon the whim of the Government, and we see no rationale behind the aforesaid

principle. The two decisions on which Mr Ram Kumar, learned counsel placed reliance in support of his contention in fact do not lay down the aforesaid proposition. We have, therefore, no hesitation to reject the submission of Mr Ram Kumar."

Again, *Sub-Inspector Rooplal v Lt. Governor* (2000) 1 SCC 644 had this to say:

"15. We will now take up the question whether the appellants are entitled to count their service rendered by them as Sub-Inspectors in BSF for the purpose of their seniority after absorption as Sub-Inspectors (Executive) in the Delhi Police or not. We have already noticed the fact that it is pursuant to the needs of the Delhi Police that these officials were deputed to the Delhi Police from BSF following the procedure laid down in Rule 5(h) of the rules and subsequently absorbed as contemplated under the said rules. It is also not in dispute that at some point of time in BSF, the appellants' services were regularised in the post of Sub-Inspector and they were transferred as regularly appointed Sub-Inspectors to the Delhi Police Force. Therefore, on being absorbed in an equivalent cadre in the transferred post, we find no reason why these transferred officials should not be permitted to count their service in the parent department. At any rate, this question is not res integra and is squarely covered by the ratio of judgments of this Court in more than one case. Since the earlier Bench of the Tribunal relied upon Madhavan case to give relief to the deputationists, we will first consider the law laid down by this Court in Madhavan case."

18. The records of this case reveal that the dates of promotion prior to 11.02.2009, assigned to the private respondents, were on the basis of the previous ruling of this Court in *Dr. Rajendra Kumar (supra)* which was affirmed by the Supreme Court. This was done on 03.10.2011, when the official respondents, while implementing the judgment of this Court in W.P.(C) 14097-14100/2005, granted

notional promotions to the private respondents in the post of Additional Directors on dates prior to the actual dates of promotion. Having regard to the law declared by the Supreme Court – noticed above- which was in effect the basis of the reasoning in *Dr. Rajendra Kumar (supra)*, it cannot be held that such ante-dating was either arbitrary or whimsical. This court also notes that there is no direct recruit quota *per se*, provided by the 1998 Rules; rather, it can be resorted to failing other methods, including promotion and deputation. Such being the case, the Petitioner could not have claimed any right over and above the private respondents, who entered FSL as deputationists in the lower grade of SSO, and were later promoted in accordance with the Rules. The assignment of prior dates was necessary to ensure justice to them, for the simple reason that FSL earlier refused to consider their service prior to absorption, for purpose of promotion to Assistant Director.

19. In view of the foregoing discussion, this Court is satisfied that the CAT's findings are unexceptionable and call for no interference. The writ petition fails and is accordingly dismissed without any order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**VIPIN SANGHI
(JUDGE)**

SEPTEMBER 26, 2014