

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

% Judgment Delivered on: 10th March, 2017

+ W.P.(C) 571/2016

SATISH KUMAR KHETARPAL

..... Petitioner

versus

DIRECTOR GENERAL CISF AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr Azhar Alam Advocate.

For the Respondents: Ms. Saroj Bidawat Advocates

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

INDIRA BANERJEE, J

1. The short question in this writ petition is whether the petitioner should be deemed to have been promoted with effect from 01.01.2011 being the date of the vacancy, in the post of Assistant Commandant, to which he has been promoted vide a notification dated 03.01.2014.

2. The petitioner was appointed as Assistant Sub Inspector of Police in the Central Industrial Security Force in July 1978, and thereafter promoted to the post of Sub Inspector on 30.09.1985. The

petitioner was promoted to the rank of Inspector with effect from 13.10.1996.

3. According to the petitioner, the petitioner was due for promotion to the post of Assistant Commandant on 01.01.2011, against a vacancy for the year 2011. However, the petitioner was actually granted promotion to the rank of Assistant Commandant on 03.01.2014, with retrospective effect from 12.03.2012, being the date on which Inspectors junior to him, were promoted Assistant Commandant.

4. For promotion to the post of Assistant Commandant, from the post of Inspector, the incumbents were required to complete a pre-promotion course.

5. In the writ petition, the petitioner has pleaded that the petitioner was selected to attend a Special Compressed Pre Promotion Course from 14.12.2009 to 24.12.2009, but he was not released by the Ministry of Home Affairs as the Parliament winter session was on.

6. By a letter No.27011/14/2009-R&W dated 15.12.2009, the Ministry of Home Affairs informed the authorities of CISF that the petitioner could not be relieved for the pre promotion course scheduled to be held between 14.12.2009 and 24.12.2009 as the Parliament winter session was going on. The CISF authorities were told that the petitioner might be detailed in the next pre promotion course, upon intimation to the Ministry.

7. It appears that by a letter No. E 42099/5/2010 PPC-AC/JAO/Pers(DPC)2829 dated 07.12.2010, about 50 Inspectors junior to the petitioner were detailed for a Special Compressed pre promotion course from 20.12.2010 to 31.12.2010. According to the petitioner, the petitioner was not informed about the pre promotion course.

8. The petitioner finally attended the Pre Promotion Course (12th batch) 14.11.2011 to 07.01.2012 at NISA, Hyderabad. By a Service Order No. 59/2012 issued on 30.01.2012, the results of the Pre Promotion Course (12th Batch) were declared. The petitioner succeeded.

9. In the meanwhile, in January 2012, a Departmental Promotion Committee met to consider promotion of Inspectors to the post of Assistant Commandant.

10. The petitioner was however, not considered for promotion by the Departmental Promotion Committee, apparently on the ground that he had not successfully completed the Pre Promotion Course. When the Departmental Promotion Committee met, the Pre Promotion Course attended by the petitioner had been completed but the results thereof not declared.

11. It appears that the petitioner made several representations. Ultimately, a Review Departmental Promotion Committee was constituted and by a Notification No.E-38013/38/JAO/2009/Pers.I/03

dated 3rd January 2014 the petitioner was promoted to the post of Assistant Commandant notionally w.e.f. 12.03.2012, that is, from the date of issuance of the promotion order in respect of vacancies which arose in 2011.

12. The petitioner has duly been given notional seniority from the date, on which his juniors were promoted, that is 12.03.2012. The petitioner has not lost seniority.

13. It is the case of the petitioner that he should have been given notional promotion w.e.f. 01.01.2011, since announced vacancies in the higher post existed on that day.

14. It is well settled that ordinarily a promotion has prospective effect. The date of promotion is the date on which the employee is actually promoted, and not the date on which the vacancy arose, as held by the Supreme Court in *Nirmal Chandra Sinha vs. the Union of India* reported in (2008) 14 SCC 29.

15. At the same time, every employee has a right to be considered for promotion as per his/her turn. Delay on the part of the department cannot enure to the disadvantage of an employee whose promotion has been delayed. If there is unjustified delay in granting promotion, as a result of which the concerned employee is seriously prejudiced, the employer would be liable for the delay, and the employee would be entitled to claim that his promotion should count from an earlier date. For example, the employee might be given promotion from the

date on which his junior was promoted so that his seniority is protected. The proposition that promotion may be given retrospective effect, finds support from the judgments of the Supreme Court in *P.N. Premachandran Vs. State of Kerla and Others*, reported in AIR 2004 Supreme Court 255 and *C.O. Arumugam and Others Vs. State of Tamil Nadu and Others* reported in 1991 Supp (2) Supreme Court Cases 199.

16. Administrative delay in conducting the Departmental Promotion Committee to hold promotions, does not in itself give candidates any right to retrospective seniority. However, as observed above, when there is any serious prejudice, caused to an employee by reason of delay in promotion for administrative reasons, not attributable to the employee, promotion would have to be given retrospective effect.

17. In this case, when the Departmental Promotion Committee was actually constituted, the petitioner was wrongfully not considered, on the ground that he had not completed the pre-promotion course, although it was the respondent authorities, who had prevented the petitioner from attending course as he could not be released for the course due to administrative exigencies.

18. The petitioner having been superseded by juniors, who were promoted before the petitioner due to no fault of the petitioner, the seniority of the petitioner was restored with effect from the date on

which his juniors were promoted. The grievances of the petitioner have been substantially redressed, but not completely. If the petitioner had been granted promotion when he became due for promotion, the petitioner would have got the benefit of Senior Time Scale, for which, regular service of four years is mandatory.

19. The petitioner retired from service on 31.01.2016. If the petitioner had been promoted as per his turn, the petitioner would have got the Senior Time Scale, which again would have made a lot of difference to his retiral benefits including pension.

20. The petitioner was given notional seniority with retrospective effect from 12.03.2012 by the order dated 03.01.2014 referred to above. In passing the order the respondent authorities accepted that the promotion of the petitioner was delayed for administrative reasons not attributable to the petitioner. The promotion of the petitioner was inadvertently overlooked in 2011.

21. The petitioner has pressed his claim to notional seniority only, from the date he became due for promotion that is 01.01.2012, for the purpose of the Senior Time Scale, which would in turn make a difference to his retiral benefits including pension.

22. In our view, the petitioner should, at least have been given notional seniority with effect from 30.01.2012, being the date of publication of the results of the Pre Promotion Course (12th Batch) declaring the petitioner qualified for promotion. As observed above,

the petitioner has no vested right to claim seniority from the date of the vacancy.

23. The writ petition is disposed of by directing the respondents to suitably modify notification dated 03.01.2014, and to notionally promote the petitioner with effect from 30.01.2012. The petitioner shall be entitled to all the consequences of such notional promotion including fixation of salary in the Senior Time Scale upon completion of 4 years and revision of retiral benefits.

24. Considering that the petitioner has suffered for no fault of his own, dragged into litigation, and is now a retired man, we direct the respondents to grant the petitioner the benefit of notional promotion w.e.f. 30.01.2012 with the utmost expedition. All financial benefits of notional promotion from 30.01.2012, and fixation of the petitioner's salary in the Senior Time Scale upon completion of four years and consequential revision of pensionary benefits shall be released to the petitioner within six months from the date of this judgement and order.

INDIRA BANERJEE, J

SANJEEV SACHDEVA, J

March 10, 2017/ n