

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

+ **W.P.(C) 4898/2015**

Reserved on: 13th July, 2017
Date of decision : 05th September, 2017

BRAJESH KUMAR Petitioners
Through Mr.V.Subramaniam T.R.,
Mr.Rahat Bansal, Advocates
versus

UNION OF INDIA AND ORS. Respondents
Through Mr.Ripu Daman Bhardwaj,
CGSC with Mr.T.P.Singh,
Advocate for R-1 to 4/UOI

W.P.(C) 5293/2015

UMED SINGH Petitioner
Through Mr.V.Subramaniam T.R.,
Mr.Rahat Bansal, Advocates
versus

UNION OF INDIA AND ORS. Respondents
Through Mr.Ruchir Mishra and
Mr.Mukesh Kr.Tiwari, Advs.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J.

1. The above two petitions have been filed placing reliance on the judgment dated 3rd April, 2013 of this High Court in WP(C) No.1285/2012 tilted *Bhavana Upadhyay vs. Union of India & Anr.*, which held that where the officer was not promoted alongwith his/her

batch mates due to non-clearing of the promotional course on the due date, not for any fault attributable to him/her but purely because he /she was not nominated for the same, such officer cannot be faulted and thereby made to suffer in terms of seniority and promotion.

2. The above two cases are identical in terms of the contention raised, in the final result, relief can be granted only in case of Brajesh Kumar, and has to be denied to Umed Singh. The reason being delay and laches on part of Umed Singh in approaching this Court and any change in the settled seniority in the promotional posts.

3. We will first deal with the case of Brajesh Kumar, who has filed WP(C) No.4898/2015, praying for direction to the respondents to grant seniority in the post of Inspector above his juniors as also for seeking promotion to the post of Assistant Commandant to Education and Stress Consultant(ESC) in Indo-Tibetan Border Police (ITBP).

4. Brajesh Kumar was directly recruited as Sub Inspector/ Education in ITBP on 06.06.1994 and after completing the 7th Condone Course from 07.11.1994 to 25.02.1995, he was posted at 20th Bn. PO Village Bukhara, Distt. Bareilly U.P.

5. Brajesh Kumar claims that till 2006 he was not nominated by the Respondents for Map Reading-1st Standard course conducted by the Respondents. He claims to have had made a representation in the year 2005 to the department for nominating him for the promotional course, but he was not nominated for the said course till the year 2006. Brajesh Kumar completed the said course only on 31.07.2006 and was accordingly included in the approved list of E of the Education Cadre of 22nd Bn. Vide Dte. Gen. Office Order No.20028-98 dated 28.11.2007 and according to the recommendation of the Board, personnel in the Education Cadre were brought under the seniority as per Approved list E 2007. Thereafter, as per the Dte. Gen. order No.12875-965 dated 03.06.2011, he was given promotion as Inspector (ESC) as per seniority of approved list E.

6. In the meantime, Respondent Nos. 5 to 11 in WP(C) No.4898/2015 (who had been impleaded in the petition vide order dated 09.05.2016) qualified MR-1st Standard Course during the year 2005 and became eligible to be brought in approved list E of ESC Cadre in 2005. It is alleged by the respondents that it is for this reason that respondent Nos.5 to 11, though junior to Brajesh Kumar in the

post of Sub-Inspector, were shown senior to him in the Seniority List of Inspector (ESC), though, all were promoted to this rank on 03.06.2011.

7. As Brajesh Kumar was shown below respondent Nos. 5 to 11 in the seniority list, he preferred representations claiming that as he had not been nominated for the Map Reading-1st Standard course by the Battalion, for this reason alone, his seniority cannot be taken away. The representations, however, were rejected by the respondents vide impugned Office Memorandum dated 29th January, 2015 which has been challenged before us.

8. In the impugned Office Memorandum and also in the counter affidavit filed before us, the stand of the respondents is that Brajesh Kumar had undergone Map Reading-1st Standard course in 2006 whereas the private respondents had cleared the said course in 2005 and, therefore, they were senior to the petitioner in spite of the petitioner having joined the rank of Sub-Inspector before them. The private respondents have also filed the counter affidavit along similar lines and have also raised the issue of petition being barred by delay and laches.

9. It is not disputed before us that similar grievance was raised in WP(C) No.1285/2012 tilted ***Bhavana Upadhyay vs. Union of India & Anr.*** and this High Court vide its decision dated 3rd April, 2013 had directed the petitioner therein should be deemed to have been promoted to the post of Inspector (Education) on the date her immediate junior was promoted and ensure maintenance of seniority. The Court had relied upon Standing Order No.1/92 dated 22nd July, 1992 which provides for promotion as per seniority of the Combatised Personnel in the Force. The relevant extracts from the Office Memorandum are quoted hereinbelow:-

“2. After a careful examination of the matter, it has been decided that seniority of such personnel who are otherwise/eligible but could not be detailed for the requisite promotional course or appear in the promotion test, due to their un-avoidable involvement in the under mentioned Force commitments will be protected, subject to the condition that they qualify in the concerned promotional course/promotion test in the first attempt. They will be allowed to claim their seniority from the dates on which their juniors are promoted. However, financial benefits will accrue to them only from the dates of taking over charge of the new posts.

(a) Force level/international mountaineering expeditions including detailment as I.O. for Foreign Mountaineering Expeditions.

(b) Un-avoidable/un-foreseen/operational made scale deployment of the Force including during General elections.

(c) West Zone Police tournaments, All India Police Games, All India Police Duty Meet National/International Sports Meets.

(d) Postings/deployment at Indian Missions abroad.

(e) Any other peculiar circumstances for which the matter will be decided on merits of the individual case at the Directorate General.”

10. The Court in ***Bhavana Upadhyay (supra)*** had observed as under:-

“16) In the instant case, it is undisputed that the petitioner was not permitted to undertake the promotional courses on the due dates not for any fault attributable to the petitioner but purely because she was not nominated for the same. It is not for the petitioner to question the working of the respondents who were bound to do justice so far as nominating their personnel for the above courses on due date is concerned. The respondents unreasonably and unfairly did not do justice to the petitioner even when she repeatedly represented to them.

17) Given the prescription of Standing order No.9, the petitioner cannot be faulted inasmuch as it is an admitted position that she was never nominated for the course and refused to undertake the same but was prevented from participating by the respondents who failed to nominate her for the same. It is undisputed before us that juniors to the petitioner were not only nominated but duly promoted on the due dates of the promotions from Sub-Inspector to Inspector. In this background, there is certainly merit in the challenge laid by the petitioner to the failure of the respondents to grant her the benefit under Standing order No.1/92 dated 22nd July, 1992 on the ground that she fully

meets the requirements thereof. Even otherwise, the petitioner was entitled to be nominated for the 'E' List test on the date when her immediate junior was so nominated and thereafter promoted.

18) It is on record before us that the petitioner has successfully completed all requisite courses on the first attempt granted to her."

11. The respondents have accepted the said judgment and have implemented the same as is evident from the seniority list as on 1st January, 2015 produced before us at page 71.

12. The case of Brajesh Kumar is identical to that of ***Bhavana Upadhaya (supra)***.

13. From the correspondence placed on record, it is evident that the respondent had made an enquiry into the circumstances under which Brajesh Kumar was not nominated for Map Reading -1st Standard Course in 2005, however, no concrete or specific reason for the same could be ascertained. The respondents have therefore, failed to show that the petitioner was not nominated because of any reason attributable to him.

14. That as far as question of delay and laches is concerned, it is noted that Brajesh Kumar and the private respondents were promoted to the post of Inspector (ESC) only in 2011. Brajesh Kumar asserts

that he became aware of the loss of seniority only in 2014. The respondents, on the other hand, have stated that the seniority list of all cadres were issued every year and a similar seniority list of ESC cadre 2014 was also issued and circulated. It is, however, not denied that Brajesh Kumar has been representing against his loss of seniority at least since January, 2014 and the writ petition was filed in May, 2015.

15. In light of the same, we do not find any merit in the objection of the respondents, including private respondents, that the petition be dismissed on the ground of delay and laches.

16. We, therefore, direct that the respondent shall place Brajesh Kumar above his immediate junior in the seniority list of Inspector (ESC). Brajesh Kumar would be treated as notionally promoted from the same date and his pay in the promotional rank of Inspector would be fixed accordingly. However, Brajesh Kumar would not be entitled to back wages at the rank of Inspector. As far as rank of Assistant Commandant is concerned, no submissions were made before us and, therefore, we do not deal with the same leaving the said issue open to be agitated in proper proceedings, if required, by Brajesh Kumar. However, the respondent would give due consideration of the change

in seniority / cadre of the petitioner (Brajesh Kumar) pursuance to our present judgment while considering his claim for the rank of Assistant Commandant and, if entitled, give him relief in that regard.

17. As noted by us at the beginning itself, Umed Singh who also relies upon the judgment of this Court in Bhavana Upadhyay(supra), is not entitled to succeed on account of delay and laches. We would elaborate and give reasons.

18. Umed Singh has filed the present petition praying for *writ of mandamus* directing the respondents to grant seniority from the date of his juniors being promoted for the post of Sub-Inspector in the Indo-Tibetan Border Police (ITBP).

19. Umed Singh was recruited as a Constable Driver in Transport Battalion of ITBP on 20th September, 1987. He was nominated for Map Reading II course in the year 1992, which he completed on 18th July 1992. He, was thereafter nominated for junior cadet course and the same was duly cleared by him on 6th December, 1993. He was promoted to the post of Lance Naik on 2nd May, 1996. He completed the seniority cadet course on 14th August, 2000 and was promoted as Head Constable on 1st March, 2001. He was thereafter nominated for

junior leadership level course on 23rd March, 2001. However, he was nominated for Map Reading 1st Standard Course only in the year 2008, which he passed on 5th April, 2008. Umed Singh was thereafter, promoted to the post of Assistant Sub-Inspector on 7th July, 2011 whereas officers junior to him had been promoted to the said post in the year 2008 itself. He was recommended for promotion for the post of Sub-Inspector on 25th April, 2013. It is claimed that in the draft seniority list of Assistant Sub-Inspectors issued on 15th February, 2013, Umed Singh was shown at serial no.606, but in the final seniority list he was shown at serial no. 1137A. Upon representations, the respondents vide Office Memorandum dated 30th September, 2013 had intimated the reasons. Umed Singh filed a Writ Petition being WP(C) No.5029/2014, however, the same was disposed of with the direction that the appeal filed by him before Deputy Inspector General of Police (Establishment) be first decided by a speaking and reasoned order. The respondent, therefore, rejected his appeal vide order dated 4th September, 2014.

20. It is further submitted by Umed Singh that in 2013 thereafter, he came to know that his juniors, respondent nos.5 and 6 were shown

senior to him and they had been promoted to the post of Sub-Inspector prior to him only because they had been nominated for Map Reading Course 1st Standard by the Department earlier to him. With this information, Umed Singh made another representation. It is thereafter, Umed Singh was promoted to the post of Sub-Inspector but, not from the date of his juniors, thus, forcing the petitioner to file the present petition. The petitioner contends that merely because the department did not nominate him for the Map Reading 1st Standard Course and his juniors were nominated before him, he cannot be denied his seniority.

21. Initially Umed Singh had not impleaded the persons who he was claiming were junior to him. This Court vide order dated 9th May, 2016 had directed and the private respondents were impleaded.

22. The official respondents in the counter affidavit have stated that Umed Singh was recruited as Constable (GD) in the Transport Battalion on 20th September, 1987. Respondent nos.5 to 7 were appointed one day after him i.e. 21st September, 1987. In the next promotional rank i.e. Lance Naik, Umed Singh was promoted almost 2 years after respondent No.5 to 7.

23. The above position with regard to appointment and promotion has been explained by the official respondents in form of a chart, which is reproduced herein below:-

Sl. No.	Particulars	870021057 Mohammad Ali	870020595 Subhash Chander Dubey	870141044 Ramesh Kumar	870113442 Umed Singh
1	Seniority No.in seniority list of HC/GD as on 09.12.2013	1207	1219	1282	1448
2	Date of Birth	10-Jul 1969	1 Jan 1965	25Dec 1965	18 Mar 1969
3	Date of Apptt.	21 Sep 1987	21 Sept 1987	21 Sept 87	20 Sept 1987
4	Date of promotion as LNK/GD	21 May 94	11 Aug 93	8 Nov 93	23 Apr 96
5	Date of promotion as HC/GD	3 Oct 2000	1 Mar 2001	1 Mar 2001	1 Mar 2001

24. Umed Singh never challenged the fixation of seniority in the grade of Lance Naik or in the grade of Head Constable.

25. Without going into the merits of the contentions raised by the petitioner, we agree that Umed Singh lost his seniority at the post of Lance Naik (GD) way back in 1993-94. He was therefore junior to the private respondents at the rank of Head Constable. Until and unless seniority at the lower rank of Lance Naik is changed and altered, Umed Singh's prayer for seniority at the rank of Head Constable cannot be granted and accepted. The petitioner cannot be now allowed to agitate the stale claim of seniority in the rank of Lance Naik merely because of a judgment passed by this Court in *Bhavana Upadhayay vs. Union of India & Anr.* (supra) where relief had been granted to the petitioner therein on the ground of her being nominated by the Department for Map Reading 1st Standard Course at a belated stage.

26. Granting relief to Umed Singh in the present petition would lead to administrative chaos and unsettling of seniority which had been settled almost two decades back. Though no specific period is stipulated for invoking writ jurisdiction, the exercise of such jurisdiction being discretionary in nature. We do not think that this case deserves any interference from us at this belated stage. We draw strength from the judgments of the Supreme Court in *P.S.*

Sadasivaswamy vs. State of Tamil Nadu (1975) 1 SCC 152, *Malcom Lawrence Cecil D'Souza vs. Union of India & Ors.* (1976) 1 SCC 599 and, *B.S.Bajwa & Anr. Vs. State of Punjab & Ors.* (1998) 2 SCC 523.

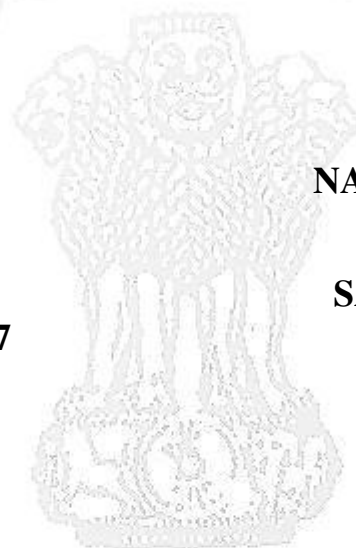
27. In view of the above, WP(C) No.4898/2015 filed by Brajesh Kumar is disposed of in terms of our directions in paragraph 16. While WP(C) No.5293/2015 filed by Umed Singh is dismissed. There would be no order as to costs.

NAVIN CHAWLA, J

SANJIV KHANNA, J

SEPTEMBER 05, 2017

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