

W.P.No.20378 of 2018 and
W.M.P.No.19712 of 2019

K.K.SASIDHARAN,J.
AND
P.T.ASHA,J.

Heard the learned counsel for the petitioner. Mr.Syed Mustafa, learned Special Government Pleader takes notice on behalf of respondent Nos.2 to 5. Mr.J.Srinivasa Mohan, learned counsel takes notice for respondent Nos. 6, 7 and 9.

2. The petitioner challenged the order dated 07.03.2019 re-fixing seniority below his juniors, before the Central Administrative Tribunal in O.A.No.758 of 2019. Even though a request was made to the Tribunal to stay the operation of the order re-fixing seniority, as it would unsettle the seniority already made, no such Interim Order was granted. The Tribunal made it clear that any order passed by the Government on the basis of the final seniority list dated 07.03.2019 would be subject to the outcome of the original application. The said order is under challenge in this Writ Petition.

3. The petitioner was appointed as Sub-Inspector of Police on 26.02.1991 in the Puducherry Police Department. It was an appointment on compassionate ground. He is stated to be the senior most appointee of

the year 1991. Subsequently, eight other candidates were selected on 14.03.1991 for appointment to the post of Sub-Inspector of Police through direct recruitment.

4. The seniority list in the post of Sub-Inspectors of police was issued originally on 27.02.2002. The name of the petitioner was shown as SI.No.2 [149]. Thereafter, the seniority list was revised and the name of the petitioner was shown as SI.No.3 [150]. The final seniority list in the post of Sub-Inspector of Police prepared on 22.08.2002, was challenged before the Central Administrative Tribunal in O.A.Nos.452 and 453 of 2003.

5. The Tribunal by order dated 09.12.2004 set aside the final seniority list and revised it by following rota quota rule. The order was challenged before the High Court. The High Court by common order dated 01.07.2009 in W.P.No.24282 of 2005 directed the Tribunal to consider the matter a fresh. Thereafter, the Tribunal reiterated its earlier decision and disposed of the matter by order dated 05.03.2010.

6. The Superintendent of Police, Head Quarters issued a revised seniority list in the post of Sub-Inspector of Police on 05.03.2013. The name of the petitioner was shown at SI.No.3 [150]. Subsequently, on

25.07.2016, the Superintendent of Police issued a tentative seniority list of Inspector of police. The name of the petitioner was shown as SI.No.7 [113]. The petitioner and the others in the seniority list were promoted to the post of Inspector of Police by following the seniority. The service of the petitioner in the post of Inspector of Police was regularised by order dated 15.06.2016 with effect from 22.11.2004.

7. It so appears that the Superintendent of Police, Head Quarters issued an order dated 25.07.2016 to the effect that the seniority list issued on 15.06.2016 was only a tentative one. The Superintendent of Police, Head Quarters, called for objections from the concerned officers for fixing the seniority. The 10th respondent appears to have submitted his objections to the seniority. The objection was primarily on the ground that the petitioner was placed above him notwithstanding his appointment on compassionate basis.

8. The factual matrix indicates that the seniority of the petitioner, on the ground that he is a compassionate appointee, is refixed after a period of 26 years from the date of initial appointment.

9. The 5th respondent passed an order dated 05.04.2018 fixing the seniority of the petitioner at Sl.No.3 [150]. Based on the order dated 05.04.2018, tentative seniority list in the post of Inspector of Police was also published on 06.04.2018. The name of the petitioner was shown at Sl.No.7 [113] . The aggrieved officers filed O.A.Nos.238 and 545 of 2018 before the Central Administrative Tribunal. The Tribunal by order dated 26.04.2018 directed the Police Department to dispose of the representations on merits and with reference to the Office Memorandum dated 04.03.2014 issued by the DOPT. The petitioner was later appointed as Superintendent of Police.

10. While the matters stood thus, the 5th respondent issued a revised seniority list dated 07.03.2019. The seniority fixed 26 years earlier has been refixed and the petitioner was shown at the bottom of the list.

11. The petitioner approached the Central Administrative Tribunal with a grievance that the Sub-Inspectors appointed after him were shown above him in the seniority list published on 07.03.2019. The date of appointment was given a go-by while revising the seniority list dated 07.03.2019.

12. The Tribunal in a very casual manner, rejected the request for staying the further proceedings pursuant to the order dated 07.03.2019 refixing the seniority. The act of unsettling the seniority, at this point of time would involve serious civil consequences to the petitioner and some of the other officers, who are no more in service.

13. The petitioner is not seeking seniority over others, who were appointed prior to him. The question raised by the petitioner deserves to be considered by the Tribunal on merits. The Tribunal has to see the entire background facts, including the law laid down by the Hon'ble Supreme Court in **N.R.Parmar V. Union of India [2013 SCC ONLINE SC 1324]** and clarifications issued by the DOPT. The Office Memorandum issued by the DOPT dated 04.03.2014 indicates that the instructions are prospective in nature.

14. The seniority is a civil right and it has an important and vital role to play in the service cadre of an employee. The future promotion to the government servant would ultimately depend upon his seniority position. In case, further promotion is on the basis of seniority alone, unsettling the seniority would cause considerable difficulties to the officers.

15. The Hon'ble Supreme Court in **H.S.Vankani V. State of Gujarat, (2010) 4 SCC 301**, while underlining the importance of seniority and the consequence of unsettling it, observed thus:

'Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instils confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the government servants and the enthusiasm to do quality work might be lost.'

16. The Supreme Court in **Amarjeet Singh v. Devi Ratan, (2010) 1 SCC 417**, held that an employee cannot be given seniority prior to his birth in the cadre.

The Supreme Court said :-

27. *The law permits promotion with retrospective effect only in exceptional circumstances when there has been some legal impediment in making the promotions, like an intervention by the court. An officer cannot be granted seniority prior to his birth in the cadre adversely affecting the seniority of other officers*

who had been appointed prior to him. "The latecomers to the regular stream cannot steal a march over the early arrivals in the regular queue." [Vide S.P. Kapoor (Dr.) v. State of H.P. Shitla .Prasad Shukla v. State of U.P. (SCC p. 190, para 10) and Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P.]

17. The Supreme Court in **Pawan Pratap Singh v. Reevan Singh, (2011) 3 SCC 267**, summarized the legal position regarding determination of seniority in the following manner:-

45. From the above, the legal position with regard to determination of seniority in service can be summarised as follows:

(i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of

officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.

18. The Supreme Court in **Ram Janam Singh v. State of U.P.**, (1994) 2 SCC 622, clearly held that date of entry into the service is the determining factor for fixation of seniority.

The Supreme Court said :-

10. *From time to time controversy regarding inter se seniority is raised between persons recruited from different sources to the same*

service. In past, notional seniority used to be given to one group of officers, purporting to mitigate their hardship or to rectify any alleged wrong done to them in the process of recruitment or promotion. Ultimately it was realised that if liberty is given to fix seniority of an officer or group of officers belonging to a particular category with reference to a notional date, that will lead to great uncertainty in public service. The date of entry into a particular service was considered to be the most safe rule to follow while determining the inter se seniority between one officer or the other or between one group of officers and the other recruited from the different sources. After referring to different judgments of this Court, a Constitution Bench in the case of *Direct Recruit Class II Engineering Officers' Assn. v. State of Maharashtra* [(1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348] came to the same conclusion. The same has been reiterated in the case of *State of W.B. v. Aghore Nath Dey* [(1993) 3 SCC 371 : 1993 SCC (L&S) 783 : (1993) 24 ATC 932]. It is now almost settled that seniority of an officer in service is determined with reference to the date of his entry in the service which will be consistent with the requirement of Articles 14 and 16 of the Constitution.

19. We have perused the tentative seniority list of Sub-Inspector of Police dated 14.05.2002, final seniority list of Sub-Inspector of Police dated 22.08.2002, revised final seniority list of Sub-Inspectors dated 05.03.2013, tentative seniority list in the post of Inspectors dated 25.07.2016, final seniority list of Sub-Inspectors dated 05.04.2018, tentative seniority list of Inspector of Police dated 06.04.2018 and the final seniority list of Sub-Inspectors published by the Government of Puducherry dated 07.03.2019. We have also perused the tentative seniority list dated 09.05.2019 for the post of Inspector of Police and the order dated 14.05.2019 withdrawing the tentative seniority list for the post of Inspector, the tentative seniority list dated 24.06.2019 for the post of Inspectors and the order impugned in the original application.

20. We are prima facie of the view that the settled seniority has been given a go-by and in a very light manner, the seniority was revised. This aspect was not considered by the Central Administrative Tribunal while rejecting the request made by the petitioner for staying the seniority list dated 07.03.2019.

21. We stay all further proceedings pursuant to the impugned final seniority list dated 07.03.2019 issued by the Superintendent, Head Quarters, Puducherry until further orders.

22. Notice returnable by 05.08.2019. Private Notice is also permitted.

Post on 05.08.2019.

[K.K.SASIDHARAN,J.]

[P.T.ASHA,J.]

15.07.2019

ssd



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