



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

Judgment reserved on: 29.08.2022

% **Judgment delivered on: 06.09.2022**

+ **W.P.(C) 4765/2014**

BERNADETTE LAKRA AND ANR Petitioners
Through: Mr. S. C. Sagar, Advocate.

versus

GOVT. OF NCT OF DELHI AND ORS Respondents
Through: Mr. Anuj Aggarwal, Additional
Standing Counsel with Ms. Ayushi
Bansal, Mr. Sanyam Suri &
Ms. Arshya Singh, Advocates for
respondents No. 1 & 2.
Mr. Shanker Raju, Mr. Nilansh Gaur
& Mr. Rajesh Sachdeva, Advocates
for respondents No. 3 to 6.

+ **W.P.(C) 5363/2014**

KUSUM LATA Petitioner
Through: Mr. Sudarshan Rajan & Mr. Ramesh
Rawat, Advocates.

versus

GOVERNMENT OF N.C.T. OF DELHI & ORS. Respondents
Through: Mr. Satyakam, Additional Standing
Counsel with Mr. Alok Raj, Advocate
along with SI Narender Singh, PHQ
for respondents No. 1 & 2.
Mr. Shanker Raju, Mr. Nilansh Gaur
& Mr. Rajesh Sachdeva, Advocates
for respondents No. 3 to 6.



CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. Regard been had to the controversy involved in the present writ petitions, they were analogously heard and a common judgment is being passed in the matter. The facts of W.P.(C.) No. 4765/2014 are reproduced as under.
2. The petitioners before this Court – who were Direct Recruits on the post of Women Sub-Inspector (Executive), have filed the present petition being aggrieved by the order dated 11.01.2013 passed by the Central Administrative Tribunal (CAT) in Original Application (O.A.) No.979/2012.
3. The facts of the case reveal that an Original Application was preferred by the petitioners stating that they were appointed on the post of Women Sub-Inspector (WSI) Executive (E) as Direct Recruits on the basis of examination held in 1997 and 1998. However, certain Promotees – who were appointed earlier to the petitioners on ad-hoc basis and who were regularized later on by the Department w.e.f. 30.11.1995 – have been placed over and above the petitioners.
4. The present case is having a chequered history and the facts reveal that the respondents before this Court were granted ad-hoc promotion keeping in view Rule 19 of the Delhi Police (Promotion & Confirmation)



Rules, 1980 to the post of Women Sub-Inspector in 1995. The ad-hoc promotion was subject to passing of training and Upper School Course.

5. The facts further establish that an Original Application, i.e. O.A. No.1556/1998 was preferred by the ad-hoc promotees seeking regularization of their promotion to the grade of Women Sub-Inspector from the date of their ad-hoc promotion. The CAT has passed the following order dated 10.08.2000 in the said O.A. No.1556/1998:

“ The grievance of the applicants in the present O.A. is with regard to the order passed by the respondents dated 14.7.98 in which Women Sub-Inspectors (WSIs) (on adhoc), as per list attached, who stood on promotion list E-I (Exe.) (Women), were directed to report to the Deputy Medical Superintendent, Aruna Asaf Ali Govt. Hospital, (Civil Hospital), Rajpur Road, Delhi for medical examination and for training in Upper School Course.

2. *The applicants have alleged that they have already done the training along with SIs and have completed the initial training with syllabus of a much higher grade than those proposed to be imparted by the aforesaid order. They had sought an interim order to the effect that respondents may be restrained from deputing the applicants to go for Upper School Course training, till the disposal of the O.A.*

3. *In the Tribunal's order dated 11.9.98, it is mentioned that the learned counsel for the applicant had submitted that the first two reliefs prayed for in the O.A. have already been granted to the applicants and she does not want to press for Interim Relief. Further in the Tribunal's order dated 25.5.99 it is mentioned that, Mrs. Meera Chhibber, the then learned counsel for the applicants, had submitted that the interim relief as prayed for by the applicants has already been granted by the department itself.*

4. *None has appeared for the applicants even on the second call and none had also appeared on the previous date*



when the case was listed for hearing on 2.8.2000. Respondents have also filed their reply as far back as 25.8.98 and another reply on 30.11.98 to which we note that no rejoinder has been filed.

5. *In the replies, filed by the respondents they have submitted that the WSIs have to undergo a refresher/re-orientation course with special emphasis on investigation and other topical subjects for a period of four weeks. They have further submitted that a decision will be taken in respect of the applicants as well as other WSIs for regularisation of their adhoc promotion. It is also relevant to note that the respondents have themselves stated that as the applicants have completed the training successfully, they are examining the issue. However, learned counsel for the respondents has not been able to produce any documents to show that a decision in this matter has been taken so far.*

6. *Noting the above facts, the O.A. is disposed of with a direction to the respondents to take a decision regarding regularisation of the promotion as WSIs w.e.f. 31.11.95, if not already taken, within a period of two months from the date of receipt of a copy of this order with intimation to the applicants. When they are so regularized, the applicants shall be entitled to all consequential benefits in accordance with the relevant law and rules. No order as to costs."*

6. It is pertinent to note that an order was also issued by the respondent/department granting regular promotion to the respondent employees who were promoted on ad-hoc basis. The Petitioners thereafter, filed an OA No. 1879/2010 before the CAT assailing the Seniority List and the Tribunal *vide* order dated 06.12.2010 directed the respondents to examine the entire gamut on inter se seniority between the direct recruits and promotees, as per law, and issue a seniority list. As there was an *inter se* seniority dispute between the Direct Recruits and the Promotees, a provisional integrated seniority list was published on 18.03.2011. A large



number of representations were made to respondents against the integrated list, and as nothing was done in the matter, the petitioners/ applicants preferred O.A. No.3157/2011 for consideration of their representations, and finally, an order was passed on 02.09.2011, directing the respondents to consider the representations of the applicants.

7. On 18.01.2012, an order was passed by the respondents again fixing the *inter se* seniority of the Direct Recruits and the Promotees. Thereafter, O.A. No.979/2012 was preferred by the Direct Recruits claiming seniority over and above the respondents who were promoted on ad-hoc basis and whose ad-hoc promotions have been regularized with retrospective effect. The Tribunal while deciding the said Original Application has held in paragraph 4 as under:

“4. We have heard the learned counsel for both sides and have gone through the records. We find that while fixing the inter-se-seniority the respondents had invited representation from all aggrieved persons and had taken final decision after disposing of the same. Thus, an opportunity had been provided to the applicants also for representing their case. Through the O.A. in question, the relief sought for is to quash all the seniority lists published by the respondents and draw up separate seniority list of direct recruits and officiating promotees. However, a perusal of the Delhi Police (Appointment & Recruitment) Rules, 1980 would reveal that there is no provision for maintaining separate list of promotees and direct recruits. In fact, Rules clearly provide integrated seniority list and the manner in which such integrated seniority list is to be published is also provided for. Considering that the promotees were regularized w.e.f. 30.11.1995 they have been rightly placed above direct recruits who have joined service after this date. As such, we do not find any reason to interfere in this inter-se-seniority. There is no merit in the contention of



the applicants. Accordingly, the present Original Application is dismissed. There shall be no order as to costs.”

8. The Tribunal has dismissed the Original Application preferred by the petitioners holding that as the Promotees were regularized w.e.f. 30.11.1995, they have been rightly placed above the Direct Recruits who were recruited in the year 1997 and 1998. Effectively, the Tribunal has held that for the purpose of seniority, the Promotees are entitled to count their past service as Ad-hoc employees (along with regular service). The statutory provisions governing the field, as contained in Rule 19 of the Delhi Police (Promotion & Confirmation) Rules, 1980, read as under:

“19. Ad-hoc promotions. –

(i) In special circumstances when there are no approved names on promotion lists, and vacancies exist, the Commissioner of Police, may promote suitable officers in order of seniority to next higher rank temporarily. Such promotions shall not entitle the officers concerned to claim and right for regular appointment or seniority or for appointment to such or any other equivalent post and shall be liable to reversion without notice as soon as qualified men become available.

(ii) To encourage outstanding sportsmen, marksmen, officers who have shown exceptional gallantry and devotion to duty, the Commissioner of Police may, with prior approval of Administrator, promote such officers to the next higher rank provided vacancies exist. Such promotions shall exceed 5 per cent of the vacancies likely to fall vacant in the given year not in the rank. Such promotions shall be treated as ad-hoc and will be regularised when the persons so promoted have successfully completed the training course prescribed like (Lower School Course), if any. For purposes of seniority such promotees shall be placed at the bottom of the promotion list drawn up for that year.



[(iii) The Commissioner of Police, Delhi for the purpose of posting to the Police Training School and the Recruits Training Centre (DAP IVth Bn. at present) personnel of appropriate merit and talent may grant one rank promotion as an incentive purely on emergent basis up to the level of Inspector without conferring on the promotee, any right of seniority and appointment whatsoever even if he may be borne on promotion list.]

Such promotees shall revert to their substantive rank as soon as they are transferred out of training institutions and ceased to be an Inspector.”

9. The aforesaid provision makes it very clear that ad-hoc promotion does not entitle the officers concerned to claim any right for regular appointment or seniority or for appointment to such or any other equivalent post. In other words, the Rules certainly provide that the persons who have been promoted on ad-hoc basis shall not be entitled to seniority from the date of ad-hoc promotion.

10. Rule 12 to Rule 17 of the aforesaid Rules deal with various categories of posts and the controversy involved in the present case is in respect of Assistant Sub-Inspector of Police (Executive) which falls under Rule 16 List ‘E’. Rule 16 List ‘E’ (Executive) reads as under:

“16. List ‘E’ – List-E (Executive)

Confirmed Assistant Sub-Inspector (Executive), who have in a minimum of 6 years of service in the rank of Assistant Sub-Inspector (Executive), shall be eligible for List-E-I (Executive). The selection shall be made on the recommendations of the Departmental Promotion Committee. The Assistant Sub-Inspector so selected, shall be brought on List E-I in order of their respective seniority, keeping in view the vacancies in the rank Sub-Inspector (Executive) likely to occur in the following one year. Subject to the medical fitness by the Civil Surgeon the selected Assistant sub-Inspectors (Executive) shall be sent for



training in the Upper School Course. On successfully completing the Upper School Course, their names shall be brought on promotion List E-II (Executive) in order of their respective seniority in List-E-I for promotion to the rank of Sub-Inspector (Executive) as and when vacancies occur.”

11. The aforesaid statutory Rule again makes it very clear that all those Assistant Sub-Inspectors (Executive) who have put in six years of service on the post of Assistant Sub-Inspector are entitled for promotion as Sub-Inspector, and their case shall be considered for promotion. However, the Rule clarifies that they will be kept in List E-I and only upon successful completion of Upper School Course, their names shall be brought on promotion List E-II (Executive), thereby entitling them for promotion as Sub-Inspector (Executive) as and when vacancy occurs. In other words, once a candidate is selected for the purpose of promotion from the post of Assistant Sub-Inspector (Executive), he shall first be kept in List E-I and upon completion of Upper School Course, he will be promoted to the post of Sub-Inspector, subject to availability of vacancies. The undisputed facts make it very clear that the Promotees in the present case were not fulfilling the required qualification prescribed under the Rules, and in those circumstances, the ad-hoc promotions were given to them.

12. A Division Bench of this Court has dealt with the issue of ad-hoc promotion in the case of ***Commissioner of Police & Others Vs. Sunil Kumar***, W.P.(C.) No. 2414/2012 as well as other connected matters. Paragraphs 16 to 22 of the judgment dated 06.05.2013 passed by the Division Bench in the said case read as under:

“16. We have already indicated above that keeping in view the anticipated vacancies which would ensue in the future, the



Delhi Police so organizes sending Constables, Head Constables and Assistant Sub Inspectors to undertake the Lower School Course, Intermediate School Course and Upper School Course respectively so that as and when, based upon seniority and upon suitability being determined, these subordinate officers earn a promotion. In other words promotions are earned in the year when vacancies accrue. We have already opined that the reason why out of turn promotees who earn a promotion under Rule 19(ii) of the 'Delhi Police (Promotion & Confirmation) Rules, 1980' are firstly given ad-hoc promotion is because an act of bravery, gallantry and devotion to duty may be an unexpected event and the officer concerned may not have been deputed to undergo the promotional course. That is why the Rule states: 'Such promotions shall be treated as ad-hoc and will be regularize when the persons so promoted have successfully completed the training course prescribed'. But, for purposes of seniority, the last sentence of the Rule provides: 'For purposes of seniority such promotees shall be placed at the bottom of the promotion list drawn up for that year'.

17. *Plain and simple English language guides us that in the promotion list drawn up for that year i.e. the year of promotion, the names of these subordinate officers have to be entered and for purposes of seniority to be placed at the bottom of the promotion list drawn up for that year, meaning thereby the year of the promotion and not any other year.*

18. *The Tribunal has reached the right destination.*

19. *We concur with the reasoning of the Tribunal.*

20. *It assumes importance to note that Sub Inspectors who earned promotion as Inspectors under Rule 19(ii) of the 'Delhi Police (Promotion & Confirmation) Rules, 1980' need not clear any promotional course for the reason the 'Delhi Police (Promotion & Confirmation) Rules, 1980' do not envisage any promotion course to be successfully cleared for Sub Inspectors to be promoted as Inspectors. In any case, pertaining to respondent Brahm Jeet Singh there is not even an issue on fact because the year in which he earned promotion under Rule*



19(ii) of the 'Delhi Police (Promotion & Confirmation) Rules, 1980' vacancies existed and his promotion could not be contingent upon he successfully clearing any promotion course.

21. We give one more additional reason. If we look at sub Rule (i) of Rule 19 of the 'Delhi Police (Promotion & Confirmation) Rules, 1980' we find that if no approved names are on the promotion lists and vacancies exist, as a special circumstance the Commissioner of Police may promote suitable officers in order of seniority to the next higher rank temporarily and these officers are not entitled to claim right for regular promotion or seniority. Meaning thereby, the Draftsman was conscious of temporary promotions and the consequence thereof as envisaged by sub Rule (i) and promotions with consequences thereof as envisaged by sub Rule (ii) of Rule 19 of the 'Delhi Police (Promotion & Confirmation) Rules, 1980'.

22. We accordingly dismiss the writ petitions affirming the view taken by the Tribunal in the impugned decisions, but without any order as to costs."

13. The aforesaid judgment makes it very clear that ad-hoc promotions were not treated as regular promotions by the Division Bench and, therefore, in the light of the aforesaid observations, the question of granting seniority for the period wherein ad-hoc Promotees have rendered services on ad-hoc basis, does not arise. The Ad-hoc Promotees are entitled for seniority from the date on which regular promotions were granted to them, after fulfilling the qualifications prescribed under the Recruitment Rules.

14. A similar view has been taken by this Court in the case of ***Tapan Kumar Dutta & Others Vs. Election Commission of India & Others***, ILR (2009) Delhi I 1.

15. Resultantly, this Court is of the considered opinion that the Tribunal has erred in law and facts by directing grant of seniority to the Ad-hoc Promotees from the date of conferral of ad-hoc promotion, especially in the



light of the fact that they were not fulfilling the qualification prescribed for promotion on regular basis on the date of grant of ad-hoc promotion. Therefore, the order of the Tribunal is hereby set aside.

16. The Direct Recruits shall be placed over and above the Ad-hoc Promotees and the Promotees shall be entitled for seniority from the date they have been granted actual regular promotion. The Department shall prepare a fresh gradation list by taking into account the date of appointment on the post of Women Sub-Inspector (Executive) in the case of the Direct Recruits; and by taking into account the date of regular promotion in the case of the Promotees, ignoring the ad-hoc service rendered by them which was *de hors* the statutory provisions. The exercise of issuing a fresh gradation list in terms of this order shall be undertaken within a period of six months from the date of receipt of certified copy of this order.

17. Any consequential benefits or modifications thereof shall be assessed afresh in terms of the new list.

18. The petitions stand disposed of in the aforesaid terms.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

SEPTEMBER 06, 2022

B.S. Rohella