

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

WP.ST 46 of 2013

Sushil Dutta

Vs.

Mrigendra Nath Chatterjee & Ors.

For the Petitioner

: Mr. Bikash Ranjan Neogi

Ms. Soma Chakraborty

Ms. Ananya Neogi

Mr. Guddu Singh

For the State

: Mr. Tapan Kumar Mukherjee, Ld. AGP

Mr. Somnath Naskar

Heard on : August 7, 2023

Judgment on : August 7, 2023

DEBANGSU BASAK, J.:-

1. The writ petition is directed against an order dated September 28, 2012 passed by the West Bengal Administrative Tribunal in OA-1279 of 2010.
2. By the impugned order, the Tribunal set aside the final gradation list published by the authorities in Government

Order No.9162(12)/F.S. dated September 29, 2010. The Tribunal held that, the original applicants were entitled to their seniority being counted from the dates of their joining the feeder post. The respondents authorities were directed to prepare a fresh gradation list of the Chief Inspectors belonging to the West Bengal Subordinate Food & Supplies Service (Grade-I) according to rule, settled principles and observations made.

3. Learned Advocate appearing for the writ petitioner submits that, none of the writ petitioners were made parties to the original application. He submits that, the writ petitioners figured in the gradation list which was assailed before the Tribunal. The writ petitioners held the post of Chief Inspectors of the West Bengal Subordinate Food & Supplies Service (Grade-I). He relies upon *(1994) 2 Supreme Court Cases 622 (Ram Janam Singh vs. State of U.P. and Another)*, *(1996) 2 Supreme Court Cases 19 (Rajbir Singh, HFS-II vs. State of Haryana and Another)* and *(2008) 6 Supreme Court Cases 797 (State of Uttaranchal & Another vs. Madan Mohan Joshi and Others)* in support of the contention that, an

affected party needs to be made a party-respondent in the proceedings.

4. Relying upon *(2010) 1 Supreme Court Cases 417 (Amarjeet Singh & Others vs. Devi Ratan & Others)* and *(2013) 8 Supreme Court Cases 693 (P. Sudhakar Rao and Others vs. U. Govinda Rao and Others)*, he submits that, a person is required to be born in the cadre for his seniority to be counted therein. Counting the seniority in the feeder post is of no consequence.
5. None appears for the original applicants before the Tribunal despite service of notice. Learned Advocate-on-record for the writ petitioner draws the attention of the Court to a letter dated July 26, 2023 which was issued to the learned Advocate-on-record for the original applicants, which he received. Learned Advocate-on-record for the writ petitioner informs the Court that, he called the learned Advocate-on-record for the original applicants today on mobile also and that, such Advocate told him that, such Advocate was no longer instructed to appear in the matter.

6. Learned Senior Advocate appearing for the State relies upon *(2000) 7 Supreme Court Cases 561 (Suraj Parkash Gupta & Others vs. State of J&K and Others)* and submits that, a person can claim seniority from the date that he is born into the cadre.
7. A gradation list was published by the respondent authorities being G.O. No.9162 (12)/F.S. dated September 27, 2010 in respect of the post of Chief Inspectors, West Bengal Subordinate Food & Supplies Service (Grade-I). Such gradation list was assailed in OA-1279 of 2010 in which the impugned order dated September 28, 2012 was passed. The gradation list was set aside. The Tribunal directed that the gradation list be redone on the basis of the seniority counted from the dates of the persons joining feeder post.
8. *Amarjeet Singh & Others (supra)* is of the following view:

“27. The law permit 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 has been appointed prior to him. “The latecomers to the regular stream cannot steal a march over the early arrivals in the regular queue.”

9. *Suraj Parkash Gupta & Others (supra)* is of the following view:

“80. We have next to refer to one other contention raised by the respondent direct recruits. They claimed that the direct recruitment appointment can be ante-dated from the date of occurrence of a vacancy in the direct recruitment quota, even if on that date the said person was not directly recruited. It was submitted that if the promotees occupied the quota belonging to direct recruits they had to be pushed down, whenever direct recruitment was made. Once they were so pushed down, even if the direct recruit came later, he should be put in the direct recruit slot from the date on which such a slot was available under the direct recruitment quota.

81. This contention, in our view, cannot be accepted. The reason as to why this argument is wrong is that in service jurisprudence, a direct recruit can claim seniority only from the date of his regular appointment. He cannot claim seniority from a date when he was not borne in the service. This principle is well settled. In *N.K. Chauhan v. State of Gujarat* (SCC at p.325, para 32) Krishna Iyer, J. stated:

Later direct recruits cannot claim deemed dates of appointment for seniority with effect from the time when direct recruitment vacancy arose. Seniority will depend upon length of service.

Again, in *A. Janardhana v. Union of India* it was held that a later direct recruit cannot claim seniority from a date before his birth in the service or when he was in school or college. Similarly it was pointed out in *A.N. Pathak v. Secy. to the Govt.* (SCC at p. 767) that slots cannot be kept reserved for direct recruits for retrospective appointments.”

10. *P. Sudhakar Rao & Others (supra)* is of the view that seniority of an employee should be reckoned from the date when the vacancy arises and not from any anterior date of promotion or a subsequent date of confirmation.
11. In the facts of the present case, persons in the employment in the feeder post were promoted to the post of Chief Inspectors, West Bengal Subordinate Food & Supplies Service (Grade-I). A person needs to be born in such cadre for his seniority to be counted in such cadre from the date of his birth in such cadre. The date of appointment of such a person in the feeder cadre on his promotion to the promoted post cannot be taken into consideration for the fixation of gradation list in the promoted post.
12. *Ram Janam Singh (supra)*, *Rajbir Singh, HFS-II (supra)*, *Amarjeet Singh & Others (supra)* and *Madan Mohan Joshi & Others (supra)* are of the view that, *inter se* seniority amongst the persons belonging to the same cadre, may not be a fundamental right, but is a civil right. The respective rights

of the seniority of the parties, thus, are required to be determined in their presence.

13. In the facts of the present case, the writ petitioner was not made a party to the original proceeding in which a gradation list was set aside.
14. In such circumstances, we set aside the impugned order of the Tribunal.
15. **WP.ST 46 of 2013** is disposed of accordingly without any order as to costs.

(Debangsu Basak,J.)

16. I Agree.

(Md. Shabbar Rashidi, J.)