



CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

O.A.NO.060/01359/2017
(Reserved on: 12.10.2020)
Pronounced on: 24.11.2020

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)

DSP Ram Gopal, No. 320/CHG, Aged 50 years S/o late Shri Girdhari Lal, presently posted as Deputy Superintendent of Police(Central), Union Territory, Sector 17, Chandigarh.

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Applicant

(BY ADVOCATE: MR. R.K.SHARMA, ADVOCATE)

VERSUS

1. Union of India through Secretary to Government of India, Ministry of Home Affairs, New Delhi 110011.
2. Union Territory, Chandigarh through its Administrator U.T. U.T., Sector-9, Chandigarh.
3. Advisor to the Administrator, U.T., Sector-9, Chandigarh.
4. Home Secretary Chandigarh Administration, U.T. Secretariat, Sector 9, U.T. Chandigarh.
5. Director General of Police, U.T. Chandigarh,

Police Headquarters, Sector 9, Chandigarh.

(BY ADVOCATE: MR. K.K.THAKUR, ADVOCATE FOR R.NO.1
MR. SANJIV SHARMA, SR. ADVOCATE,
WITH MR. MUKESH KAUSHIK,
ADVOCATE FOR RESPONDENTS NO.2TO5.

Respondents



ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, seeking quashing of the letter dated 16.09.2017 (Annexure A-1) conveying that there is no vacancy in the Rank of Superintendent of Police (SP) (non-IPS) in Chandigarh Police meant for promotion from the rank of Dy.SP and that the Punjab Police Rules governing the promotion are pending adoption and to direct the respondents to consider his claim for promotion as Superintendent of Police against existing vacancy of Dy. Commandant IRB in the rank of Superintendent of Police, he being the senior most and eligible in terms of Punjab Police Service Rules, 1959 as amended on 26.12.2006, applicable to Union Territory, Chandigarh with effect from due date with all consequential benefits.

2. Before touching upon the issues raised in this case, let us have a bird's eye view of the relevant facts culled out from the pleadings of the parties. The applicant initially joined Chandigarh Police as Assistant Sub Inspector on 16.03.1991. He was promoted out of turn as Sub Inspector on 02.09.1993 and then as Inspector on 29.10.1998 and ultimately came to be promoted as Deputy Superintendent of Police (DSP) w.e.f. 01.06.2009. The applicant pleads that one of the channel for promotion from the post of DSP is to the rank of Superintendent of Police (Non IPS). Chandigarh Administration does not have its own Recruitment Rules governing the post of S.P (Non IPS). The conditions of



service of U.T. employees are the same as are the conditions of service of the employees of the State of Punjab by virtue of notification dated 13.01.1992 as interpreted by the Hon'ble Supreme Court in **U.T. CHANDIGARH VERSUS RAJESH KUMAR BASANDHI**, 2004(1) SCT 680. It is pleaded that as per the decision, even formal adoption is not required for its implementation.

3. The applicant pleads that in terms of Punjab Police Service Rules, 1959 (for short Rules of 1959") as amended from time to time, promotion to the rank of S.P. shall be made from the rank of Deputy Superintendent of Police (both promoted from the rank of Inspector and directly recruited) having six years continuous service in the rank of DSP (substantive) on the basis of merit-cum-seniority subject to the availability of the posts of Supdt. of Police sanctioned by Finance Department from time to time." As per Instructions dated 20.8.1987 of U.T., it has to prefer its own employees in the matter of promotion to the higher posts, if they are otherwise eligible and suitable. It has been categorically held by courts that when officers of UT, Chandigarh are eligible for promotion/appointment, then they should be considered at first instead taking any officer/officials on deputation from Punjab & Haryana. As per SO No. 83/2015 dated 23.01.2009, Ministry of Home Affairs, created IRB (A common cadre with Chandigarh Police) with 894 posts including 7 posts of Assistant Commandants, 3 posts Dy. Commandants and 1 post of Commandant i.e. equivalent to DSP, Addl. SP and SP (non-IPS cadre).



4. The applicant pleads that he was promoted as DSP w.e.f. 22.02.2011 which was antedated w.e.f. 01.06.2009. He submits that no DSP from Chandigarh fulfilled eligibility criteria of 6 years for promotion as SP between 2009-2012. He pleads that post of Deputy Commandant equivalent to ASP/SP was filled up by taking Mr. G.S Grewal, PPS, on deputation from Punjab from 1.5.2011 up to 15.04.2013 and Mr. Shiv Charan, HPS, on deputation from Haryana from 6.8.2012 to 17.07.2013. The IGP U.T., Chandigarh, recommended names of 6 DSPs, who had completed 6 years of continuous service as per Rules of 1959 for promotion as SP against 3 vacant posts of Dy. Commandant vide communication dated 07.08.2013 followed by DO letter dated 10.07.2015 to the Adviser. Some other correspondence took place and ultimately DGP U.T. vide letter dated 16.09.2017 replied Home Secretary that there is no vacancy in the rank of SP (Non IPS) in Chandigarh Police for promotion from DSP and amendment dated 26.12.2006 in Rules of 1959, for 6 years eligibility for promotion of DSP to SP was pending with Home Secretary for adoption.

5. Representations Annexure A-10 dated 27.02.2017 and A-11 dated 29.03.2017, followed by reminder Annexure A-12 dated 27/07/2017 moved by applicant were ultimately rejected vide impugned order dated 16/09/2017. Hence the O.A.

6. Contesting Respondents No. 2 to 5 have filed a joint Written Statement controverting the claim of the applicant. They submit that there are only 04 sanctioned posts of SPs in Chandigarh Police meant for IPS, as per Notification dated 30.03.2010 issued by DOPT and one post of Commandant/IRB



which is to be filled up only by an IPS officer of AGMU Cadre. They submit that a person who seeks promotion needs to fulfil all the conditions of physical experience of feeder cadre post in service. They submit that post of Deputy Commandant (IRB) having remained vacant for more than one year is deemed to have been abolished in view of the instructions on the issue. They submit that no salary, whatsoever, was drawn against the post of Deputy Commandant (IRB) which is in the rank of Additional Superintendent of Police and paid to Mr. Pardeep Kumar, ACFA and Sh. Khagesh Bhandari, ACFA and that their salaries were drawn against the post of Assistant Commandant, IRB and not against the post of Deputy Commandant, IRB. There is no vacancy in the Rank of SP(non-IPS) in Chandigarh Police meant for promotion from the rank of DSP. The Punjab Police Rules governing promotion from the rank of DSP to S.P. are pending consideration for adoption and unless adoption takes place, no promotion can be made. They submit that the Punjab Rules do not apply to the post of Deputy Commandant in IRB.

7. The applicant has filed a replication rebutting the claim of the respondents. It is submitted that plea taken by the respondents appears to be false in view of their own orders / letters Annexure A-7 to A-9. Order dated 03.03.2016 (Annexure A-9) clearly indicates that two incumbents were appointed as S.P. between 2011 to 2013 against the posts of Deputy Commandant, IRB and further Respondent No.5 in letter dated 04.02.2016 (Annexure A-14) has admitted the equivalency of Deputy



Commandant IRB with that of SP which was vacant at that point of time.

8. We have heard the learned counsel for the parties at length and examined the pleadings on file with their able assistance including the written submissions made by learned counsel for the applicant.

9. The learned counsel for the applicant vehemently argued that the applicant is the senior most DSP in the cadre and being eligible in terms of 1959 Rules as SP/Deputy Commandant in IRB, U.T. Chandigarh, has a right of consideration for such promotion from due date and denial of such right is illegal, arbitrary, discriminatory and cannot be sustained in the eyes of law. He submits that applicant is eligible, post is available and rules are there, yet he has been denied consideration which is not expected from a model employer. On the other hand, learned Sr. Advocate for the respondents submits that applicant was not even eligible for such promotion as he has not actually worked on the post of DSP. In other words, ante-dated period cannot be counted as eligible service for promotion. He submits that post of Deputy Commandant in IRB is not governed by Rules of 1959 as no decision in that connection has yet been taken and matter is pending consideration with competent authority. The applicant has no right of promotion but only consideration if he is eligible therefore.



10. We have considered the submissions made on behalf of both sides minutely. From the pleadings of the parties, the moot points for consideration in this case are as under: -

(1) As to whether the cadre of Chandigarh Police service and Indian Reserve Battalion in U.T. Chandigarh is common?

(2) As to whether the applicant is eligible for promotion to the post of Superintendent of Police/Deputy Commandant in IRB, Union Territory, Chandigarh.

(3) As to whether the Rules of 1959 would apply to the DSPs of U.T. Chandigarh for promotion to the higher post without formal adoption?

(4) As to whether the post of Deputy Commandant in IRB, Union Territory, Chandigarh, is available for being filled up by way of promotion or is deemed to have been abolished?

(5) As to whether a person who is granted ante-dated promotion, is entitled to count such period as “experience” for the purpose of eligibility for promotion to the higher post?

11. First of all, we proceed to consider the issues No.1 & 2 simultaneously. It is apparent from the pleadings that the respondents themselves admit in letter dated 26.10.2010 (Annexure A-22) written by Government of India to Chandigarh Administration conveying a decision for merger of cadre of Indian



Reserve Battalion with the existing cadre of Chandigarh Police. The cadre of Chandigarh Police is governed by the Rules of 1959 according to which promotion to the rank of Superintendent of Police is to be made from the rank of DSP having six years continuous service. The applicant was promoted as DSP w.e.f. 01.06.2009 and as such became eligible for promotion w.e.f. 01.06.2015. It is also not in dispute that he is the senior most DSP in the feeder cadre. Once it is recognized that he was eligible for promotion but was not given promotion for one or the other reason and ultimately promoted retrospectively, then such period has to be counted as experience for seniority and eligibility also for promotion to higher post. The respondents cannot be allowed to turn around and claim that his ante-dated period of promotion would not be counted as experience. In view of these facts, it is held that cadre of Chandigarh Police and Indian Reserve Battalion in U.T. Chandigarh is common and applicant is eligible for promotion to the post of Superintendent of Police/Deputy Commandant in IRB, Union Territory, Chandigarh. In so far as absence of Recruitment Rules, as pleaded by respondents is concerned, by virtue of Notification dated 13.1.1992, the Rules of 1959 would apply to the post of Deputy Commandant, which is part of the Chandigarh Police Cadre. Be that as it may, the fact is that it is well settled law that the Recruitment Rules which are applicable at the time of vacancy would apply and not the subsequently framed Recruitment Rules for promotional purposes. Thus, we have no hesitation in upholding the plea of the applicant that since the applicant became eligible for promotion in 2015, so the Recruitment Rules of Punjab would be applicable to him.



12. The question as to whether the Rules of 1959 would apply to the category of the applicant or not is no longer res-integra and stands settled by apex dispensation in the case of **RAJESH KUMAR BASANDHI** (supra) holding that even formal adoption is not required for its implementation. The Court has held in clear terms that "The appellant having itself given effect to the rules amended after 1.4.1991, cuts against its own argument to say that amendment subsequent to 1.4.1991 would not be applicable unless specifically adopted by the Union Territory of Chandigarh. It may not be open for the appellant to pick one amendment in the Punjab Rules and implement the same and refuse to apply the other amendment. It is clear that no adoption of the amended provision was necessary and by assigning the general meaning to the expression "for the time being" it would be applicable without being specifically adopted by the Chandigarh Administration. The general meaning of the phrase "for the time being" seems to be reasonable since the position as existing at the time the rule is applied that would be taken into account unless of course context may indicate otherwise. We find no such context by reason of which we may assign meaning to the phrase other than the meaning understood in general sense that such an expression is indefinite in time and refers to state of facts which may arise and exist at the time rule is applied which may vary at different times.". Not only that, in terms of para No. 7 of Standing Order no. 83/2015 relating to Organisation and deployment of India Reserve Battalion, U.T. Chandigarh "All acts, Rules, Instructions and guidelines applicable to the



Chandigarh Police will be applicable to the employees of IRB and as per para 8 "Cadre", IRB, U.T. Chandigarh is an integral part and parcel of Chandigarh police and would form one cadre.

13. Now we proceed to consider the question (4) as to whether the post of Deputy Commandant/IRB is deemed to have been abolished in view of having remained unfilled for such a long time. On this issue, the stand taken by applicant and in our view rightly, is that deeming abolition of the post of Deputy Commandant (IRB) is not borne out from the record as admittedly salary against one of the three posts in the rank of Superintendent of Police had been drawn and paid to Mr. Pardeep Kumar, ACFA from August 2014 to 19.01.2017 and afterwards from 20.01.2017 to 19.04.2017 to Mr. Khagesh Bhandari ACFA. Thus, the post cannot be treated as abolished more so when the applicant claims to be eligible for promotion on 01.06.2015 itself having been given seniority as DSP w.e.f. 01.06.2009. Another half hearted plea taken by the respondents is that the applicant is not drawing grade pay of Rs.6600/- and as such is not eligible for promotion to the post of Addl. SP/SP. The record shows that applicant was drawing pay in PB III of Rs.15600-39100 + Grade Pay Rs.6600/- (Annexure A-26). In any case, the date of promotion of the applicant stands antedated to 01.06.2009, thereby he has been granted Grade Pay of Rs.6600/- w.e.f. 01.06.2013 and GP of Rs.7600/- w.e.f. 01.06.2018. Thus, even this plea is no longer available to the respondents. It is not in dispute that applicant is the senior most Deputy Superintendent of Police, Chandigarh



Police having seniority in the said cadre w.e.f. 01.06.2009. In any case, the concept of abolition of post is applied in direct recruitment posts and not promotional post which fact goes unrebutted and as such it has to be held that the post has not been abolished under deeming fiction more so when applicant was available for such promotion. In any case, this issue was considered and decided in O.A.No.469/2010 titled **D.K. MOHANAN VS. UNION OF INDIA & OTHERS**, decided on 6.12.2010 by Ernakulum Bench of this Tribunal holding that there is no question of abolition of posts to be filled up for promotional quota. The deemed abolition of post concept is applicable to the direct recruitment quota only. Similar view was taken in O.A.No. 902/2013 titled **ISSAC K.J. VS. SUPERINTENDENT AND OTHERS**, decided on 23.1.2017 by Ernakulum Bench of this Tribunal.

14. The last question that is to be considered is as to whether a person who is granted ante-dated promotion, is entitled to count such period as “experience” for the purpose of eligibility for promotion to the higher post stands answered in favour of the applicant in view of discussion above that ante-dated promotion would include grant of seniority and eligibility for promotion. This issue is no longer res-integra and stands settled in the case of **UNION OF INDIA & OTHERS VS. K.B. RAJORIA**, AIR 2000 SC 1819, in which question was as to whether notional service can be counted as eligible service for promotion. The Court held that regular service cannot be construed as actual physical service, more so when notional promotion was given to the candidate for



compensating wrong done to him earlier by supersession by his junior. Similar view was taken in **O.S. SINGH VS. UNION OF INDIA**, 1996 (1) SCT 1. A Division Bench of this Court following these two decisions has taken same view in **R.S. DOON VS. UOI ETC.** O.A.No. 127-CH-2007 decided on 4.4.2008. This was upheld in CWP No. 18543/2008 titled **UOI & ANOTHER VS. R.S. DOON & ANOTHER**, decided on 7.11.2008.

15. The learned counsel for the applicant vehemently argued that the Chandigarh Administration was under obligation to follow the Guidelines dated 10.04.1989 of Govt. Of India, for convening DPC every year until there is no eligible candidate and no vacancy certificate is given by the authorities. These instructions were considered by Hon'ble Supreme Court in the case of **UNION OF INDIA VERSUS N.R. BANERJEE**, JT 1996 (11) SC 605. Thus, he claims that applicant is entitled to promotion w.e.f. 2015 itself. No doubt, one cannot dispute the proposition raised by learned counsel for the respondents that one does not have a right of promotion but equally it is also true that Hon'ble Apex dispensation has held in **UNION OF INDIA AND OTHER VS HEMRAJ SINGH CHAUHAN AND OTHERS** in CIVIL APPEAL NO.2651-52 OF 2010 (Arising out of SLP(C) No.6758-6759/2009) dated 23rd March, 2010 that the right of consideration for promotion is a fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution. Recently, a Division Bench of this Tribunal in



O.A.No.060/372/2019 titled **RAJESH BANSAL VS. UOI ETC.**

Decided on 30.9.2020 has held that DPC is to be convened every year and the promotion becomes due from the date of vacancy / eligibility unless there is reasonable explanation for not filling up the post in terms of instructions in that relevant connection.

16. In view of the aforesaid discussion, this O.A. merits acceptance and as such is allowed. The impugned order, Annexure A-1 is quashed and set aside. The respondents are directed to consider the case of the applicant for promotion to the higher post in terms of above observations and if found fit promote him from due date with all the consequential benefits of arrears of pay and allowance and seniority, within a period of two months from the date of receipt of a certified copy of this order. The parties are, however, left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(AJANTA DAYALAN)
MEMBER (A)

Place: Chandigarh

Dated: 24.11.2020

HC*