

(32)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

O.A. 479/86

Date of decision: 24.5.93

Ashwani Kumar, IPS.

Petitioner.

Versus

Union of India & Ors.

Respondents.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. B.N. DHOUNDIYAL, MEMBER(A).

For the Petitioner. Shri Romesh Gautam, Counsel.

For Respondents 1 to 3. Shri M.L. Verma, Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioner, Shri Ashwani Kumar, was appointed to the Indian Police Service by the process of direct recruitment for which the examination was held in the year 1972. He joined service on 19.7.1973. In due course, he was confirmed on 19.7.1975. Respondents 4 and 5 having since retired from service, the real claim of the petitioner in this case is for seniority over Shri O.S. Singh. We should understand the prayer of the petitioner for quashing the impugned order, Annexure-III, dated 23.7.1985 as claiming relief for seniority over Shri O.S. Singh, Respondent No.6, in this case. Shri Singh started his career as a Deputy Superintendent of Police in the State Service and he was continuously officiating in the senior scale w.e.f. 30.3.1978. On the ground that certain adverse remarks were *✓* taken into consideration, his case was not considered for the

(33)

I.P.S., he moved before the High Court of Himachal Pradesh in Civil Writ Petition No. 661/1984. His principal case was that the adverse entries which were taken into consideration have subsequently been set aside and his case for inclusion in the select list is required to be considered. The interim direction was issued by the Himachal Pradesh High Court on 18.12.1984 directing consideration of the case of Shri Singh for inclusion in the select list of I.P.S in the light of setting aside of the adverse entries made against him. In pursuance of the interim direction issued by the High Court, the impugned order came to be made on 23.7.1985 produced as Annexure-III. By the said order, Shri Singh has been given the year of allotment as 1970 and placed above Shri Ashwini Kumar, the petitioner, who has been given the year of allotment as 1973. The writ petition filed by Shri Singh before the Himachal Pradesh High Court was subsequently withdrawn in the light of the passing of the impugned order by which he was given necessary benefit of seniority. Thus, there is no adjudication of the rights of the parties as such by the High Court of Himachal Pradesh, Shri Singh having subsequently withdrawn the writ petition. It is in this background that the petitioner has approached this Tribunal for relief as summarised earlier.

2. It is not possible to take the view that the impugned order is not liable for interference on the ground that it is made in pursuance of the direction of the Himachal Pradesh High Court. The impugned order was made in pursuance of the

(34)

interim direction which was not followed by a final judgement of the Himachal Pradesh High Court, the writ petition having been withdrawn by Shri Singh. Hence, the petitioner is entitled to challenge the validity of the impugned order.

3. The principal question for consideration is as to whether the impugned order is right in so far as it places the petitioner below Shri Singh. The impugned order makes it clear that the year of allotment of Shri Singh is 1970 whereas the year of allotment of the petitioner is 1973. If according to the years of allotment to Shri Singh and the petitioner is right, the petitioner cannot have any grievance. It is urged that the impugned order is not right in so far as it allots 1970 as the year of allotment to Shri Singh. So far as the year of allotment to the petitioner as 1973 is concerned, it cannot be disputed. The relevant statutory provision in regard to the year of allotment so far as the promotee to the IPS is concerned, the same is governed by Rule 3 (3)(b) of the Indian Police Service (Regulation of Seniority) Rules, 1954 (hereinafter referred to as 'the seniority rules') and reads as follows:

"(b) Where the officer is appointed to the Service by promotion in accordance with Rule 9 of the Recruitment Rules, the year of allotment of the junior-most among the officers recruited to the service in accordance with rule 7 of these Rules who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former...."

The first part of Explanation-1, which is relevant, may also be extracted for the sake of convenience as follows:

"In respect of an officer appointed to the service by promotion in accordance with sub-rule (1) of rule 9 of the Recruitment Rules, the period of his continuous officiation in a senior post shall, for the purposes of determination of his seniority; count only from the

✓

(35)

date of the inclusion of his name in the Select List, or from the date of his officiating appointment to such senior post whichever is later".

On proper analysis of the aforesaid provisions, it becomes clear that we have to first ascertain the date of commencement of officiation in the senior scale of the person promoted under Rule 9. After such determination is made, we have to ascertain who is the junior-most among the direct recruit appointed under rule 7 who continuously officiated in a senior post from a date earlier than the date of commencement of such officiation of the promotee IPS officer. Once such a junior-most among the officers recruited to the service in accordance with Rule 7 is available, we have to find out the year of allotment of such direct recruit. The year of allotment of the promotee would be the same as that of such a direct recruit. So far as the facts are concerned, it is not disputed that on review of the select list made on excluding the adverse entries from consideration the name of Shri Singh was included for the first time in the select list on 12.7.1974. It is also not disputed that Shri Singh was appointed to the IPS on the basis of his selection on 31.3.1976. It is not disputed that his date of continuous officiation in the senior post is 30.3.1978. We have to ascertain who was the juniormost direct recruit who had continuously officiated in the junior-post before 30.3.1978, before the date from which Shri Singh started officiation in the senior post. The petitioner has averred in paragraph

6(vii) that he was promoted to the senior scale on 9.12.1977 and he continuously officiated in that post. As the petitioner is the junior most direct recruit who commenced continuous officiation in the senior post from a date earlier than the officiation in the senior post of Shri Singh, his year of allotment should be the same as is the year of allotment of the petitioner. As already stated, there is no dispute about 1973 being the correct year of allotment so far as the petitioner is concerned. Hence, it follows that the year of allotment of Shri Singh should be 1973. It is necessary to point out that in none of the ~~replies~~ affidavits filed by the contesting respondents, the averment of the petitioner that he was promoted to the senior scale on 9.12.1977 has been disputed. But ~~by~~ the impugned order has given Shri Singh the year of allotment as 1970 taking into account the particulars of Shri Ajit Narain, on the assumption that he was the junior-most direct recruit officer who started officiation in the senior post from 19.3.1974. Admittedly, the petitioner is junior to Shri Ajit Narain. Hence, Ajit Narain could ^{not} be taken as the junior most direct recruited who had continuously officiated in the senior post. Having regard to the mandate of Rule 3(3)(b) what could have been taken into account is the date of continuous officiation of the petitioner in the senior post and not the date of continuous officiation in the senior

(37)

scale of Shri Ajit Narain. This is the basic mistake committed by the impugned order. We have no hesitation in taking the view that the impugned order to the extent that the year of allotment to Shri Singh was determined taking into consideration the date of officiation of Shri Ajit Narain instead of taking into consideration the date of officiation of the petitioner is liable to be inferreded. The year of allotment to Shri Singh is clearly opposed to the statutory provision. The correct year to be allotted to Shri Singh is 1973.

4. As the petitioner as well as Shri Singh thus get the same year of allotment as 1973, the next question for consideration is that who among the two persons should rank senior. As the petitioner was continuously officiating in the senior post from a date earlier than Shri Singh, he is entitled to be placed above Shri Singh in the seniority list. Rule 3(3)(b) read with explanation makes it clear that even if the date of officiation in the senior post of the promotee as well as the direct recruit is the same, the promotee has to be placed below the direct recruit. We have, therefore, no hesitation in holding that the impugned order is liable to be quashed and the petitioner is entitled to be placed above Shri Singh in the seniority list.

6. For the reasons stated above, this petition is allowed and the impugned order Annexure-III dated 23.7.1985 is hereby quashed and Respondents 1 to 3 are directed to place the petitioner above Respondent No.6 Shri O.S. Singh in the

seniority list of IPS officers in the State of Himachal Pradesh. The petitioner shall be entitled to all consequential benefits flowing from such according of seniority. No costs.

B. N. Dholiyal
(B.N. DHOUDIYAL)
MEMBER(A)

Dholiyal

(V.S. MALIMATH)
CHAIRMAN

'SRD'
240593
260593
28