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**CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI**

O.A. No. 423 of 1993 decided on 6.11.1998.

Name of Applicants: Sh. Nathu Ram & Another.

(By Advocate : Sh. B S Charya)

versus

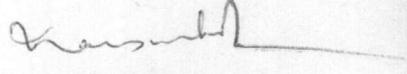
Name of respondent/s Union of India & Others.

(By Advocate : Sh. Amresh Mathur)

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)
Hon'ble Dr. A Vedavalli, Member (J)

1. To be referred to the reporter - Yes/No
2. Whether to be circulated to the other Benches of the Tribunal. - Yes/No


(N. Sahu)
Member (Admnv)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 423 of 1993

New Delhi, this the 6th day of ~~October~~^{November}, 1998.

HON'BLE MR. N. SAHU, MEMBER (A)
HON'BLE DR. A VEDAVALLI, MEMBER (J)

1. Sh. Nathu Ram, S/O Sh. Ram Swaroop, R/O C-1/91, Nehru Vihar, Karawal Nagar Road, Delhi-94.
2. Sh. Katar Singh, S/O Late Sh. Baljeet Singh, A-3/368, East Gokalpuri, Delhi.
3. Sh. Paras Nath, S/O Sh. Bihari Lal, 20/229, Kalyan Puri, Delhi-91.
4. Sh. Bharat Singh, S/O Sh. Dev Karan, 852/7, Govind Puri, New Delhi-19.
5. Sh. Jai Narayan, S/O Sh. Banwari Lal, C-271, Wazirpur, J.J. Colony, Delhi-82.
6. Sh. Bal Raj, S/O Sh. Surat Singh, R/O RZ-F-222/64. Gali No. 34 and 35, Sadh Nagar Part II, Palam Colony, Delhi-35.
7. Sh. Umesh Kumar, S/O Sh. Sube Singh, 7-B, DDA Flate, Ashok Vihar III, Delhi.

--APPLICANTS.

(By Advocate Sh. B.S.Charya)

Versus

1. Commissioner of Police, Delhi Police, Police Hqrs. M.S.O. Building, New Delhi - 110002.
2. The Dy. Commissioner of Police, Hqrs. (I), Delhi, Delhi Police, Police Hqrs. M.S.O. Building, New Delhi - 110002.
3. Union of India, Ministry of Home Affairs, Govt. of India, New Delhi (through its Secretary).
4. ASI Ram Niwas No. 94/PHQ, VIth Bn., DAP, Model Town, Delhi.
5. ASI Rajinder Singh No. 2087/SW, Vigilance, Police Hqrs. New Delhi-2.
6. ASI Ram Pal Singh No. 279/N/2600/W, Delhi Police, North District, Civil Lines, Delhi.

7. ASI (Smt) Sudesh Kumari No. 545/W, Delhi Police, Prov. & Lines, Rajpur Road, Delhi.

8. W/ASI (Smt.) Neeta Rani, No. 11/E, East District, Delhi Police, Vishwas Nagar, Delhi.

9. ASI Virender Kumar, No. 301/N, VIth Bn., DAP, Model Town, Delhi. --RESPONDENTS.

(By Advocate -Sh. Amresh Mathur)

ORDER

BY MR. N. SAHU, MEMBER (A) -

The present petition was filed by seven Head Constables whose grievance was that they were omitted to be considered for promotion to the post of A.S.I. (Min.) because the respondents did not maintain the 40 point roster according to the rules. All the seven applicants are admittedly scheduled caste officials. Their dates of appointment are as under:-

SR. NOS.	NAME OF THE APPLICANT	DATE OF APPOINTMENT
1.	Sh. Nathu Ram	03.11.86
2.	Sh. Katar Singh	21.04.87
3.	Sh. Paras Nath	03.11.86
4.	Sh. Bharat Singh	17.09.86
5.	Sh. Jai Narayan	17.09.86
6.	Sh. Bal Raj	17.09.86
7.	Sh. Umesh Kumar	09.11.86

2. The DPC met on 8.11.1991. Except applicant No. 2, all the other applicants completed five years of service on 3.11.1991. Applicant No. 2 completed five years of service on 21.4.1992. This DPC met for the purpose of consideration for promotion to the next higher

post of A.S.I. (Min.). For this purpose respondent Nos. 1 and 2 are required to prepare a 'D' list of eligible candidates on the basis of completion of minimum period of service of 5 years as Head Constable and satisfactory service records. This 'D' list was released on 12.11.91 in respect of 95 candidates. This list was drawn in order of seniority only on the basis of date of appointment. Promotion orders were released in respect of 71 candidates taken out of aforesaid 'D' list w.e.f. 12.11.1991. No doubt, Sr. Nos. 7 to 9, 11 to 14 and 86 to 88, total 9 candidates have been shown as belonging to SC in this seniority list but 7 out of 9 were appointed in 1985 prior to the appointment of the applicants. It is claimed that these 7 should have been promoted as early as on 1.2.1991 if they were properly placed in the 40 point roster and if promotions were granted to them according to roster point. As a matter of fact, it is stated that there was not a single schedule caste candidate in the list of 38, promoted on 1.2.91. According to the applicants, 15% of scheduled caste and 7-1/2 % scheduled tribe of total 95 candidates should have been found as promoted in the list of 95 candidates. A representation was filed by applicant No. 1 on 2.1.92 pointing out that the promotion order was arbitrary and illegal in as much as the seniority of Head Constables was not prepared by observing the 40 point roster. This representation was summarily rejected by respondent No. 2 vide communication dated 10.3.1992. Again applicant No. 1 represented on 26.6.92 to respondent No. 1 but there was no reply to this also. Thereafter, several promotion orders were released on 12.11.91, 1.5.92, 26.5.92 etc. exhausting the list of 95 candidates,

prepared on 12.11.91. Another 'D' list was issued on 31.12.1992 in respect of 66 incumbents. In this 'D' list of 66 incumbents, the applicants' names were found at Sr. Nos. 44, 49, 58, 59, 63 and 64. Their grievance is that even this 'D' list was not issued adhering to the 40 point roster.

3. The instructions on the subject are extracted by the applicants themselves. Those instructions are extracted ~~are~~ hereunder:-

"d) That the instructions of the Ministry of Home Affairs issued vide OM dated 4.12.63, 2.9.64, 25.3.70, 16.5.74, 11.6.74, 1.9.74, 25.3.70 and 15.3.93 and other instructions are clear on the subject. Under para 11.1 it is stipulated that if sufficient number of SC/ST candidates fit for appointment against reserved vacancies are not available, such vacancies can be dereserved after following the prescribed procedure for dereservation as in Chapter 10 and such reserved vacancies can be filled by candidates of other communities. **The reservations are carried forward to subsequent 3 recruitment years.** Under para 9.3, it is provided that there is reservation of 15% and 7-1/2% of the vacancies for Scheduled Caste and Scheduled Tribe respectively in promotions made on the basis of seniority subject to fitness. Promotion to the post of Asstt. Sub-Inspector (Min.) is made on the basis of seniority subject to fitness. In such cases the principles of zone of consideration is not applicable. The following guidelines are required to be observed by the respondent Nos. 1 and 2:-

"(i) A separate 40 point roster to determine the number of reserved vacancies in a year should be followed on the lines of the roster prescribed in Annexure-I to the Ministry of Home Affairs OM No. 1/11/69-Estt. (SCT) dated the 22nd April 1970 in which

points 1, 8, 14, 22, 28 and 36 are reserved for Scheduled Castes and points 4, 17 and 31 are reserved for Scheduled Tribes.

(ii) Wherever according to the points in the roster there are any vacancies reserved for Scheduled Castes and Scheduled Tribes separate lists should be drawn up of the eligible Scheduled Castes or the Scheduled Tribes officers, as the case may be, arranged in order of their inter-se-seniority in the main list.

(iii) The Scheduled Castes and Scheduled Tribes officers should be adjudged by the Departmental Promotion Committee separately in regard to their fitness.

(iv) When the Select Lists of Officers in the general category and those belonging to Scheduled Castes and Scheduled Tribes have been prepared by the Departmental Promotion Committee, these should be merged into a combined Select list in which names of all the select officers, general as well as those belonging to Scheduled Castes and Scheduled Tribes, are arranged in the order of their inter-se-seniority in the original seniority list of the category of grade from which promotion is being made. This combined select list should thereafter be followed for making promotions in vacancies as and when they arise during the year.

(v) If the number of eligible candidates belonging to Scheduled Castes/Scheduled Tribes found fit for promotion falls short of the number of vacancies reserved for either of them during the year, action for dereservation should be taken in accordance with OM No. 36011/25/79/Estt/(SCT) dated 16th November, 1979 subject to the reservation being carried forward to three subsequent recruitment years and exchange of vacancies between Scheduled Caste and Scheduled Tribes in the final year of carry forward."

4. It is in the above background that the applicants prayed for quashing the 'D' list dated 12.11.91 (Annexure P-1) and 'D' list dated 30.12.92 (Annexure P-9) and for quashing the promotions orders dated 12.11.91, 1.5.92, 26.5.92, 18.6.92, 7.8.92, 31.8.92, 9.9.92, 30.12.92 and 4.1.93.

5. The pleadings were complete in this case on 28.10.1993. Unfortunately, this case could not come up on Board for regular hearing for several years. On 2.6.98, when this case came up on the Board, we are informed that the previous counsel Sh. Gera is no longer the counsel for the respondents. We directed Sh. Amresh Mathur who was present in the Bar, to take notice and to appear on behalf of respondents. We gave him sufficient time to take the brief. The case came up on 20.7.1998, Sh. Girish Kathpalia appeared for the respondents who stated that he was engaged only that day and he wanted to consult and update the brief with relevant documents. Subsequently on 20.8.98, this case was fixed again for hearing, Sh. B S Charya, counsel for applicants and one Sh. Ram Chander, SI, Deptt. Representative appeared. We recorded as under:-

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"Counsel for applicants states that he will file the written arguments in this case and he is preparing necessary papers for the same. He has taken the consent of Sh. Girish Kathpalia, counsel for respondents who also appeared before us earlier in the day.

Adjourned to 31.8.1998."

6. On 31.8.1998, the case could not reach on Board. On 2.9.1998, the counsel for the applicants sought adjournment on the ground that he was not well. Sh. Mahavir Singh, H.C., Deptt. Representative stated that the counsel for the respondents is busy in the High Court and we adjourned the case to 7.9.98. We again adjourned to 9.9.98 because counsel for both the parties could not be present. On 9.9.98, only the counsel for applicants was present and not the counsel for respondents yet we gave one more opportunity to the counsel for the respondents and posted the case to 16.9.98. Meanwhile, on 8.9.98, the written arguments, with the consent of the Court, was filed by the counsel for the applicants with a copy to the counsel for the respondents. The case was finally taken on 23.9.98, again none appeared for the respondents and only counsel for the applicants appeared. In this view of the matter, we had no alternative except to close the case for orders.

7. In para 4.4 of the counter, it is admitted that the respondents released the 'D' list on 12.11.91 in respect of 95 candidates and the reserved candidates were not placed at the appropriate position in the seniority list according to the 40 point roster. As mentioned above, seven persons, included in the list of 71, issued on 12.11.91, were appointed in 1985 and actually they should have found their place in the roster point and should have been promoted in the promotion order dated 12.91 according to the applicants.

8. We will do no better than extract the observations and enunciation of the law of the Hon'ble Supreme Court in the case of SUPERINTENDING ENGINEER, PUBLIC HEALTH, U.T. CHANDIGARH AND OTHERS Vs. KULDEEP SINGH AND OTHERS 1997 SCC (L & S) 1044 as under:-

"4. Article 14 prohibits discrimination and Article 16 (1) accords equality of opportunities in the matter of appointment to an office or post under the State. Article 38 read with the Preamble enjoins the State to accord socio-economic justice, the basic feature in all institutions of national life. Article 335 of the Constitution enjoins that the claims of the members of the Scheduled Castes and Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. It is settled law that it should be read consistent with Article 46 of the Constitution to take special care of the educational and economic interests of the Scheduled Castes and Scheduled Tribes and to protect them from injustice and all forms of exploitation. Appointment to an office or post under the State is one of the policies of the State to accord economic justice as part of social justice for integration of Scheduled Castes and Scheduled Tribes in the social mainstream, as also dignity of person and equality of status. It would be an opportunity to improve excellence which is a fundamental duty. In the light of Article 16 (4-A) introduced by the Constitution (77th Amendment) Act, 1995 the claims of the Scheduled Castes and the Scheduled Tribes for promotion shall be taken into consideration in making appointment or giving promotion. It is the constitutional duty coupled with the power of the authorities implementing the rules of recruitment including promotion. In that behalf, in **COMPTROLLER AND AUDITOR GENERAL OF INDIA, GIAN PRAKASH VS. K.S. JAGANNATHAN** (SCC 679 at P.693), a three Judge Bench of this Court was to consider whether the appellant-Comptroller and Auditor General of India was under the constitutional obligation to fix the lesser standard of examination in the light of the Brochure, to inform the Scheduled Caste and Scheduled Tribe employees of the same and

to conduct refresher courses before conducting examination and whether the failure to discharge the duty was unconstitutional. This Court considered the constitutional obligation on the part of the authorities in implementing the rule of reservation and pointed out in paras 21, 22 and 23 as under: (SCC pp.693-95).

"21. It is now necessary to examine the nature of the discretion conferred by the said Office Memorandum dated 21.1.1977 -"Whether it is a discretionary power simpliciter or a discretionary power coupled with a duty?" From the provisions of the Constitution referred to above, it is transparently clear that it is a discretion to be exercised in the discharge of the constitutional duty imposed by Article 335 to take into consideration the claims of the members of the Scheduled Castes and the Scheduled Tribes, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. This duty is to be exercised in keeping with the Directive Principle laid down in Article 46 in promoting with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and to protect them from social injustice and all forms of exploitation. Article 37 of the Constitution provides that the Directive Principles of State Policy contained in Part IV of the Constitution, in which Article 46 occurs, are fundamental to the governance of the country and that it is the duty of the State to apply these principles in making laws. As said by Murtaza Fazal Ali, J., in **STATE OF KERALA VS. N.M. THOMAS** (at p.996 of the Reports: SCC p.379, para 164) the directive principles form the fundamental feature and the social conscience of the Constitution and the Constitution enjoins upon the State to implement these directive principles.

Ans

22. The object of the said Office Memorandum dated 21.1.1977, is to provide an adequate opportunity of promotion to the members of the Scheduled Castes and the Scheduled Tribes. By reason of the provisions of Article 16 (4) of the Constitution a treatment to the members of the Scheduled Castes and the Scheduled Tribes different from that given to others in matters relating to employment or appointment to any office under the

State does not violate the Fundamental Right to equality of opportunity for all citizens in such matters guaranteed by Article 16 (1) of the Constitution. It is now well settled by decisions of this Court that the reservation in favour of backward classes of citizens, including the members of the Scheduled Castes and the Scheduled Tribes, as contemplated by Article 16 (4) can be made not merely in respect of initial recruitment but also in respect of posts to which promotions are to be made: (see, for instance **STATE OF PUNJAB VS. HIRA LAL and AKHIL BHARATIYA SOSHIT KARAMCHARI SANGH (RLY.) VS. UNION OF INDIA.**

23. The question which now falls to be considered is the manner in which the Comptroller and Auditor General of India is required to exercise the discretion conferred by the said Office Memorandum dated 21.1.1977, and the manner in which he has, in fact, exercised it. The said Office Memorandum dated 21.1.1977, refers to two other office memoranda, namely, the Office Memorandum dated 23.12.1970, number of Scheduled Caste and Scheduled basis of the general standard to fill all also be considered for promotion provided they are not found unfit for such promotion, and to achieve this, the said office memorandum directs that the qualifying standard in such examinations can be relaxed in their favour in keeping with the above criterion. The Office Memorandum dated 27.11.1972, fixes the reservation quota for the members of the Scheduled Castes at 15% and the Scheduled Tribes at 7 1/2% in appointments filled by promotion on the basis of seniority subject to fitness. Under the said Office Memorandum dated 21.1.1977, if a sufficient number of Scheduled Caste and Scheduled Tribe candidates are not available in the qualifying examinations on the basis of the general standard to fill all the vacancies reserved for them in the promotional posts, suitable relaxation in the qualifying standard for such examinations should be made in the case of the Scheduled Caste and the Scheduled Tribe candidates bearing in mind all relevant factors including, namely, (1) the number of vacancies reserved, (2) the performance of the Scheduled Caste and the Scheduled Tribe candidates as well as the general candidates in that examination, (3) the minimum standard of fitness for appointment to the post, and also (4) the overall strength of the cadre and that of the Scheduled Castes and the Scheduled Tribes in that cadre. The said Office

Memorandum dated 21.1.1977, thus postulates two qualifying standards - one, a general qualifying standard and the other, a relaxed or lower qualifying standard for candidates belonging to the Scheduled Castes and the Scheduled Tribes. Paragraph 4 of the said Office Memorandum dated 8.2.1968, reproduced earlier, shows that in the case of direct recruitment through a qualifying examination a minimum standard is generally to be fixed and that in such cases, a lower minimum qualifying standard should be fixed for the candidates belonging to the Scheduled Castes and the Scheduled Tribes, taking into account the minimum standard necessary for the maintenance of efficiency of administration, and that if the minimum qualifying standard for general candidates is reviewed at a later date, the lower minimum qualifying standard applicable to the Scheduled Caste and Scheduled Tribe candidates should also be reviewed. The Office Memorandum No. 1/1/70-Estt.(SCT) dated 25.7.1970 which deals with examination for direct recruitment also speaks of a general standard and of a lower standard for candidates belonging to the Scheduled Castes and the Scheduled Tribes, the standard being required to be relaxed in their case to make up the deficiency in the reservation quota provided they are not found unfit for such post or posts. As seen above, a similar provision exists in the said Office Memorandum dated 23.12.1970, with respect to departmental competitive examinations for promotion and in departmental confirmation examinations."

5. This principle of power coupled with duty was succinctly stated by Earl Cairns, L.C. in the House of Lords in **JULIUS VS. LORD BISHOP OF OXFORD** (AC at pp.222-23) quoted with approval therewith by this Court in **COMMR. OF POLICE VS. GORDHANDAS BHANJI** (SCR at p.147) thus:

"There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so."

[12]

9. The attitude of the respondents, in this case, has not been cooperative. We have advisedly extracted the proceedings in this case. There was no helpful compliance. We are satisfied that there is no averment that the 40 point roster has been maintained when the promotions had taken place in 1991-92 and for this purpose the seniority in the 'D' list released did not take into account the positions of the applicants, as per the roster fixed. This is a grave illegality and a breach of the constitutional mandate and the instructions of the Home Ministry. The prayer in this case is for quashing the lists of promotion and the DPC proceedings. This would mean that we would be quashing the promotions of a large number of other persons. We do not want to do this. It would cause grave injustice to them for no fault of theirs. We would, therefore, dispose of this OA by giving the following directions.

10. We direct respondent Nos. 1 and 2 to prepare the 40 point roster in accordance with the rules and should exhibit the place of the applicants at appropriate roster points, say atleast from 1.1.1985, and redraw the 'D' list dated 12.11.91 which would reflect the seniority of the applicants in terms of their roster points. In the said 'D' list while mentioning the seniority, the roster point of the applicants in the 40 point roster should also be specifically exhibited. Thereafter, the respondents shall convene a special review DPC to consider the suitability-cum-fitness of the applicants in accordance with their revised seniority and if found fit give them promotion. If the statement made by the applicants that Sr. Nos. 7, 8 and 9 & 11, 12 and 13

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found in the 'D' list dated 12.11.91 were 85 appointees and should have been considered in accordance with the 40 point roster in the promotion order of 1.2.1991 for 38 candidates, respondents should not deprive the applicants but should consider them in the place of these six who are stated to be eligible for consideration in 1.2.1991. As these six persons in the reserved category who are 85 appointees are not before us, we will only observe that respondents will deal with them in accordance with law, equity and fairness.

11. The respondents state that the applicants did not complete five years in June, 1991 upto which candidates for promotion were considered by the DPC. When 'D' list dated 12.11.91 was prepared. There was no justification to put the cut-off-date as June 1991. As all the applicants have completed five years on 3.11.1991, except applicant No. 2, these should have been considered. There is no rationale for fixing the cut-off-date five months before the due date on which the 'D' list was proposed to be prepared. As early as in April, 1990, the Hon'ble Supreme Court in RAM BHAGAT SINGH AND ANOTHER VS. STATE OF HARYANA AND ANOTHER 1998 SCC (L&S) 203 held that the lower standard of eligibility must be prescribed for persons belonging to SC and ST or backward class and relaxation also must be considered without hampering efficiency of administration. We have also extracted above the instructions of the Home Ministry which were approved and applied in the earlier case. The respondents are obliged by law to consider the case of reserved class candidates sympathetically without compromising the efficiency of administration and not to

deprive them of their rightful promotion by considering their eligibility at a date which was much earlier to the date on which the DPC met to draw the list. From a perusal of pleadings that we have, we are constrained to conclude that the 40 point roster pertaining to Head Constables has not been maintained. As a result the respondents have violated the instructions of the Ministry of Home Affairs, the constitutional mandate and law on the subject laid down by the Hon'ble Supreme Court.

12. We direct the respondents to ensure that the above exercise is carried out within a period of 24 weeks from the date of receipt of a copy of this order. A communication be issued to them indicating the revised seniority consequent on the maintainance of the 40 point roster. Their consequential rights of promotion, in 1991-92 promotions shall be given effect by convening a review DPC as directed above.

13. We are not quashing the promotion orders, as mentioned above, because it would cause grave administrative dislocation but we hereby direct respondent No. 3, Secretary, Ministry of Home Affairs, Union of India, to conduct an enquiry to identify persons responsible for this lapse in not maintaining the 40 point roster. We will do no better than to quote para 6 of the decision of Hon'ble Supreme Court in Kuldip Singh's case cited above:-

para

"6. It would thus be clear that the petitioner was under a constitutional duty coupled with power. Every public servant is a trustee of the society and in all facets of public administration,

every public servant has to exhibit honesty, integrity, sincerity and faithfulness in implementation of the political, social, economic and constitutional policies to integrate the nation, to achieve excellence and efficiency in the public administration. A public servant entrusted with duty and power to implement constitutional policy under Articles 16 (4), 16 (4-A), 15 (4) and 335 and all interrelated directive principles, should exhibit transparency in implementation and should be accountable for due effectuation of constitutional goals. Maintenance of the roster and strict adherence to it in accordance with the Brochure issued by the Govt. of India in that behalf to implement the rule of reservation in promotion is the charge and trust put on public servants. The Constitution has trusted the public servant as honest administrator to effectuate public policy and constitutional goals. The petitioner herein, has betrayed that trust and tended to frustrate the public policy." (Emphasis supplied by us).

14. We accordingly direct respondent No.3, Secretary, Ministry of Home Affairs, Union of India to enquire as to why the roster was not maintained and as to why the instructions of the Home Ministry based on the constitutional mandate were observed in the breach. He will identify the officials responsible who in the language of the Apex Court "betrayed the trust" and "tended to frustrate the public policy", will consider appropriate steps to set right the deficiencies and punish the officials responsible. A report shall be sent in this regard in compliance of the above direction to the Registrar of this Tribunal before 30.4.1999.

15. If the applicants gain their position on account of the exercise of placing them at appropriate roster points and thus are found fit for promotion by the Review DPC in the 'D' list dated 12.11.91, they shall accordingly be promoted from that date with all

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consequential monetory benefits in terms of arrears of pay, seniority and rights of further promotion etc. in accordance with the law as enunciated by the various Circulars of DOPT and Ministry of Home Affairs and the decisions of the Hon'ble Supreme Court on the subject.

A. Vedavalli

(DR. A VEDAVALLI)

MEMBER (J)

Narasmha Sah
(N SAHU) 6/11/98
MEMBER (A)

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Copy of order

No. 19582 /DHC/WRITS/D-2/2009
Dated 15/09

From

The Registrar General
High Court of Delhi
New Delhi

To

✓ 1. The Registrar, Central Administrative Tribunal, Principal Bench, Copernicus Marg,
New Delhi.

O.A. No. 423/93 dated 6.11.98

WRIT PETITION (CIVIL) NO. 1367/1999

The Commissioner of Police & ors.

....Petitioner/s

Vs.

Sh. Nathu Ram & ors.

....Respondent/s

Sir,

I am directed to forward herewith for information and immediate compliance/necessary action a copy of order dated 27.4.2009 passed by Hon'ble Division Bench of this Court in the above noted case alongwith a copy of Memo of Parties.

Please acknowledge receipt.

Yours faithfully


Asstt. Registrar (Writs)
for Registrar General

AB/29.4.09

30/20/09/2009
6/5
CAT (PB), New Delhi
Receipt No. 1296/SC
Date 15/09/09
Receiving Officer



J 34

IN THE HIGH COURT OF DELHI AT NEW DELHI

C.W.P. NO. 1367 OF 1999

IN THE MATTER OF

Commissioner of Police, Delhi & ors. Petitioners

Vs.

Shri Nathu Ram & ors. Respondents

MEMO OF PARTIES

1. Commissioner of Police, Delhi
Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi-110002.
2. The Deputy Commissioner of Police/HQ(I),
Delhi Police,
Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi-110002.
3. Union of India,
Ministry of Home Affairs,
Government of India,
New Delhi

.... Petitioners

Vs.

1. Shri Nathu Ram,
S/o Shri Ram Swaroop,
R/o C-1/91, Nehru Vihar,
Karawal Nagar Road,
Delhi-94.

(35)
K

2. Shri Kartar Singh,
S/o Late Shri Baljeet Singh,
A-3/368, East Gokalpuri,
Delhi.
3. Shri Paras Nath,
S/o Shri Bihari Lal,
20-229, Kalyan Puri,
Delhi-91.
4. Shri Bharat Singh,
S/o Shri Dev Karan,
852/7, Govind Puri,
New Delhi-19
5. Shri Jai Narain,
S/o Shri Banwari Lal,
C-271, Wazirpur J.J. Colony,
Delhi-82.
6. Shri Bal Raj,
S/o Shri Surat Singh,
R/o RZ-F-222/64, Gali No.34 & 35,
Sadh Nagar, Part II,
Palam Colony,
Delhi-35.
7. Shri Umesh Kumar,
S/o Shri Sube Singh,
7-B, D.D.A. Flats,
Ashok Vihar-III,
Delhi
8. ASI Ram Niwas, No.94/PHQ,
6th Bn., D.A.P.,
Model Town, Delhi.
9. ASI Rajinder Singh, No.2087/SW,
Vigilance, Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi-2
10. ASI Ram Pal Singh, No.279/N/2600/W,
Delhi Police, North District,
Civil Lines, Delhi.

L (36)

11. ASI (Smt.) Sudesh Kumari
No.545/W, Delhi Police,
Provisions & Lines,
Rajpur Road,
Delhi.

12. W/ASI (Smt.) Neeta Rani,
No.11/E, East District, Delhi Police,
Vishwas Nagar, Delhi

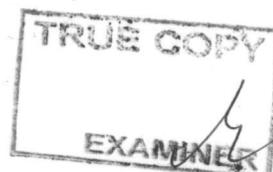
13. ASI Virender Kumar, No.301/N,
6th Bn., D.A.P.,
Model Town, Delhi Respondents

14. ^{al} Registrar
C.A.T. principal Bench, Copernicus Marg,
New Delhi.

NEW DELHI

DATED : 26.2.1999

Avnish Ahlawat
(MRS. AVNISH AHLAWAT)
COUNSEL FOR PETITIONERS
243, LAWYERS' CHAMBERS
DELHI HIGH COURT



IN THE HIGH COURT OF DELHI AT NEW DELHI

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WP (C) No. 1367 of 1999

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Reserved on: February 03, 2009
Pronounced on : April 27, 2009

Commissioner of Police, Delhi & Ors.

... Petitioners

through :

Ms. Avnish Ahlawat, Advocate

VERSUS

Nathu Ram & Ors.

... Respondents

through :

Mr. Arun Bhardwaj, Advocate

CORAM :-

**THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE SURESH KAIT**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The promotion to the post of Assistant Sub-Inspector (Ministerial) {hereinafter referred to as 'ASI'} on regular basis is governed by the Delhi Police (Promotion and Confirmation) Rules, 1980. Rule 15(3)(i) deals with promotions to the post of ASI and, *inter alia*, stipulates that the feeder cadre would be Head Constable (Ministerial) {for short, 'HC'}. One of the eligibility conditions is that such confirmed HCs should have put in minimum five years service.
2. In order to fill up the posts of ASI on regular basis, letter dated 23.4.1991 was issued whereby service particulars of eligible candidates, namely, HCs/ASIs appointed on ad hoc basis, but holding the substantive post of HC having five years regular service in the

grade were called for. The cut-off date of 30.6.1991 was also stipulated by which the incumbent was supposed to have completed five years service. A Departmental Promotion Committee (DPC) for this purpose was convened on 31.10.1991. Total posts available were 95 (including anticipated vacancies) and it was found that only 98 persons fulfilled the eligibility conditions who had completed five years of regular service by 30.6.1991. Their cases were considered and 95 persons out of them were recommended for promotion and actual orders for promotion were issued from time to time exhausting the said list.

3. The respondents herein, who belong to Scheduled Caste (SC) category, though had not completed five years regular service as on 30.6.1991, but completed the requisite period of service before the date the DPC was convened. Thus, they had completed five years of service between 1.7.1991 and 31.10.1991. On this basis, they made representation to the petitioners requesting that they should also be considered. Their request was turned down and, thus, they were not included in the list prepared by the DPC. The respondents, in these circumstances, filed the OA, which has been allowed by the learned Tribunal vide its orders dated 6.11.1998.
4. The Tribunal, *inter alia*, found that the 40 Point Roster in accordance with the Rules had not been prepared. Had the said Roster been prepared, the respondents would have been senior to many persons who got promotions. In this backdrop, the Tribunal has directed the

petitioners to prepare the 40 Point Roster in accordance with the Rules, thereby placing the respondents at appropriate Roster points, at least from 1.1.1985. On that basis, direction is given to redraw the promotion list which would reflect the seniority of the respondents in terms of their Roster points. Consequent direction to convene Special Review DPC to consider the suitability-cum-fitness of the respondents in accordance with their revised seniority is given and if they are found suitable, further direction is given to promote them as well. The contention of the petitioners herein that the respondents did not complete five years service in June 1991 has been repelled by the Tribunal on the ground that 'D-List' issued for promotions is dated 12.11.1991 and, therefore, there was no justification to put the cut-off date as of June 1991.

5. The moot question which is to be considered by this Court is as to whether the cut-off date of 30.6.1991 could be fixed or it should have been the date on which the 'D-List' was prepared or DPC was convened. Other consequences would flow from the outcome of this principal issue.
6. Before we advert to the issue at hand, it would be imperative to take note of certain facts in detail.
7. As mentioned above, 95 vacancies (including anticipated vacancies) of ASI were sought to be filled, for which purpose communication dated 23.4.1991 was issued and particulars of all eligible confirmed HCs were called from the concerned District/Units. 98 persons were

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found eligible to have completed five years regular service in the grade as on 30.6.1991. Particulars of these persons were received in the Headquarters. There were in all 90 vacancies of ASI at that time, out of which 65 were for those who were already working on ad hoc basis as ASI and 25 more posts were to be available during the one year. As per vacancies, 69 posts were for general category, 14 for Scheduled Caste category and 7 for Scheduled Tribes. In accordance with the revised zone of consideration, the number of candidates to be considered were 142 in general category, 32 in Scheduled Caste and 18 in Scheduled Tribe (total 192). However, since only 98 candidates were eligible in the normal zone of consideration as well as in the extended zone of consideration, 87 General category, 11 SC category (total 98) were only considered. On receipt of particulars, the matter was submitted for holding a DPC on 17.10.1991, which was held on 8.11.1991. DPC considered all those 98 candidates and as per the criteria fixed, prepared the list D Ministerial of 12.11.1991. All promotions in Delhi Police are made under the Delhi Police (Promotion and Confirmation) Rules, 1980.

Rule 5(i) of the said Rules is as follows :-

“5(i) – Promotions from one rank to another and from lower grade to the higher grade in the same rank shall be made by selection tempered by seniority. Efficiency and honest shall be the main factors governing selection (Amended vide Notification No. F.5/690/83-H(P)/Estt, (dated April 7, 1984). Zone of consideration will be determined in accordance with the rules/instructions issued by the Government from time to time.”

Relevant portion of Rule 15 is to the following effect :-

“15 – List ‘D’

(i) xx xx xx

(41)

(ii) xx xx xx

(iii) Confirmed Head Constables (Ministerial), who have put in a minimum of 5 years service in the rank of Head Constable shall be eligible. The selection shall be made on the recommendations of the Departmental Promotion Committee. The Head Constables, so selected, shall be brought on List-D (Ministerial) in order of their respective seniority, keeping in view the number of vacancies like to occur in the rank of Assistant Sub Inspector as and when vacancies occur."

8. Accordingly, list of 98 candidates was prepared by the petitioners. 85 of them were in General Category and 10 in the SC category. Results of 2 General Category candidates and 1 SC category candidate were kept in sealed cover as departmental inquiries against them were pending. Orders dated 12.11.1991 were issued giving the promotions to 71 HCs (including 65 HCs who were already working as ASI on ad hoc basis). 7 of them belonged to SC category. For remaining officials in the select list, promotion orders were issued on 1.5.1992, 26.5.1992, 18.6.1992, 7.8.1992, 31.8.1992 and 9.9.1992 respectively.

9. Sixty six (66) more vacancies arose thereafter and on 15.9.1992, names of HCs, who were fulfilling the eligibility conditions, were called for. The DPC for this purpose was convened on 30.12.1992 and on the basis of its recommendations, list of 66 HCs for promotion to the post of ASI was prepared, which included 10 SC category candidates. No ST Category candidate was available. In this list, except the respondent No.2, names of other respondents appeared at S.Nos. 44, 49, 58, 59, 63 & 64. According to the petitioners, other respondents were far below in the seniority list and, therefore, could not be considered.

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10. As mentioned above, after the representation of the respondents was rejected, these seven respondents filed OA before the Tribunal. Their grievance was that the petitioners had not maintained the 40 Point Roster according to Rules and had the seniority list been prepared with the 40 Point Roster in mind, they would have been much above in the seniority list. It was also argued that as on the date of DPC, all the respondents, except the respondent No.2, had completed five years service and there was no reason to disregard them for the purposes of promotion. They also pointed out that though in the 'D-List' prepared there were 71 candidates who were given promotion w.e.f. 12.11.1991, which included 9 candidates who belong to the SC category, but 7 out of those 9 candidates were appointed in 1985 prior to the appointment of the applicants and, therefore, they should have been promoted as early as on 1.2.1991 if they were properly placed in the 40 Point Roster. As a matter of fact, in the promotion list issued on 1.2.1991, not a single SC candidate was promoted, though at that time 38 candidates were given promotion to the post of ASI. Even in respect of 'D-List' of 95 candidates issued on 12.11.1991, proper representation, namely 50% for SC and 7½ per cent for ST was not given. The grievance of the respondents was that even in the 'D-List' of 66 incumbents, which was issued on 31.12.1992, proper representation was not made.

11. The Tribunal has recorded in the impugned judgment that the petitioner herein has admitted in para 4.4 in its counter affidavit that in the 'D-List' released on 12.11.1991 in respect of 95 candidates, the

reserved category candidates were not placed at the appropriate position in the seniority list according to the 40 Point Roster. From this list, when the promotion orders in respect of 71 persons were issued on the same date, i.e. on 12.11.1991, and had included 7 persons from SC category, they should have, in fact, been promoted with effect from 1.2.1991.

12. This is disputed by the petitioner. Submission was that para 4.4 of the counter affidavit was not properly read as it was very clearly stated therein that these respondents had not completed five years of service in June 1991, upto which date the candidates were considered by the DPC. It was argued that as a matter of fact the Roster Register would show that Roster Points were in fact maintained. Records were produced before this Court to demonstrate that. It was submitted that 40 Point Roster is only to identify the post. It is not a seniority register. The Roster is only meant to calculate the number of vacancies available to the reserved categories on the posts sanctioned. It is also submitted that a candidate in the reserve category, when gets accelerated promotion, he will come at the bottom of the list of the selected candidate and not on the roster point vacant position. Roster only identifies the vacancy. It is not to be used for seniority purposes. It only identifies that a vacancy falling vacant at a particular point has to go to SC or ST candidate or a General category candidate. After calculating the vacancies, the selection is made as per merit and seniority. Selection is made as per merit and seniority of the individual of SC or ST category will not

have a jump over a General category candidate by getting themselves placed at the Roster point.

13. We may point out that the Government has issued instructions in this behalf, which are extracted in the impugned judgment of the Tribunal as well. As per these instructions, a separate 40 Point Roster to determine the number of reserved vacancies in a year is to be prepared. Wherever according to the points in the Roster there are any vacancies reserved for SC/ST categories, separate list is to be drawn of the '*eligible Scheduled Castes and Scheduled Tribes officers, as the case may be, appointed in order of their seniority in the main list*'. They are to be adjudged separately in regard to their fitness. Thereafter, the select list prepared by the DPC of General Category candidates as well as SC & ST category candidates are to be merged under which a combined select list in which names of these officers are required to be arranged in order of their *inter se* seniority in the original seniority list. It, thus, follows that separate 40 Point Roster is prepared primarily for the purpose of determining the number of reserved vacancies in a year and more importantly for the purpose of consideration of the candidature even in respect of SC/ST candidates separately, list of those candidates are to be prepared who are '*eligible*'.

14. We have already indicated above that the question as to whether the respondents could have been considered or not as per the Roster Points, would become relevant only if they were eligible for being considered as per the recruitment rules when the DPC met on

31.10.1991. If they had completed five years of service and became eligible, then as per the Roster Points they would have been included in the select list. If they were not eligible, the question of not maintaining the Roster (though denied by the petitioners) would not arise. For the purpose eligibility, what needs to be determined is as to whether the cut-off date of 30.6.1991 fixed by the petitioners was appropriate or this date can be advanced to the date when the DPC was convened. Therefore, we proceed to decide this principal issue.

15. Learned counsel for the petitioner submitted that date of eligibility is when such list is prepared and not the date when the DPC is convened. In this behalf, she referred to two judgments of the Supreme Court; first is *Ramesh Kumar Choudha & Ors. v. State of M.P. & Ors.*, (1996) 11 SCC 242.

In this case, cut-off date for eligibility was fixed as 1.1.1992 and the persons who acquired the qualification after that date were found not eligible. Question for determining the cut off date itself was not considered and, therefore, this case may not be of any help for determining this issue in the instant case.

16. Second judgment on which reliance is placed is *Ramrao & Ors. v. All India Backward Class Bank Employees Welfare Association & Ors.*, (2004) 2 SCC 76. Relevant portion of this judgment is extracted below :-

“29. It is now well-settled that for the purpose of effecting promotion, the employer is required to fix a date for the purpose of effecting promotion and, thus, unless cut off date so fixed is held to be arbitrary or unreasonable, the same cannot be set aside as offending Article 14 of the Constitution of India.

In the instant case, the cut off date so fixed having regard to the directions contained by the National Industrial Tribunal which had been given a retrospective effect cannot be said to be arbitrary, irrational, whimsical or capricious.

31. It is not in dispute that a cut-off date can be provided in terms of the provisions of the statute or executive order. In *University Grants Commission v. Sadhana Chaudhary and Ors.*, (1996) 10 SCC 536. It has been observed :

"21 ... It is settled law that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless it can be said that it is very wide off the reasonable mark. (See: *Union of India v. Parameswaran Match Works* (1975) 1 SCC 305 and *Sushma Sharma (Dr) v. State of Rajasthan*, 1985 Supp SCC 45)"

32. If a cut-off date can be fixed, indisputably those who fall within the purview thereof would form a separate class. Such a classification has a reasonable nexus with the object which the decision of the Bank to promote its employee seeks to achieve. Such classifications would neither fall within the category of creating a class within a class or an artificial classification so as to offend Article 14 of the Constitution of India.

33. Whenever such a cut-off date is fixed, a question may arise as to why a person would suffer only because he comes within the wrong side of the cut-off date but, the fact that some persons or a section of society would face hardship, by itself cannot be a ground for holding that the cut-off date so fixed is ultra vires Article 14 of the Constitution."

17. It is manifest from the reading of these judgments that cut off date cannot be pushed to the date when the DPC was held as list of eligible candidates is to be prepared before the convening of DPC. For this purpose, in the circular dated 23.4.1991, cut off date was subsequently mentioned as 30.6.1991. This, therefore, cannot be changed. When the cut off date is fixed in the aforesaid manner, the date on which DPC would be convened is not ascertained by that time. It may be any date after the particulars are received. In such

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circumstances, even in the given case, the department should have called for the particulars of all those who were completing five years service by 31.10.1991. That would mean that the date on which the DPC is going to be convened should be fixed few months in advance and particulars of the candidates becoming eligible by that date are to be called. That is never the practice and cannot be if the administration has to work smoothly.

18. We find from the impugned judgment that except observing that there was no justification to put the cut off date as 30.6.1991, no other reason is given for arriving at a conclusion that all candidates who completed five years service as on 3.11.1991 should have been considered. The respondents herein belong to the SC category. If this principle is to be followed, many general category candidates also must have completed five years service after June 1991 and before 31.10.1991. On this reasoning, they also should have been considered. Therefore, not only the aforesaid observation is contrary to law and without any basis, it has other consequences as well, not contemplated by the Tribunal while making those observations.
19. We may, at this stage, deal with the judgment of the Supreme Court in the case of *Chhotu Ram v. State of Haryana & Ors.*, (2000) 10 SCC 399, on which reliance is placed by learned counsel for the respondent. That was a case where the appellant was appointed as Junior Engineer on 16.6.1973 in the Haryana Public Works Department (Irrigation Branch) on regular basis. He appeared in

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AMIE (B) Examination in November 1979 and was declared successful on 3.3.1980. The DPC met in September 1980 to consider the cases of eligible candidates for promotion. The DPC was of the opinion that the appellant was not eligible for promotion as he had not cleared the examination by 1.1.1980, which is the cut off date for such purpose. The Supreme Court allowed the appeal on the ground that he had qualified the examination before the meeting of DPC in September 1980. However, this conclusion is arrived at by the Supreme Court on the basis of specific clarification dated 23.7.1973 issued by the Chief Secretary, Government of Haryana to the effect that the eligibility has to be taken from the date of completion of examinations, if by that time, the matter regarding promotion is taken up, the result of the examination had been declared.

Thus, this judgment of the Supreme Court was on the basis of decision of the Government itself to take up the eligibility as on the date of DPC. In the absence of any such decision of the department in the instant case (which on the contrary is just the opposite), the respondent cannot draw support from the aforesaid judgment, which was on its own facts without laying down any general principle of law in this behalf.

20. The only question, in these circumstances, which remains to be considered is as to whether the respondents were entitled to relaxation. This question arises in view of the contention of learned counsel for the respondent that the SC candidates had not been given their proper representation. He referred to the information obtained

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under the Right to Information Act as per which there was a backlog of 40 SC vacancies for the year 1991; 20 each in the year 1992 and 1994. He, thus, submitted that even in the year 1991, when the aforesaid process was undertaken, 40 posts for SC candidates still remain to be unfilled. He, thus, submitted that as per the instructions, the eligibility condition of five years should have been relaxed in the case of SC candidates to give them due representation. He also pointed out in this behalf that even the Tribunal relied upon the judgment of the Supreme Court in *Ram Bhagat Singh & Anr. v. State of Haryana & Anr.*, (1997) 11 SCC 417, held that the lower standard of eligibility must be prescribed for persons belonging to SC or ST or backward class and relaxation also must be considered without hampering running of the administration.

21. In *Ram Bhagat Singh* (supra), the question which came up for consideration was entirely different. The relevant rules for appointment in judicial service in the State of Punjab provide that a candidate should obtain minimum 45% marks in written papers and 33% marks in language paper, Hindi and further that a candidate would be considered as qualified only if he obtains at least 55% marks in aggregate of all papers, including the viva voce test. This standard was fixed for all the candidates whether they belong to general category or reserved category. In that context, the question arose for consideration was as to whether there should be relaxed standards for persons belonging to reserved category. The Supreme Court opined that having regard to the provisions of Articles 14, 15

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and 16 of the Constitution read with Article 38 thereof, it was necessary to have relaxed standards for SC/ST candidates.

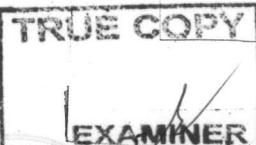
22. That is totally different from the problem at hand where eligibility condition of specified number of years of service is imposed for becoming eligible for promotion to the next higher post. This has to be fulfilled, which is essential condition and not capable of relaxation. Ratio of *Ram Bhagat Singh* (supra) cannot be stretched to relax the condition of five years service, prescribed in the Rules for becoming eligible for next higher post. The Tribunal, therefore, was not correct in relying upon the judgment in *Ram Bhagat Singh* (supra) for such a proposition.

23. We are, therefore, of the opinion that the judgment of the Tribunal does not stand judicial scrutiny. Accordingly, this writ is allowed, impugned judgment of the Tribunal is set aside and as a consequence, the OA filed by the respondents before the Tribunal is dismissed.




(A.K. SIKRI)
JUDGE


(SURESH KAIT)
JUDGE



April 21, 2009
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