



**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.4232 of 2018

Orders reserved on :25.06.2021

Orders pronounced on : 16.08.2021

**Hon'ble Mr. A. K. Bishnoi, Member (A)
Hon'ble Mr. R.N. Singh, Member (J)**

1. Shiv Kumar | Azad, Aged-55 years,
S/o Late Shri Ram Chander,
Working as Officer Superintendent,
R/o Flat No.201, Plot No.267/4, Shri Kameshwar
Apptt.
Sector-1, Vaishali, Ghaziabad (UP).
2. Arun Kumar, Aged – 54 years,
S/o Late Shri Hari Charan Sharma,
Working as Assistant,
R/o K-376, Kangra Niketan, Vikaspuri,
New Delhi-110018.
3. Hari Krishan Joshi, Aged – 55 years,
S/o Late Shri R.K. Joshi,
Working as Assistant,
R/o Block-14, House No.831, Lodhi Colony,
New Delhi-03.
4. Mahavir Prasad Sharma, Aged – 57 years,
s/o Shri Udaivir Sharma,
Working as Assistant,
R/o House N0.562, C-12, Krishan Colony,
Palwal (Haryana).
5. Raj Kumar Purthi, Aged – 55 years,
S/o Sh. Sant Lal Purthi,
Working as Assistant,
R/o 14/1, 1st Floor, Kalkaji, New Delhi-110019.

... Applicants

(through Advocate Shri Yogesh Sharma)



Versus

1. Union of India through
The Secretary,
Ministry of Youth Affairs & Sports,
Shastri Bhawan, New Delhi-110011.
2. Director General,
Sports Authority of India,
Ministry of Youth Affairs & Sports
J.N. Stadium, New Delhi.
3. The Secretary,
Sports Authority of India,
Ministry of Youth Affairs & Sports
J.N. Stadium, New Delhi.
4. Shri Sanjay Saraswat,
Regional Director (Pers.)
Sports Authority of India,
(Hq.) Building, J.N. Stadium,
Lodhi Complex, New Delhi-110003.
5. Sh. Digambar Mohan Sharma,
Through the Assistant Director (Pers.)
Sports Authority of India,
Jawaharlal Nehru Stadium
Complex (East Gate), Lodhi Road, New Delhi-
110003.
6. Sh. Hemraj Goel,
Through the Assistant Director (Pers.)
Sports Authority of India,
Jawaharlal Nehru Stadium
Complex (East Gate), Lodhi Road, N. Delhi-110003.
7. Shri Mukesh Batish,
Through the Assistant Director (Pers.)
Sports Authority of India,
Jawaharlal Nehru Stadium
Complex (East Gate), Lodhi Road, New Delhi-
110003.

... Respondents

(through Advocate Ms. Geetanjali Sharma for R-1, Shri Sanjib Kumar Mohanty for R-2 to R-4 and Shri Avijit Singh for R-5 to R-7)



ORDER

Hon'ble Mr. R. N. Singh, Member (J):

In the present Original Application, the applicants have challenged the order dated 09.10.2018 (Annexure A/1) vide which the respondent Nos.2 to 3 have promoted the respondent nos.5 to 7 to the post of Office Superintendent (hereinafter referred to as 'OS') in the pay scale of Rs.1640-2900 on notional basis w.e.f. 30.9.1992.

2. The applicants have prayed therein in the present Original Application for declaring the impugned order dated 09.10.2018 as illegal, arbitrary and against the rules and have sought for quashing of the said impugned order. The applicants have further prayed for a direction to the respondent Nos.1 to 4 to consider the cases of the applicant nos.2 to 5 for their promotion to the post of OS with retrospective date as admissible under the Recruitment Rules with all consequential benefits.

3. Learned counsel for the applicants submits that the applicants were initially appointed to the post of



Lower Division Clerk under the respondent Nos.2 and 3 and were subsequently promoted to the post of Upper Division Clerk and further to the post of Assistant. It is also the case of the applicants that the applicant No.1, namely, Shri Shiv Kumar Azad, had already been promoted to the post of OS. However, he has joined in the present OA for the reason that private respondent Nos.5 to 7 have been accorded notional promotion from retrospective date in violation of Recruitment Rules and on such count, the private respondent Nos.5 to 7 will become senior in the grade of OS and will thus jeopardize his further career progression. Learned counsel for the applicants submits that the Rules called 'Sports Authority of India (Supervisory and Ministerial) Staff Recruitment Rules, 1992 (hereinafter referred to as 'the Rules of 1992'), notified on 05.09.1992, regulate the recruitment and appointments to the post of OS. Such Rules provide that the post of OS is a Group 'B' post in the pay scale of Rs.1640-2900 (pre-revised), 50% of such posts are required to be filled by the method of merit and 50% by the method of seniority-cum-fitness. The Recruitment Rules further provide that Assistant(s) in



the pay scale of Rs.1400-2300 with five years of service are eligible for being considered for promotion to the post of OS. The grievance of the applicants is that the private respondent Nos.5 to 7 have never been appointed to the feeder post, i.e., the post of Assistant and they have been appointed and working to the post of Hostel Supervisor which is not a feeder post for the post of OS. However, under the garb of review DPC, the respondent Nos.1 to 4 have promoted them to the post of OS which is in utter violation of aforesaid Recruitment Rules.

4. Pursuant to notice from this Tribunal, the respondent nos.2 to 3 have filed a reply dated 8.3.2019 on 13.3.2019. A statement has been made on behalf of the respondent No.1 on 28.11.2019 that they are only a performa party. Accordingly, no reply has been filed on their behalf. A separate reply has been filed on behalf of respondent Nos.4 to 7 on 17.7.2019.

5. This Tribunal vide Order dated 15.11.2018, as an interim measure, had ordered that promotion of the private respondent Nos.5 to 7 shall be subject to the result of the OA. A further reply on behalf of respondent



Nos.2 to 4 has since been filed on 11.2.2021. With liberty from this Tribunal, private respondent Nos.5 to 7 have filed certain documents, stated to have been obtained under RTI on 3.3.2021 and thereafter another affidavit on behalf of respondent Nos.2 to 4 has been filed on 19.4.2021. An extract of aforesaid Recruitment Rules has been filed by the applicants as Annexure A/4 to the OA and a copy of the aforesaid Recruitment Rules has been brought on record by the applicants subsequently.

6. Learned counsel for the applicants argues that once the private respondent Nos.5 to 7 have been holding the post of Hostel Supervisor, which is not a feeder post for the post of OS, neither while considering and/or granting the retrospective promotion to them vide the impugned order nor on the date of original DPC, i.e., 18.9.1992, the action of the respondents in convening the Review DPC to consider them for promotion to the post of OS and further promoting them to such post retrospectively after around 26 years, is in violation of Recruitment Rules and thus illegal, arbitrary and,



therefore, the impugned order deserves to be set aside. He further argues that granting promotion or notional promotion after 26 years of original DPC dated 18.9.1992 does not only take away legitimate expectation of the applicants but also prejudices the seniority of the applicant No.1 as well as further career progression of all the applicants.

7. Though initially learned counsel for the private respondent nos.5 to 7 has argued that the Recruitment Rules being referred to and relied upon by the learned counsels for the applicants is not notified. However, he has not pressed this argument subsequently. Moreover, learned counsel for the parties keeping in view the aforesaid Recruitment Rules placed on record have not disputed the existence of the aforesaid Recruitment Rules dated 5.9.1992 and/or the provisions thereof precisely noted hereinabove. However, the learned counsel for the respondent Nos.2 to 3 argues that before notification of the Rules of 1992, Hostel Supervisor and other categories of staff, namely, Supervisors/Caretaker/Grounds-Supervisor/Mess-Supervisor/Museum



Keeper/ Library Assistant/Junior Hindi
Translator/Assistant (Publication)/Assistant Security
Officer/Transport Supervisor etc. having pay scale of
Rs.1400-2300, pre-revised, with five years of regular
service were eligible for being considered for promotion
to the post of OS and for that purpose, a common
seniority list of all these categories of persons used to be
prepared in the order of initial date of their appointment
and was used to be considered for promotion as OS in
the year. The learned counsel for the respondent Nos.2
to 3 further submits that various persons junior to the
private respondent Nos.5 to 7 were considered by the
DPC held on 18.9.1992 and were promoted. However,
the private respondents, herein could not be considered
because of administrative lapse. He argues that these
private respondent Nos.5 to 7 have made various
representations and respondent No.7, particularly kept
on representing for his promotion since 1994, that he
has wrongly left out in preference of his junior(s) in the
matter of promotion by the DPC held on 18.9.1992.
Accordingly, the matter was got examined at various
levels in the office of respondent Nos.2 to 4, and even by



two Committees constituted by them to redresses the grievances of the private respondent Nos.5 to 7, and a decision has been taken to convene a review DPC. Accordingly, review DPC was convened on 11.9.2018 with the approval of the Director General, Sports Authority of India and on recommendations of the said review DPC, the impugned order dated 9.10.2018 (Annexure A/1) was passed. It is also contended that applicant No.1 is already working on the post of OS and the applicant Nos.2 to 4 are not eligible for promotion as OS. Besides the applicant Nos.3 and 5 are too juniors to be considered for promotion to the post of OS. The learned counsel appearing for private respondent Nos.5 to 7 further submits that the applicants have indirectly challenged the document/Memorandum dated 09/10.09.1991 vide which isolated posts were interpolated and were approved for being considered for the post of OS. He has further supported the contentions of the learned counsel appearing for respondent Nos.2 to 3 and he has also submitted that once the DPC held on 18.9.1992 could not consider the private respondent Nos.5 to 7 and thereafter juniors were considered and



promoted, the respondent Nos.2 to 4 have rightly taken a decision to convene the review DPC and after convening a review DPC on 11.9.2018, they have passed the impugned order, based on the recommendations of such review DPC. Various documents are filed with the reply, counter reply and are also brought on record by the respondents. The respondents have said to strengthen their case that prior to the aforesaid Rules, various posts were considered to be feeder posts for promotion to the post of OS and a common seniority list was being prepared and taking into consideration the common seniority list, promotions were being done. They reiterate that once the respondent Nos.5 to 7 were senior in such common seniority list and they got ignored by the DPC held in 1992, they have rightly been found entitled to be considered for promotion to the post of OS by the review DPC even after passing of 26 years thereafter.

8. Shri Avijit Singh, learned counsel appearing for respondent Nos.5 to 7 has placed reliance upon the following judgments to strengthen the defence of the respondents:-



- i. ***Nalini Kant Sinha vs. State of Bihar and others***, 1993 Supp (4) SCC 748'
- ii. ***Govt. of NCT of Delhi and others vs Shri Rakesh Beniwal and others*** in W.P.(C) No.7423/2013 decided on 04.08.2014 by the Hon'ble Delhi High Court; and
- iii. ***Balwant Singh Bisht vs Union of India and others*** in W.P. (C) No.23332/2005 decided on 14.03.2008 by the Hon'ble Delhi High Court.

With the assistance of the aforesaid judgment of the Hon'ble Supreme Court and those of the Hon'ble High Court of Delhi, learned counsel appearing for the respondent Nos.5 to 7 argues that the impugned order giving notional promotion retrospectively is in accordance with law. Learned counsel for the private respondent Nos.5 to 7 further argues that the present OA is barred by limitation.

9. *Per contra*, Shri Yogesh Sharma, learned counsel for the applicants, argues that once the aforesaid Recruitment Rules was holding the field even on the date of original DPC, i.e., on 18.9.1992, the DPC was required to be convened in accordance with the provisions



thereof. Had the DPC convened on 18.9.1992 in accordance with the extant Recruitment Rules, the private respondent Nos.5 to 7 were not in the feeder post(s) and they were not eligible to be considered for promotion and, therefore, the question of convening the review DPC on 11.9.2018 did not arise. He submits that convening of review DPC on 11.09.2018 by overlooking the extant Recruitment Rules is illegal and arbitrary and, therefore, the impugned order passed on the basis of recommendations of review DPC dated 09.10.2018 is also illegal and arbitrary and, therefore, the same deserves to be quashed and set aside.

10. We have perused the pleadings on record. We have also considered the submissions made by the learned counsels appearing for the parties.

11. It is not in dispute that a review DPC has been held by the respondent Nos.2 to 4 only on 11.9.2018 and the impugned order is dated 09.10.2018. The applicants have approached this Tribunal in November, 2018 and, therefore, the contention raised on behalf of private respondent Nos.5 to 7 that the OA is barred by limitation



is without any basis. It is worth noting that the respondent Nos.2 to 4 have considered the matter and decided to constitute a review DPC to consider the case of private respondent Nos.5 to 7 for retrospective promotion after 26 years. Moreover, the impugned order is passed in October, 2018, the applicants have challenged the order dated 9.10.2018 in November 2018 by filing the instant OA. Accordingly, argument of the Learned counsel for the respondent Nos.5 to 7 that the OA is barred by limitation is misconceived and hence has no merit.

12. Undisputed facts which are worth noting even at the cost of repetition are that the Rules of 1992, referred to hereinabove, were notified on 05.09.1992 and the original DPC was convened on 18.9.1992, meaning thereby on the date of original DPC, the aforesaid Rules of 1992 have been holding the field and as per the said Rules, only the post of Assistant is the feeder post and, therefore, the persons who are holding the post of Assistant with 5 years of service as such are eligible to be considered for promotion to the post of OS. The



respondent Nos.5 to 7 have not been appointed to the post of Assistant and they had been working as Hostel Supervisor, which is not a feeder post for the post of OS in accordance with the Rules of 1992.

13. Now the issue in the present case for consideration is as to whether on the date of DPC, the Rules of 1992 were required to be applied or the practice prevalent before the notification of the Rules of 1992. In this regard, we may refer to the law laid down by the Hon'ble Apex Court in the case of ***Deepak Agarwal and another vs. State of UP and others***, reported in 2011 (6) SCC 725, in which after considering their judgments in catena of cases their Lordships have ruled in paras 26 and 33 as under:-

“26. It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the “rule in force” on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be



considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in *Y.V. Rangaiah's* case² lays down any particular time-frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the appellants has been taken away by the amendment.”

“33. It may be that the removal of the two posts from the feeder cadre would lead to some stagnation for the officers working on the two aforesaid posts. In fact, the Government seems to recognise such a situation. It is perhaps for this reason that the posts have been upgraded to the post of Deputy Excise Commissioner. However, mere upgradation of the post may not be sufficient compensation for the officers working on the two posts for loss of opportunity to be promoted on the post of Deputy Excise Commissioner. In such circumstances, the Government may be well advised to have a relook at the promotion policy to provide some opportunity of further promotion to the officers working on these posts. With these observations, the impugned judgment is affirmed and the appeal is accordingly dismissed with no order as to costs.”

We have also considered the aforesaid judgments, referred to and relied upon by the learned counsel for private respondent Nos.5 to 7. In the case of ***Nalini Kant***



Sinha (supra), their Lordships were considering the grievances of the petitioner as to whether if the petitioner was ignored in preference to the junior(s) in the matter of promotion and subsequently he was granted promotion, whether the petitioner would be entitled for arrears of pay etc. or not. By recording in para 4 of the said judgment that a decision without constituting a precedent, their Lordships were of the view that the Govt. should accept the claim of the petitioner. Accordingly, the aforementioned Judgment of the Hon'ble Apex Court in **Nalini Kant Sinha** (supra) is of no help to the respondents. Similarly in the case of **Shri Rakesh Beniwal and others** (supra), the Hon'ble High Court of Delhi was considering the directions of this Tribunal passed vide Order dated 07.08.2013 in OA No.1459/2012 wherein this Tribunal had directed the respondents therein in the said OA to consider the applicants therein for promotion from the date on which their immediate juniors were promoted and also to grant them arrears of pay and consequential benefits. In the said case also the issue was entirely different as would



be evident from paras 26 to 29 of the Judgment which are reproduced here in below:

“26. The delay in appointment and the consequential denial of benefits is the direct corollary of the inaction of the petitioners; consequently, they cannot take advantage of their own delays in declaring results and issuing appointment letters to deny promotion to the respondents. The Supreme Court has observed in this regard in the matter of *Baij Nath Sharma v. Hon'ble Rajasthan High Court at Jodhpur*, 1988 SCC (L&S) 1754,

“But here the appellant has been deprived of his promotion without any fault of his. High Court said that it might be sad state of affairs that the name of the appellant was not considered for promotion till he retired. High Court may feel anguish but it gives no comfort to the appellant. At least for future such an unfortunate thing should not happen to any other officer similarly situated. This malaise which abysmally afflicts any service when there is recruitment from different sources when there is recruitment from different sources crops up in the one form or the other with great disadvantage of one or the other. But then service is not constituted merely for the benefit of the officers in the service but with a certain



purpose in view and in the present case for dispensing justice to the public at large.”

[emphasis added]

27. The circumstances surrounding the present matter reflect a casual and indifferent attitude on part of the petitioners, which borders on being callous. The respondents have had to, in the interregnum, not only go through the ignominy of working under their juniors, but also, despite admittedly being senior to them, still continue to draw lesser pay. In the economic scenario prevailing in the country, where prices of even essential commodities have gone skyrocketing, not from year to year or month to month, but from day to day, the respondents have had to manage his affairs with a far lower pay packet than they might have got on the promotional post.

28. This court accordingly finds no infirmity in the order of the Tribunal and directs the petitioner to consider the respondents for promotion, from the date when their immediate juniors were promoted and additionally grant them all consequential benefits and arrears of pay from that date. These directions are to be complied with, within a period of eight weeks.

29. The writ petition is disposed of in the above terms; there shall be no order as to costs.”

In the case of **Balwant Singh Bisht** (supra), the facts were that the petitioner was enrolled in Border Security



Force as Sub Inspector (General Duty)/Junior Engineer on 28.7.1988. The next promotion were to the post of Junior Engineer (Civil) Senior Grade/Inspector. The petitioner was considered for promotional post in the DPC convened on 2.1.2001. However, the recommendation of DPC was kept in sealed cover in so far as the petitioner was concerned. At that time, no inquiry was pending as no charge sheet was issued to the petitioner. Charge sheet came to be issued to the petitioner much subsequently, i.e., on 30.1.2001. A request for opening of the sealed cover was wrongly applied. In such facts and circumstances, the Hon'ble High Court of Delhi found that the petitioner was recommended for promotion by the DPC held on 6.1.2001 but his result was kept in sealed cover and subsequently the respondents therein have themselves convened a review DPC and the petitioner was not only given promotion from back date but seniority was also given to the petitioner above his juniors. Therefore, in these facts and circumstances, the Hon'ble High Court directed the respondents to pay arrears of salary to the petitioner of promotional post from 06.01.2001. In view



of these facts and circumstances, the Judgments of the Hon'ble High Court of Delhi under reference is of no help to the respondents.

14. However, in view of the law settled by the Hon'ble Supreme Court in **Deepak Agarwal** (supra), it was incumbent upon the respondents to apply the provisions of the aforesaid Recruitment Rules only on 18.9.1992, i.e., the date of original DPC and thereafter as well till the said Recruitment Rules held the field and no other instruction or practice, if any, existing prior to 18.9.1992.

15. In view of the aforesaid facts and circumstances and for the foregoing reasons, we are of the considered view that the impugned order has been passed by the respondents in violation of the provisions of the Rules of 1992, notified on 5.9.1992 and, therefore, the same is liable to be quashed. Accordingly, the impugned order dated 09.10.2018 (Annexure A/1) is quashed. The respondents are directed to consider the applicants in accordance with the provisions of the aforesaid Rules of 1992 and to pass necessary order as expeditiously as



possible and in any case within eight weeks of receipt of a copy of this Order. It is further directed that the applicants shall be entitled for all consequential benefits in accordance with rules which will flow from such order(s).

16. The OA is partly allowed in the aforesaid terms. There shall be no order as to costs.

(R.N. Singh)
Member (J)

(A. K. Bishnoi)
Member (A)

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