



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

O.A.NO. 1370 of 1988

Triveni Kumar Joshi & 6 others ... Applicants
Vs.

State of U.P. through Home Secretary,
Lucknow & others. Respondents.

27.12.1988.

Hon'ble Mr.G.S.Sharma - J.M.

Sri S.C. Budhwar for the applicants, Sri P.C. Srivastava for the U.P. State and Sri R.H.Zaidi for the respondents No.2 are present. Sri Srivastava files his reply and Sri Zaidi files objections. One intervener Sri H.P. Tripathi applies to vacate the interim order or to implead him as a party to this petition. They have been heard.

The contention made by Sri P.C.Srivastava on behalf of the state government respondent No.1 is that the re-determination of the seniority of the applicants may take some time and it may not be in the interest of the public to keep 7 posts of DIGs vacant at the risk of law and order and he gave an undertaking on behalf of the state that within the time allowed by this tribunal after the re-determination of the seniority of the applicants, the state government will consider the case of the applicants for promotion to the post of DIG and on ~~their~~ ^{their} findings ~~of~~ suitable for promotion will promote them against the existing vacancies and in case of their being no vacancy will create as many posts of DIGs as may be necessary to

accommadate them that the the necessary benefits from the date of their re-determination ⁱⁿ ~~in~~ the seniority and the interim order made by this Tribunal deserves to be vacated.

On the other hand, Sri Zaidi has contended that the petition is defective and is not maintainable in the present form. His contention is that there cannot be a joint petition for issuing mandamus and the applicants have not sought the leave of the Tribunal under the Rule 4 of the Central Administrative Tribunal (Procedure) Rules 1987 for filing a joint petition under section 19 of the Administrative Tribunal Act. He has further contended that the claim of the applicant is pre-mature and they have no legal right to get a promotion and in any case, the state government has not refused to promote them and as such this petition is not maintainable. In support of his contention, he placed his reliance on Amrit Lal Berry Vs. Collector, Central Excise AIR 1975 Supreme Court 538. The contention of the interveners is that he expects his name in the panel for promotion as DIG and the interim order is likely to delay his promotion.

Sri Budhwar has submitted that the allegations made in the petition under section 19 make out a case for filing the joint petition by the applicants and the petition was admitted by the Tribunal after due consideration ^{and} ~~of~~ hearing the applicants and ~~the~~ ^{the} permission under rule 4 may be implied in this ^{case} and it is not necessary to make a specific prayer and grant the leave for filing the joint petition. Regarding the other

(A-3)

objection ~~as~~ ~~its~~ ~~stand~~ ~~is~~ ~~bad~~
preliminary ~~petition~~ its stand is bad, the panel for
promotion as DIGs was prepared by the U.P. state
on the basis of the old seniority list of the I.P.S.
officers and as the same has been quashed by this
Tribunal and the preparation of the fresh seniority
list has been directed the panel has become illegal
and is liable to be quashed and as the juniors to the
applicants are being considered and promoted as DIGs,
it amounts to the infringement of their rights guaranteed
by Articles 14 and 16 of the Constitution and on account
of this discrimination the applicants have a right
to ~~see~~ ^{the} ~~maintainance~~ ^{in addition to} protect their fundamental
rights. His further submission is that in view of the
undertaking given on behalf of the state government
the Tribunal may pass the suitable order modifying
the interim order protecting the seniority of the
applicants in the cadre of DIGs.

After a careful consideration of the whole
matter as well as the fact that the interim order was
passed by a division Bench and I. sitting as a single
member cannot dismiss the petition, assuming that
it is not maintainable for want of permission under
Rule 4, I am of the view that this legal ~~petition~~ can
be considered at a later stage and as the applicants
complain of ^{point of} apprehend discrimination and the panel prepared on
the basis of the old seniority list of I.P.S. officers
cannot have any legal value and the state government
is prepared to safe-guard the interests of the applicants

and it is not in public interest and otherwise expedient to keep a number of post, of senior police officers ~~—~~ vacant, I direct that the U.P.state respondent No. 1 shall consider the applicants for promotion as DIG and on being found fit for promotion shall promote them within a month from the date of ~~the redetermination of their~~ ^{the} seniority, ~~re-determin~~ by the Union of India by creating new post, or otherwise ^{and other benefits} and shall give them their due seniority in the new cadre and the promotions of the non applicants made by the UP state in future and their seniority vis-a-vis the applicants shall be subject to the decision of this petition. The interim order dated 13.12.88 is modified accordingly.

Dated: December 27, 1988.

Subhash
MEMBER (J)

Subhash
OIR estm w/

गोपनीय अमिताभ चौहानी द्वारा दिल्ली
राज्य न्यायालय न्यायालय द्वारा दिल्ली द्वारा
दिल्ली 6.1.89