

In the Central Administrative Tribunal,

Patna Bench : Patna.

Date of Decision:- 11.12.2001

Registration No. OA-334 of 1996

Maheshwari Singh, Son of Late Ram Lekhan Singh,
Assistant Sub- Inspector of Police, C.B.I. Office,
Dr. S.K.Sinha Path, Baily Road, Patna-1 and
presently residing at M.I.G. 6 MF-7/231, Bahadurpur
Housing Colony, P.S. Agamkuan in the town and
district Patna.

... Applicant

- By Shri M.N.Ray, Advocate

versus

1. Union of India through Secretary, Department of Personnel & Training and Pension, Central Secretariat, New Delhi.
2. Director, Central Bureau of Investigation, Special Police Establishment, Lodi Complex, New Delhi.
3. Sri Ram Pujan Tiwari, Sub-Inspector of Police, C.B.I. Office, 7/2 Karmik Bhawan, P.O. I.S.M., Dhanbad.
4. Sri B.K. Naskar, Sub-Inspector of Police, C.B.I., A.C.B. Office, Nizamplace MCO Building, 234/4, 15th Floor, A.J.C. Bose Road, Calcutta-700020.
5. Sri N.C.Dutta, Sub-Inspector of Police, C.B.I., A.C.B. Office, Nizam Place, M.C.O. Building, 234/4, 15th floor A.J.C. Bose, Road, Calcutta-70020.
6. Sri Bhagwan Singh, Sub-Inspector of Police, C.B.I. Office, A.C.B., Dr. S.K.Sinha Path, Bailey Road, Patna-1.
7. Sri B.N.Singh, Sub-Inspector of Police, C.B.I. Office, 2 Booty Road, Ranchi.

8. Sri Sapan Banerjee, Sub-Inspector of Police
C.B.I., A.C.B. Office, Nizam place M.C.O. Building,
234/4, 15th floor, A.J.C. Bose Road, Calcutta-700020.
9. Sri Dalip Chakravarty, Sub-Inspector of Police,
C.B.I., A.C.B. Office, Nizam place M.C.O. Building,
234/4 15th floor, A.J.C. Bose Road, Calcutta-700020.
10. Sri Siri Parashad Sub Inspector of Police, C.B.I.
Office, Block No.4, C.G.O. Complex, Lodi Road,
New Delhi-110003.
11. Sri D.K.Banerjee, Sub-Inspector of Police C.B.I.,
A.C.B. Office, Nizam Place M.C.O. Building,
234/4, 15th floor, A.J.C. Bose Road, Calcutta-700020.
12. Sri Mahesh Chand Gupta Sub Inspector of Police,
C.B.I. Office, C.G.O. Complex, Lodi Road, New
Delhi-110003.

..... Respondents

- By Shri G.K.Agarwal, Additional Standing Counsel

Coram:- Hon'ble Shri Lakshman Jha, Member (Judicial)
Hon'ble Shri L. Hmingliana, Member (Administrative)

O R D E R

Hon'ble Shri Lakshman Jha, Member (J):

1. The applicant has prayed for a direction to the Respondents to promote him to the post of Assistant Sub-Inspector of Police/Sub-Inspector of Police from the date of the promotions of his Juniors with all consequential benefits of service.
2. The applicant was appointed as a Foot Constable in the Special Police Establishment, Patna Branch by the Superintendent of Police on 25.6.66 vide Annexure-A-1. He appeared in the departmental

Examination for the purpose of promotions in the higher rank of Head Constable in the year 1979, but he was promoted as Head Constable on 8.8.88.

The administration later on issued a letter on 27.9.91 promoting him as Head Constable with effect from 29.11.80. However, his pay was fixed in the rank of Head Constable with effect from 27.2.91 and he was not given arrears of pay and allowances (Annexure A-2). It is, therefore, stated that the applicant should have been promoted as Head Constable with effect from 17.12.79 when his juniors had been promoted after passing the Examination on 17.12.79. Some Juniors were further promoted as Assistant Sub-Inspectors earlier than the applicant ignoring his claim. The applicant was promoted along with four others to officiate as Assistant Sub-Inspector of Police vide Office Order No.393/93 dated 11.3.93 without reckoning the seniority of the applicant from the date of appointment. The Respondent No.8, S. Banerjee, who appeared in the aforesaid examination held in 1979, was senior to D. Chakravorty, Respondent No.9. Shri Banerjee was promoted as Head Constable in 1988 whereas Shri Chakravorty was promoted in the year 1979. Shri Banerjee challenged the decision in the Central Administrative Tribunal, Calcutta Bench and his prayer for promotion as Head Constable from December, 1979 ^{was allowed} when his juniors had been promoted with all

consequential benefits. The case of the applicant also stands on the same footing. It is stated that the private respondents are juniors to the applicant. The name of the applicant appears at Sl. No. 148, whereas, names of private respondents appear at Sl. Nos. 204, 210, 255, 291, 311, 327, 329, 357, 504 and 545 vide Annexure-A-4. The applicant filed representation before the Director, C.B.I. on 23.1.95 with a request for promotion in the rank of Sub Inspector of Police from the date of his juniors were promoted, but of no avail. It is further stated that the Departmental Examination for promotion to the post of Head Constable was held in the years 1979 and 1980 and the Departmental Examination for promotion to the rank of Assistant Sub Inspector of Police was held in the year 1987. Since after 1987 Examination for promotions to either aforesaid ranks was not held. Thus, the applicant should have been promoted to the rank of Assistant Sub-Inspector of Police and Sub-Inspector of Police from the dates his juniors were promoted. The applicant should not have suffered due to mistake of the department in not giving him promotion in the year 1979. Hence, the prayer for reliefs as stated above.

APL
3. The respondents have resisted the claim of the applicant. It is stated that the seniority of the applicant was governed in accordance with MHA Office Memorandum No. 9/11/55-AFS dated 22nd December, 1959 as at Annexure-R-1. According to which, seniority would follow the order of confirmation and not the order of

appointment. It is further stated that the applicant appeared in the departmental qualifying examination for promotion to the rank of Head Constable in the year 1979, but he promoted in the rank of Head Constable as he had not been confirmed in the rank of Constable w.e.f. 16.11.79, whereas Juniors to him had already confirmed in the rank of Constable earlier. The applicant was promoted to the rank of Head Constable in the year 1988. Subsequently, in pursuance of the Hon'ble Supreme Court's judgment in the case of Chandpal, a review DPC was held, by which he was found fit for promotion to the rank of Head Constable with effect from 29.11.80. He was also held as confirmed in the rank of Constable with effect from 14.6.69. However, he was not paid his arrear of pay and allowances on his retrospective promotion. He was allowed only notional pay fixation benefit. Thus, it is said that the seniority of the applicant could not be reckoned from the date of appointment as claimed by him. It is not denied that Sapan Banerjee, who was promoted to the rank of Head Constable after the applicant, was promoted to the rank of Head Constable but it was done so pursuant to the direction of Hon'ble Calcutta Bench of the CAT as at Annexure-R-4. The post of Head Constable was selection post before 1980 and it was made non-selection post thereafter. The applicant was promoted to the rank of Head Constable, with effect from 29.11.1980. The applicant will be considered for promotion to the rank of Sub-Inspector of Police on his turn.

for the applicant and Shri G.K.Agrawal, learned Additional Standing Counsel for the respondents and perused the record.

5. It is admitted position that the private Respondents were juniors to the applicant in the initial grade of Constable. It is also admitted position that the applicant was promoted ~~retrospectively~~ in the rank of Head Constable with effect from 29.11.80 vide Headquarters letter dated 20.11.91. He was promoted to the rank of Assistant Sub Inspector with effect from 6.4.93, as ~~is~~ apparent from Annexure-A-5. ^{is} some of the juniors, namely, Bhagwan Singh and Sapan Banerjee, were promoted to the rank of ASI in the year 1987. It is the contention of the learned counsel for the respondents that the aforesaid juniors to the applicant had already been confirmed in the rank of Constable before the confirmation of the applicant in the rank of Constable, and, therefore, in term of Recruitment Rules of 1959, he could not be promoted to the rank of Head Constable earlier than the aforesaid Juniors. Subsequently, post of Head Constable was made non-selection. Then he was retrospectively promoted with the benefit of notional pay fixation. The learned counsel for the Respondents further contended that the administration did not commit any mistake and only followed the Rules of seniority as it was applicable at the relevant time. He further contended that the applicant was promoted to the rank of A.S.I. on 6.4.93 and he has filed this O.A. with the prayer for promotion to the rank of A.S.I. and S.I. retrospectively from the date his juniors were promoted in the years 1987 and 1992 respectively. He filed

a representation as at Annexure-A-5 on 23.1.95, for promotion to the rank of Sub-Inspector which could not be disposed of. In other words, he ~~has~~ not been filed representation for promotion to the rank of ASI retrospectively. Therefore, the application so far with prayer for promotion to the rank of A.S.I. is concerned, it is hit by limitation. Moreover, it is bound to unsettle the settled things. The contention of the learned counsel for the respondents appears quite sound and appropriate and we do not ^{feel} inclined to interfere with the order of promotion to the rank of ASI already given to the applicant on 6.4.93.

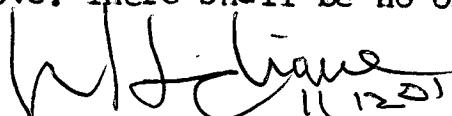
6. So far the prayer for promotion to the rank of S.I. is concerned, it is admitted position that juniors to the applicant were promoted in the year 1992 and the applicant has not been promoted to the rank of S.I. till date. It is also admitted position that the applicant has already been confirmed in the rank of Constable with effect from 14.6.1969, against the earlier order of confirmation with effect from 16.11.79. It is also admitted that the post of Head Constable, the feeder grade, was made non-selection post since after 1980. It is by now settled position of law that the date of appointment and not the date of confirmation governs the seniority of the incumbent concerned. The decision of the Hon'ble Supreme Court in G. Ganga Rasnina Vs. A. Narayan Swami & Others as reported in (1994) 28 ATC page 102 may be referred to. Therefore, we find no impediment in the way of promotion of the applicant to the rank of Sub-Inspector of Police with effect from the date his juniors were promoted, Particularly, in

8.

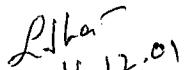
the light of judgment of the Hon'ble Supreme Court in Chandrapal's case, and also, in the light of decision of the Kolkata Bench of the C.A.T. in OA-192/89 (Sapan Banerjee Versus the Union of India and Others) as at Annexure-R-4.

7. In view of the aforesaid discussions we find and hold that the applicant is entitled for consideration ~~for~~ promotion in the rank of S.I. with effect from the date his juniors were promoted with consequential benefits, and, accordingly, we direct the Respondents to dispose of the Representation of the applicant as at Annexure-A-5 by means of a speaking order within a period of three months from the date of communication of this order in the light of the observations made above. There shall be no order as to costs.

SKS


11.12.01

(L. Hmingliana)
Member (A)


11.12.01

(Lakshman Jha)
Member (J)