

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 115 of 2001.

Dated this Wednesday, the 18th day of July, 2001.

J. M. Rathod, Applicant.

Shri Shivramakrishnan alongwith Advocate for the
Shri I. J. Naik, Applicant.

VERSUS

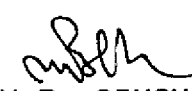
Union of India & Others, Respondents.

Shri V. S. Masurkar, Advocate for the
Respondents No. 1 to 3.

Shri A. I. Bhatkar, Advocate for
Respondent No. 4

CORAM : Hon'ble Shri Justice B. Dikshit, Vice-Chairman.
Hon'ble Shri M. P. Singh, Member (A).

- (i) To be referred to the Reporter or not ? YES
- (ii) Whether it needs to be circulated to other —
Benches of the Tribunal ?
- (iii) Library. YES


(M.P. SINGH)
MEMBER (A).

OS*

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J. M. Rathod,
Police Inspector,
Police Station,
P.O. Silvassa,
Pin - 396 230.

... Applicant.

(By Advocate Shri Shivramakrishnan
alongwith Shri I. J. Naik)

VERSUS

1. Union of India through
The Secretary,
Ministry of Home Affairs,
Central Secretariat,
North Block,
New Delhi.
2. The Administrator,
Union Territory of Dadra
& Nagar Haveli,
Circuit House,
P.O. Silvassa,
Pin Code - 396 230.
3. The Asstt. Inspector,
General of Police,
Union Territory of Dadra
& Nagar Haveli, Circuit House,
P.O. Silvassa,
Pin Code - 396 230.
4. Shri M. R. Rohit,
Police Sub Inspector,
U.T. of Dadra & Nagar
Haveli, P.O. Silvassa,
Pin Code - 396 230.

... Respondents.

(By Advocate Shri V.S. Masurkar for
Respondent Nos. 1 to 3.
By Advocate Shri A. I. Bhatkar for
Respondent No. 4).



O R D E R (ORAL)

PER : Shri M. P. Singh, Member (A).

The Applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, challenging the Office Memorandum dated 21.12.1998 (Annexure A-1) showing the applicant at Sl. No. 2 in the final seniority list of Police Sub-Inspectors.

2. The brief facts, as stated by the Applicant, are that he has been serving as a Police Inspector w.e.f. 11.03.1998. Respondent No. 2 published the final seniority list of Police Sub-Inspectors dated 21.12.1998 showing the name of the Applicant at Sl. No. 2 and the name of Respondent No. 4 at Sl No. 1. According to him, the name of Respondent No. 4 was not at all reflected in the provisional seniority list dated 16.09.1997. Since the seniority of the applicant has been depressed, he submitted a representation against erroneous fixation of seniority. According to him, the then Assistant I.G.P. was satisfied with the contents of his representation and had assured him that the mistake or error in the final seniority list will be rectified. Hence, the applicant did not come before the Tribunal with his grievance. However, the said Assistant I.G.P. has now been transferred and the Applicant finds that without approaching the Tribunal the said grievance will not be redressed. The Applicant is, therefore, before us by filing this O.A. and praying for a direction to the Respondents to withdraw and cancel the impugned final seniority list dated 21.12.1998 (Annexure A-1)



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and has also sought direction to continue his name ² ~~the~~ Applicant at Sl. No. 1 in the aforesaid seniority list.

3. The Official Respondent Nos. 1 to 3 have contested the case by stating that the Applicant has been shown at Sl. No. 2, due to the fact that the Respondent No. 4, namely - M. R. Rohit, has been regularised in the grade of Police Sub-Inspector with retrospective effect from 1985. The name of Respondent No. 4 was not included in the provisional seniority list as at that point of time he was serving as an Assistant Sub-Inspector and while publishing the final seniority list, Shri M.R. Rohit (Respondent No. 4) was promoted vide order dated 23.07.1998 as Police Sub-Inspector notionally giving the retrospective effect from 1985. Hence, his name was included in the final seniority list at sl. no. 1. According to the official Respondents, one vacancy for the post of Police Sub-Inspector was reserved for Scheduled Caste candidate and the said Shri Rohit was coming under the zone of consideration but due to adverse remarks in the Annual Confidential Report, the said Shri Rohit was not considered for promotion and the vacancy reserved for S.C. candidate was exchanged with S.T. candidate and one Shri C. G. Patel, who belonged to S.T. was promoted to the post of Sub-Inspector w.e.f. 1985. Shri C.G. Patel subsequently died in the year 1997. Respondent No. 4 had represented against his non-promotion from the year 1985. Accordingly, a Review D.P.C.



was held to consider his case. The Review D.P.C. has recommended the appointment of Respondent No. 4 as Police Sub-Inspector and consequently he was appointed to the grade of Sub-Inspector w.e.f. 1985. Hence, in view of the above submissions, the O.A. is devoid of merit and therefore be dismissed.

4. Respondent No. 4 has also filed a reply on similar lines and has stated that Applicant was promoted as Police Sub-Inspector w.e.f. 25.03.1987. According to him, one Mr. C.G. Patel, belonging to S.T. Community was promoted as Police Sub-Inspector w.e.f. 21.03.1985 against a vacancy reserved for S.C. candidate. In fact, he (Respondent No. 4) belongs to S.C. Community and ought to have been promoted against the vacancy reserved for S.C. community in place of Shri C.G. Patel. He made certain representations to the authorities concerned. However, nothing materialised and, therefore, he filed an O.A. No. 64 of 1991. In that O.A. he impleaded the present applicant and also C.G. Patel as Respondents in addition to the official respondents. However, the O.A. was withdrawn by him on a promise given by the official respondents to promote him to the post of Police Sub-Inspector. He has further stated that the Respondents had convened a Review D.P.C. and his case for promotion to the post of Police Sub-Inspector against a reserved vacancy for S.C. w.e.f. 21.03.1985 was considered and he was promoted to the post w.e.f. the date Shri C.G. Patel, (Scheduled Tribe) was promoted, i.e. on 21.03.1985 vide order dated



23.07.1998. In view of this promotion order, he has been placed at sl. no. 1 in the seniority list of Police Sub-Inspector as on 01.01.1997 circulated vide O.M. dated 21.12.1998. In view of the aforesaid submission, the O.A. filed by the Applicant be rejected.

5. Heard the Learned Counsel appearing on both sides on the rival contentions and perused the records.

6. During the course of argument, the Learned Counsel for the Applicant stated that Respondent No. 4 was not promoted as Police Sub-Inspector vide order dated 09.07.1991. In fact, this order of 09.07.1991 was not an order of promotion in his parent cadre at Dadra & Nagar Haveli. It was a deputation of the Respondent No. 4 with the Union Territory of Daman & Diu, as the Applicant had volunteered himself to proceed on deputation. In his parent cadre he continued only as Assistant Sub-Inspector during the deputation period, which lasted till 1995. Respondent No. 4 was not promoted as Police Sub-Inspector in the Dadra & Nagar Haveli till 23.07.1998 and the aforesaid order was not communicated to the applicant and, therefore, the applicant could not challenge this order. He also submitted that Respondent No. 4 was considered for promotion as P.S.I. both by D.P.C. of 1985 and the D.P.C. of 1987 and could not be promoted. He therefore cannot be allowed to claim promotion as Police Sub-Inspector from 1985 when he never challenged the promotions made in 1985 and 1987 in time. According to him, Respondent No. 4 has relied on



interlocutory order dated 14.02.1996 and 07.08.1996 of the Tribunal in O.A. No. 1053/95 and has deliberately suppressed the final order in this O.A. passed on 27.07.2000. The interlocutory order cannot be relied upon, as they are superseded by the final order. The Learned Counsel for the Applicant further submitted that the vacancy for the post of Sub-Inspector reserved for S.C. in 1985 was a single vacancy and, therefore, could have been treated as unreserved. Even assuming that it was reserved for S.C., the same was exchangeable with S.T. as provided under the relevant rules. Since Shri C.G. Patel was recommended and promoted against the only available single vacancy of Police Sub-Inspector, which arose in 1985, the Applicant could not have been promoted retrospectively w.e.f. 1985, as no other vacancy was available at the relevant point of time. Moreover, when the provisional seniority list of Police Sub-Inspector was issued on 16.09.1997, the name of Respondent No. 4 did not figure at all in the list. It was only in the final list which was issued in December, 1998 that the name of Respondent No. 4 was shown at sl. no. 1. According to him, this is not permissible under the Rules, as the respondents are required to give an opportunity of hearing to the Applicant before depressing his seniority in the final seniority list. He also submitted that the Respondents should have published another revised provisional seniority list before finalising the same. Since the applicant has not been given an opportunity of hearing before finalising the seniority list of 16.09.1997, the same should be quashed and set aside by the Tribunal.



7. The learned Counsel for the Respondents, on the other hand, submitted that the Applicant in his application has not challenged the promotion order dated 23.07.1998 by which Respondent No. 4 has been promoted to the post of Sub-Inspector from retrospective effect i.e. from 21.03.1985. It is because of this promotion to the grade of Sub-Inspector from retrospective effect that he has been shown senior to the applicant in the said seniority list. The applicant has only challenged the seniority list which was issued on 21.12.1998. The Learned Counsel for the Respondents also produced the original record relating to the representation submitted by the Applicant with regard to the seniority list. He stated that the representation of the Applicant has been duly considered in consultation with the Law Department and the same has been rejected. However, the applicant somehow has not been informed about the decision taken by the Respondents.


8. We have perused the original record relating to the preparation of the final seniority list and on perusal of the record we find that the Respondent No. 4 has been promoted from retrospective effect from 1985, as a result of which he has been assigned due seniority in the grade of Sub-Inspector w.e.f. 21.03.1985 and has therefore been shown senior to the Applicant, who was promoted to the grade of Sub-Inspector in the year 1987. The proceedings of the review D.P.C. could not be produced by the Learned Counsel for the respondents as these were not available




with him. In any case, these are not under challenge in the present O.A. We are satisfied that the review D.P.C. has been held by the respondents in accordance with rules, instructions and prescribed procedure. Moreover, the contention of the applicant that he has not been informed about the order promoting Respondent No. 4 from retrospective date cannot be accepted, as the aforesaid fact has been stated by the applicant in his pleadings. Moreover, while issuing the final seniority list, the official respondents have stated in the remarks column that respondent no. 4 is assigned seniority as his case has been regularised vide order dated 23.07.1998.

9. After hearing the Learned Counsel appearing on both sides and after careful consideration of the material placed before us, we find that Respondent No. 4 has correctly been assigned seniority in the grade of Sub-Inspector w.e.f. 21.03.1985 as he has been promoted in the said grade w.e.f. 21.03.1985 on the recommendation of a review D.P.C. held for this purpose. We do not find any contravention of the rules and procedure adopted by the Respondents in holding a Review D.P.C.

10. For the reasons stated above, the O.A. is dismissed as devoid of merit with no order as to costs.


(M.P. SINGH)
MEMBER (A).


(B. DIKSHIT)
VICE-CHAIRMAN.