

(12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.112/95

Date of order: 18.2.1997

Harish Chandra Sharma : Applicant

Vs.

1. Union of India through Secretary, Ministry of Home, Govt. of India, New Delhi.
2. State of Rajasthan through Secretary, Department of Personnel, Govt. of Rajasthan, Secretariat, Jaipur.
3. Union Public Service Commission through Secretary, Dholpur House, Shahjaha Road, New Delhi.
4. Shri B.R.Suri, DIG, CID (Intelligence), Police Headquarter, Jaipur.

... Respondents.

None Present for the applicant.

Mr.U.D.Sharma, Counsel for respondent No.2

None for other respondents.

CORAM:

Hon'ble Mr.Gopal Krishna, Vice Chairman

Hon'ble Mr.O.P.Sharma, Administrative Member.

PEP HON'BLE MR.O.P.SHARMA, ADMINISTRATIVE MEMBER.

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Harish Chandra Sharma, has prayed that the respondents may be directed to produce the entire record pertaining to selection made in the IPS (Indian Police Service) from RPS (Rajasthan Police Service) in relation to the years of 1980 and onwards till 1987. His further prayer is that the respondents may be directed to issue an order for changing the date of the promotion of the applicant to IPS and his year of allotment in the IPS from 1981 to 1978. He has sought yet another direction to the respondents to issue an order to the effect that the applicant is senior to Shri B.R.Suri, respondent No.4, in the seniority list of IPS.

2. The applicant's case is that he was appointed to RPS

9

against direct recruitment quota in the year 1961 and he joined the service on 23.9.1961. He was given promotion to the senior scale in 1973 and given Selection Grade in 1984. Grant of Selection Grade was considered as a promotion by the respondents while in fact this is not a promotion but only amounts to granting of a higher pay scale. One Shri Fateh Chand Soni filed a Writ Petition before the Rajasthan High Court, No.3939/91, Fateh Chand Soni Vs. The State of Rajasthan, which was decided on 21.8.1993, The Rajasthan High Court held that grant of Selection Grade in the RPS is not a promotion. The seniority list prepared earlier on 30.6.90 on the assumption that Selection Grade was a promotion, was set aside by the High Court with a direction to prepare a new seniority list. Accordingly, fresh seniority list was issued on 29.6.94 (Annex. A1), reflecting the position as it existed on 1.1.1978 in respect of officers in the RPS, who were in the senior scale. In this seniority list the applicant is shown as senior to Shri B.R.Suri, respondent No.4, whereas name of Shri Pukhraj Sirvi does not find at all in the list. Subsequently this seniority list was modified but in both the seniority lists the name of the applicant appears above Shri B.R.Suri whereas Shri Pukhraj Sirvi's name does not appear in the said list. In yet another seniority list issued on 1.1.1983, both S/Shri Suri and Sirvi who were shown as junior to the applicant, although earlier both these officers had been placed above the applicant in the seniority list of officers to whom Selection Grade have been granted. Thus the position now is that both these officers are junior to the applicant as per the revised seniority list issued by the respondents. S/Shri Suri and Sirvi were granted promotion to the IPS under the IPS (Appointment by Promotion) Regulations, 1955, in 1984 and 1986 respectively whereas the applicant was appointed to the IPS in the year 1988. Since S/Shri Suri and Sirvi were appointed to the IPS earlier, they

9

have been placed above the applicant in the seniority list of IPS officers and have also been assigned an earlier year of allotment to the IPS. In the aforesaid judgment dated 21.8.93, the High Court had directed that those who have been made to suffer the loss of seniority by wrong interpretation of the Rules shall be entitled to all consequential benefits for the purpose of promotion. It was, therefore, incumbent upon the State of Rajasthan, respondent No.2, to make a request to the Govt. of India to convene a review DPC to consider the names of eligible officers whose seniority has been revised upwards on the basis of the judgment of the Rajasthan High Court. Therefore, the applicant is entitled to promotion to IPS prior to S/Shri Suri and Sirvi, who have become junior to the applicant in the revised seniority list, prepared in accordance with the judgment of the Rajasthan High Court. The applicant's representation to the respondents for change of his year of allotment to the IPS has however been of no avail. The applicant's case is that he cannot be made to suffer on account of an illegality committed by the State Government in granting higher seniority to S/Shri Suri and Sirvi.

3. Respondents Nos.1 and 3 i.e. the Union of India and the Union Public Service Commission, had conveyed through the counsel for respondent No.2, the State of Rajasthan that they did not intend to file a separate reply. Hence no reply has been filed on their behalf. Respondent No.2, the State of Rajasthan in its reply have stated that the judgment of the Rajasthan High Court in the case of Fateh Chand Soni, has been reversed by the Hon'ble Supreme Court, in the State of Rajasthan Vs. Fateh Chand Soni, reported at 1996(1) SLR 1. It has, therefore, been added in the reply that the O.A has become infructuous. In view of the judgment of the Hon'ble Supreme Court, the revised seniority lists prepared by the State of Rajasthan granting higher seniority to the applicant have

*Ans.*

become inoperative and have therefore no relevance. S/Shri Suri and Sirvi were granted Selection Grade in RPS on 16.12.81 whereas the applicant was granted the said Selection Grade in RPS in 1984 and therefore, S/Shri Suri and Sirvi were senior to the applicant. Therefore, S/Shri Suri and Sirvi were properly appointed to the IPS on the basis of the earlier seniority list of RPS officers which was operative at the relevant time. Therefore, the directions of the Rajasthan High Court on which the applicant has relied for seeking consequential relief for promotion, etc, do not survive any longer.

4. None is present on behalf of the applicant. On 30.1.97, Shri P.P.Mathur, Advocate, was present as brief-holder for Mr.R.N.Mathur, counsel for the applicant and at the request of the brief-holder for counsel for the applicant and the counsel for the State of Rajasthan, the case was listed for final disposal at the stage of direction, to day.

5. We have heard the learned counsel for respondent No.2, the State of Rajasthan and have perused the material on record as also the judgment of the Hon'ble Supreme Court in the case of Fateh Chand Soni. In Fateh Chand Soni's /the Hon'ble Supreme Court has held, reversing the view taken earlier by the Rajasthan High Court that grant of Selection Grade in RPS is not a promotion. The applicant was granted Selection Grade on a date later than S/Shri Suri and Sirvi. Therefore, since grant of Selection Grade has been held to be a promotion from the senior scale, the person granted Selection Grade earlier will naturally rank senior to the one who has been granted Selection Grade on a later date. In view of this position, S/Shri Suri and Sirvi, would rank senior to the applicant in the RPS and therefore, if they have been granted promotion to the IPS earlier, then this has been done in accordance with their seniority position. The applicant's ground of challenge to grant of promotion to the IPS to S/Shri Suri and Sirvi,

Q

earlier is based on the ground that the applicant was senior to these officers in the RPS. Since this is not the position, in view of the judgment of the Hon'ble Supreme Court in Fateh Chand Soni case, the applicant's challenge to grant of promotion to S/Shri Suri and Sirvi earlier than the applicant fails.

6. In the circumstances the O.A is dismissed. No order as to costs.

(O.P.Sharma)

Administrative Member.

(Gopal Krishna)

Vice Chairman.