

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**CP No-173/2017 in
OA No-1281/2000
MA No-963/2017
MA No-2566/2019
MA No-3660/2017
MA No-4356/2017**

New Delhi, this the 22nd day of August, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

1. Sudhanshu Kumar Khare,
SP/CBI/ACB/Ranchi
Aged about 45 years
S/o late Sh. M.L. Khare
R/o House No. 1, Booty Road,
Dindayal Nagar, Ranchi.
2. Vivek Priyadarshi,
Aged about 44 years,
SP/CBI/Vyapam/Bhopal
S/o Sh. C.B. Arya
R/o E 504, DJA Apartments
Plot No. 1A, Sector 13
Dwarka, New Delhi.
3. Nirbhay Kumar,
Aged about 44 years
SP/CBI/EO-II/New Delhi
S/o Sh. S.V. Saxena
R/o 816, Gaur Valerio
Indirapuram, Ghaziabad. Petitioners

(through Sh. A.K. Behera with Sh. Aditya Singla, Ms. Supriya Juneja and Ms. Cheshta Jetly)

Versus

1. Sh. Bhanu Pratap Sharma,
Secretary, DoPT
Ministry of Personnel, Public grievances and
Pensions, Govt. of India.
2. Sh. B.V. Purshottam
Dy. Secretary DoPT
Ministry of Personnel, Public Grievances and
Pensions, Govt. of India.
3. Sh. David R Syiemlieh
Chairman
Union Public Service Commission
Dholpur House, Shahjahan Road
New Delhi, Delhi-110069. Respondents
(through Sh. Hanu Bhaskar and Sh. Gyanendra Singh
for R. No. 1 and 2 and Sh. Naresh Kaushik with Ms.
Akshita Rao for R. No. 3)

ORDER(ORAL)

Mr. Justice L. Narasimha Reddy

The litigation pertaining to seniority for the post of DSP in the CBI which started exactly twenty years ago, is yet to reach finality. Though the issue was otherwise simple, it took various turns, and the result is that the grievance of the officers, who filed the case in the year 1999 still remains. A comment is also made to the effect that the petitioners would have been in a better position, had they not filed this OA.

2. For the post of DSP in the CBI, the appointment is through direct recruitment as well as promotion. The petitioners herein are the directly recruited DSPs. Final seniority list for the post was published on 06.08.1999. The applicants felt that they have been placed below the promotees, contrary to the relevant provisions of law. Accordingly, they filed OA No. 1281/2000 before this Tribunal. The respondents pleaded *inter alia* that they have power to relax the conditions and accordingly the impugned seniority list cannot be found fault with. The OA was dismissed on 28.01.2002. The applicants filed WP(C) No. 1823/2002 before the Hon'ble High Court of Delhi. It is stated that the respondents were not able to present or produce the rules, enabling them to relax the conditions. Taking the same into account, the High Court allowed the WP(C) No. 1823/2002 through its order dated 27.05.2009 and remanded the matter for fresh consideration.

3. After remand, the case was heard and the Tribunal allowed the OA through judgment dated 01.07.2010. Final seniority list dated 06.08.1999 was set aside and direction was issued to the respondents to prepare a fresh list, in accordance with the

guidelines issued therein. It is stated that the applicants have been promoted to the post of Additional SP in the year 2006.

4. The Union of India, on the one hand, and the contesting private respondents on the other, filed WP No.(C) 7370/2010 and 7371/2010 before the Hon'ble High Court of Delhi challenging the order passed in the OA. Initially, the order passed in the OA was stayed on 01.11.2010. Thereafter, the Writ Petitions were allowed on 17.11.2014, setting aside the order passed in the OA. The applicants filed Review Petition No. 561/2014 and batch. Through an order dated 22.05.2015, the Hon'ble High Court allowed the Review Petition, mainly based upon the judgment of the Hon'ble Supreme Court in the case of ***Union of India vs. N.R. Parmar***, (2012) 13 SCC 340 and the result was that the Writ Petition was disposed of directing that the Union of India shall undertake the review, in the context of preparing the seniority list, by following the principle of rotation and other principles indicated therein.

5. The order passed by the Hon'ble High Court attained finality. The administration of the CBI is said to have appointed a committee of senior officers to take steps for implementation of the order passed by the Hon'ble High Court. A draft seniority

list was published on 23.09.2016. On a consideration of the representation received and response thereto, a final list was published on 07.11.2016. It is stated that review DPCs were also convened for promoting the DSPs to Additional SPs as a sequel to the seniority list dated 07.11.2016.

6. However, shortly thereafter, the respondents started taking steps, exactly in the opposite direction. A revised seniority list dated 17.11.2017 was published in supersession of the one, dated 07.11.2016. The petitioners initially filed contempt case no. 182/2017 before the Hon'ble High Court of Delhi alleging that the various steps taken by the respondents constitute contempt of the orders passed in the Review Petitions. Through an order dated 02.03.2017, the Hon'ble High Court directed that the proper course would be to file a contempt case before this Tribunal, since the order passed in the review is traceable to the one passed in the OA. Accordingly, the present contempt petition is filed.

7. The petitioners contend that after a prolonged litigation, a final seniority list dated 07.11.2016 was published and not a single representation was received taking any exception to it, let alone it being challenged in any forum. It is contended that

when the seniority list had received finality, the respondents were expected to take other consequential steps but they surprisingly took a U-turn and came forward with the seniority list dated 17.11.2017. The petitioners contend that these acts and omissions on the part of the respondents amount to contempt of the court.

8. The respondents have filed separate counter affidavits. The actual contest is on behalf of the CBI itself. According to them, the list of eligible officers for promotion to the post of Additional SP to SP, based on seniority list dated 07.11.2016, was forwarded to UPSC and the latter in turn has taken exception to the same vide their communication dated 25.07.2017. It is also stated that though reply was issued by the CBI on 02.08.2017, the DoP&T communicated that the stand taken by the CBI in its letter dated 02.08.2017 is not correct and accordingly, it was decided to revisit the seniority list dated 07.11.2016 and to publish a fresh one in accordance with the observations made by the Hon'ble High Court.

9. It is stated that the seniority list dated 17.11.2017 was withdrawn through an order dated 17.11.2017 and that on the same day, another list was published. It is also pleaded that if

the applicants are aggrieved, they have to institute separate proceedings challenging the order dated 17.11.2017 and that it cannot be stated that there was any contempt, on the part of the respondents.

10. We heard Sh. A.K. Behera, learned counsel for the applicants and Sh. Hanu Bhaskar, Sh. Gyanendra Singh, learned counsel for respondent nos. 1 and 2 and Sh. Naresh Kaushik, for respondent no. 3.

11. It is rather unfortunate that in a prestigious organisation like the CBI, a simple matter like seniority should take so many turns and the matter should remain in the state of uncertainty for a period of two decades. This does not augur well for any organisation.

12. After taking several turns, the litigation pertaining to the seniority in the post of DSP assumed finality with the publication of seniority list dated 07.11.2016. It is important to note that this was preceded by provisional list and the various objections raised with reference to that were considered. Another aspect is that the persons, who can be said to be aggrieved, are stated to be no more in service. In such a case, it

would have been an easy task for the CBI to ensure that the issue is given a quietus.

13. The seniority list dated 07.11.2016 assumed finality, in the sense, that it was not challenged before any Court or Tribunal. On the other hand, it was acted upon by conducting more than one review DPCs. The respondents have prepared the list of eligible officers for further promotion to the post of SPs and forwarded it to the UPSC. In their communication dated 25.07.2017, the UPSC observed as under:

“I am directed to refer to your letter No. 230/19/2015-AVD-II dated 23rd June, 2017 on the subject mentioned above and to say that the Penalty Statement furnished by the CBI is not in order as the penalty statement has been provided only for the vacancy year in which they are to be included visa-vis to their juniors(promote). As per the Note for DPC if any officer is not found fit for a year, he may be considered for the subsequent years as requested by the Department. Therefore, the Penalty Statement for all the subsequent years for which the RDPC is to be convened is required. Similarly, the Vigilance Clearance Certificate furnished by the Department in respect of these 18 officers has been given only for the relevant vacancy year to which they are to be included visa-vis to their juniors. Therefore, the information furnished by the Department relating to Penalty Statement & Vigilance Clearance certificate in respect of these 18 officers need to be revised. You are, therefore, requested to furnish a copy each of Penalty Statement

& Vigilance Clearance Certificate for subsequent years to this office to expedite the case immediately.

2. It is further stated that the Eligibility List furnished along with the proposal does not indicate the date on which these 18 new entrants in the Seniority List are eligible for promotion to the post of Superintendent of Police as per the Recruitment Rules. Therefore, you are requested to furnish a Revised Eligibility List indicating the date on which these 18 new entrants are eligible for promotion as per the provisions contained in the Recruitment Rules.

3. The DOP&T is requested to ascertain that the Eligibility List of these 18 officers is in accordance with the provisions of the RRs and the officers are fulfilling the requisite qualifying service in the feeder grade for considering their promotion to the post of Superintendent of Police in CBI. Since UPSC is not to be consulted for promotion to the feeder grade of Suptd. Of Police, the DoP&T is requested to confirm that in respect of the instant proposal, promotions to the feeder grade have been made in accordance with the provisions of the relevant RRs.

4. Till the documents/information as mentioned above is received, the instant proposal is being treated as pending on part of the Ministry.”

14. From a perusal of this, it is evident that nowhere the UPSC has expressed reservations about the validity of the seniority list dated 07.11.2016. Its concern was only about the eligibility of the 18 officers, as per the Recruitment Rules, in the context of promotion to the post of SP. No patent defect as such was pointed out.

15. The CBI, on its part was so confident that it made an effort to explain the doubts expressed by UPSC through their communication dated 02.08.2017. Even in this, the CBI did not have an inkling of doubt, about the correctness or otherwise of the seniority list dated 07.11.2016, nor the doubts expressed by the UPSC were referable to the list.

16. It appears that the letter dated 25.08.2017 was marked to the DoP&T. The latter expresses their view on that, in the communication dated 25.08.2017, as under:

“DoPT may please refer to this Bureau’s ID No. DPDPC/2017/53/114/2017-DPC dated 02.08.2017 vide which necessary documents/statements including list of officers with date of their notional promotion and actual promotion was sent. DOPT may please also refer to their ID No. 230/19/2015-AVD-II dated 25.08.2017 vide which advice of Estt. (RR) Division has been provided with a request to furnish revised list in accordance with the advice tendered by the Estt. (RR) Division.

2) As desired, list of officers has been revised and attached for taking further necessary action in the matter.”

17. Here again, no exception was taken to the seniority list. As a matter of fact, the eligibility or otherwise of a few officers for promotion to the post of SP can never be linked to their place in the seniority list. It would depend upon their standing, or the residency period in the feeder category and other similar factors.

The seniority list would become relevant, if only, any person who was senior to them in that list had any complaint that he is not being considered, and the like.

18. What prompted the respondents to abandon the seniority list dated 07.11.2016, is evident from the letter dated 17.11.2017. It reads as under:

“The Hon’ble High Court of Delhi has passed Order dated 22.5.2015 passed on Review Application Nos. 561/2014, 567/2014, 8/2015 in WP(C) No. 7370/2010 and Review Application Nos. 560/2014, 566/2014 & 9/2015, C.M. Nos. 20614, 20830/2014 in WP(C) 7371/2010.

Hon’ble High Court of Delhi in its above orders has observed as under:

“If the above understanding were to be appropriately given effect to, in the given circumstances of the case, the sequitur would be that from the date or time when direct recruit vacancies were notified by the recruitment agency i.e. UPSC, the quota would get fixed to the extent they were ultimately filled for the purposes of reckoning seniority. Having ascertained that position the mandate of paragraph 2.4.2 would have to be worked out and the rotation of vacancies in the seniority list in question dated 06-08-1999 would have to be necessarily made.

In the light of the above discussion, the review petition have to succeed and are allowed to the limited extent indicated in the preceding paragraph. The Union of

India is hereby directed to undertake the review to the extent indicated and give effect to the quota rule embodies through the 1987 amendment so as to rotate the vacancies available for the period 1994-95, 1995-96 and 1996-97 onwards as between the two sources duly interpolating them.

It is clarified that no adverse impact by way of reversion or recovery of pay, pension or allowances would be given effect as a result of the directions contained in the present order. Equally, consequential benefits wherever admissible would also be given to the direct recruits concerned. The review petitions are partly allowed in the above terms.”

In compliance to the aforesaid Hon’ble High Court of Delhi Order and DoPT ID No. 230/19/2015-AVD-II dated 31.8.2017 and 230/25/2002-AVD-II (Part-1) dated 6.11.2017, the seniority list of the Dy. Superintendent of the Police as on 1.1.1999 circulated vide CBI, HO letter No. DP Pers.I/2016/3638/A-23030/3/2002 (Vol. II) dated 7.11.2016 has been revisited strictly in terms of the Order dated 22.5.2016 of the Hon’ble High Court of Delhi.

In pursuance of the above, it has been decided to withdraw the Seniority list of the Dy. Superintendent of Police, CBS as on 1.1.1999 circulated vide CBI, HO aforesaid letter dated 7.11.2016. Simultaneously a fresh draft Seniority list of Dy. Superintendent of Police, CBI as on 1.1.1999 has been prepared in accordance to the aforesaid Orders of the Hon’ble High Court a well as various instructions/advice of DoPT received in the matter from time to time. The same is enclosed herewith.

It is requested the enclosed seniority list may kindly be circulated amongst all concerned officers and their signature in

token of having seen the same may be sent to the Head Office. Further, factual errors/omissions as well as objections, if any, found in the enclosed list may be intimated to CBI, Head Office within 15 days from the date of issue of this letter, failing which it would be presumed that the list does not require any change and final seniority list would be published for taking further action in the matter.

This issues with the approval of the Director, CBI.”

19. A perusal of this indicates that the CBI entertained a doubt by itself as to the correctness of the seniority list dated 07.11.2016 and straightaway decided to withdraw it. The fact that the seniority list dated 07.11.2016 is prepared as a measure of implementation of the orders passed by the Hon'ble High Court in Review Petition was totally forgotten. It ignored the fact that the list was not only acted upon, but also promotions were made by holding review DPCs and proposals were forwarded to UPSC for further promotions. It is just un-understandable as to why such a decision could have been taken. Added to that, not a single officer, who would be adversely affected on account of such a decision, was put on notice, nor a general notice was issued. Even if it were to have been a seniority list prepared by the administration on its own accord, such a hasty and unwarranted step was impermissible in law.

20. What is more objectionable is that the same day on which the seniority list dated 07.11.2016 was withdrawn, another list was published. There cannot be a better example of arbitrariness and high handedness than this. For all practical purposes, it appears that somebody in the administration is determined to bring the administration to disrepute. Such an uncalled for and unnecessary step and the resultant litigation would be a blot on the functioning of a reputed organisation. They did not even take into account, the fact that the matter was languishing for two decades and it assumed finality after several rounds of litigation; and the list was prepared on the basis of recommendations of a high power committee, that too, after publishing a provisional seniority list. The whole exercise is untenable. Obviously, for that reason, the seniority list dated 17.11.2017 was set aside by the Bangalore Bench of the Tribunal and it was challenged.

21. In view of the discussion undertaken above, what becomes clear is that various steps, taken by the respondents, for cancellation of seniority list dated 07.11.2016, are untenable. Any acts of meddling with the seniority list dated 17.11.2016 would, in a way, amount to flouting the orders of the Hon'ble

High Court in the Review Petition. If the respondents felt any insurmountable difficulties in implementing the seniority list, the only course open to them, was to approach the Hon'ble High Court for necessary directions. As a matter of fact, such an attempt was made in the recent past when they filed the CM No. 8871/2019 in WP(C) No. 7370/2010. In the order dated 12.07.2019, the Hon'ble High Court observed as under:

“Even otherwise, despite our query, learned counsel for the petitioner has not pointed out as to which aspect of our order dated 22.5.2015 passed in Review Petition No. 561/2014 in WP(C) 7370/2010 needs clarification. Our order is clear and it is for the petitioner to understand the same and take appropriate action in compliance thereof. They did take action by issuing the seniority list dated 07.11.2016, and another draft list dated 17.11.2017. Having taken action on its understanding of the said order, it was open to the aggrieved parties to agitate their grievance before the Tribunal, which they did. That stage is over, since the original application preferred before the Bangalore Bench has been disposed of. It would be open to the Tribunal/court concerned to understand the order passed by this Court in the writ petition, as well as in the Review Petition as aforesaid, and to proceed on the basis of their understanding of the said order.

The application is, accordingly, dismissed.”

22. Before us also, the respondents are not able to point out any factual or legal defect in the list. At any rate, this is a rare case in which CBI is doubting an order passed by itself, that too, at a time when not a single officer has chosen to challenge it, either by way of writ petition, or OA.

23. Though we find that a clear contempt case is made out to hold that there is a violation of the orders passed by the Hon'ble High Court and thereby, the one in the OA, we intend to give an opportunity to the respondents to take corrective steps.

24. For the foregoing reasons, we direct that

- (A) The seniority list dated 07.11.2016 shall be treated as final.
- (B) All the steps taken by the respondents and in particular, the CBI, contrary to the said list, shall stand set aside.
- (C) The respondents shall take further steps, as directed by the Hon'ble High Court in the order in the Review Petition, within a period of six weeks from the date of receipt of a certified copy of this order.

The contempt case is accordingly closed. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/ns/