

Gian Singh and Another Vs High Court of Delhi and Others

Court: Delhi High Court

Date of Decision: May 11, 2011

Citation: (2011) 5 ILR Delhi 280

Hon'ble Judges: M.L. Mehta, J; A.K. Sikri, J

Bench: Division Bench

Advocate: Pawanjeet Singh Bindra, for the Appellant; V.R. Datar and Chetan Lokur, for DHC, Urvashi Malhotra, for Avnish Ahlawat, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Sikri, J.

This petition is filed by the two Petitioners who were the employees in the office of District & Sessions Judge, Delhi. They

have since retired. However, at the time of filing of this petition, they were in service and were holding the post of Senior Stenographers. The next

promotion is to be the post of Superintendent for which selection was held by the Departmental Promotion Committee (DPC) in the year 1995

and promotions were made vide orders dated 17th May, 1995 pursuant to the recommendations of the DPC. The Petitioners were not selected

for promotion to the said post and instead promotion was given to Respondent No. 4 to 6 which is the cause of their grievance. In this writ petition

the Petitioners are seeking the following relief:

I) Pass a writ/direction/order in the nature of certiorari quashing the order No. 8438/Estt/E-3/DHC dated May 17, 1995 of the Respondent No. 1

thereby appointing Respondents No. 4 to 6 as Superintendents in the office of District & Sessions Judge, Delhi

II) Pass a writ/direction/order in the nature of mandamus directing the Respondent No. 1 to appoint the Petitioners as Superintendents in the office

of District & Sessions Judge with effect from May 17, 1995 with all consequential benefits resulting therefrom.

III) Pass such other order(s) as this Hon"ble Court may deem fit and proper in the circumstances of the case.

2. As mentioned above, the Petitioners belonged to the category of Senior Stenographers and in the seniority list of Sr. Stenographers, they were

placed at Sl. No. 1 and 2. Respondents No. 4 to 6, on the other hand, were working as Reader, SAS Accountant and Reader respectively. The

employees belonging to all these cadres including Sr. Stenographers are eligible for consideration to the post of Superintendent. Admittedly, at that

point of time, there were no service rules for promotion to the post of Superintendent in the District Courts, Delhi framed by this Court and the

service conditions of lower court staff were governed by Rules and Orders of Punjab & Haryana High Court V-I, Chapter 18-A and the rules

made therein by the Punjab & Haryana High Court:

Rules of Punjab High Court relating to appointment of Clerks (now Superintendents) of the Court of District & Sessions Judge as amended upto

June, 1947:

(1) Mode of appointment:

Posts of Clerks of Courts to District and Sessions Judge shall be classified as selection post and shall be in a provincial cadre.

(2) Authority competent to appoint.

Appointment to the post of Clerk of Court of District and Sessions Judge whether permanent or officiating shall be made by the Hon"ble Judges of

the High Court.

Provided that the District and Sessions Judge concerned may make an officiating appointment to the post of C.O.C. in a leave vacancy for a

period of not exceeding three months, subject to confirmation by the Hon"ble Judges of the High Court.

3. Three things emerged from the narration of the facts disclosed above up to this stage which are:

(a) For the post of Superintendent, the Readers, SAS Accountant, Sr. Stenographers etc. are eligible to be considered. Therefore, while

considering their candidature for promotion to the post of Superintendent, a combined seniority list needs to be prepared.

(b) The appointment to this post of Superintendent is by way of selection.

(c) The competent authority to make the promotion is the High Court.

4. A request dated 22nd July, 1992 was received from the District & Sessions Judge, Delhi for filling up of three posts of Superintendent which

were going to fall vacant on the ensuing retirement of three incumbents namely Mr. Jaswant Singh, Mr. C.D. Sidhu and Mr. M.C. Verma on

28.2.1993, 31.5.1993 and 30.6.1993 respectively.

5. In response to this request of the learned District & Sessions Judge, Delhi this Court asked him to sent the names of such Class-III employees

of his office, office of the Administrative Civil Judge and of the Judge, Small Cause Court who were completing 20 years of service in Class-III

post as on 1.1.1993 alongwith their ACR folders, service books and their service particulars. In compliance, the District & Sessions Judge

responded by sending the requisite information and the records alongwith the summary of ACRs. The matter was thereafter placed before the Full

Court on 21.5.1994 which decided to constitute a Committee of three Hon"ble Judges of this Court to consider the candidature of the eligible

persons and to make its recommendations. The Committee of three Hon"ble Judges was constituted for this purpose held its meeting from time to

time. In its third meeting it iron out certain freezes so that things can put in place and the deliberations of those meetings are not mentioned for the

simple reasons that they are not relevant for us. In the third meeting which took place on 21.4.1995, the Selection Committee had deliberations

about the promotions to be made. 6. After going through the meeting, entire records and the representations of the officials and also taking into

consideration the comments of the District & Sessions Judge, Delhi sent vide letter dated 17th April, 1995. The Committee accepted the

presentation of Mr. Jagat Singh only and held him senior to Mr. M.R. Agnihotri, who was at serial No. 1 in the seniority list of general line

candidates on the basis of length of service. On the similar analogy i.e. length of service Mr. Ajit Singh Dhari, Reader (who was to retire the next

year) was selected by the Selection Committee. Therefore, the Committee recommended in order of merit for appointment to three posts of

Superintendents in the office of District & Sessions Judge, Delhi as under, subject to the decision of CWP No. 1152/88 Sh. V.K. Garg v.

Administration of Delhi, pending in the High Court of Delhi:

1. Mr. Jagat Singh

2. Mr. M.R. Agnihotri

3. Mr. Ajit Singh Dhari

7. The recommendations of the Selection Committee were placed before the Full Court. The Full Court in its meeting held on 6th May, 1995

approved the recommendations of the Selection Committee. Accordingly, this Court sent letter No. 8438/Estt./E-3/DHC dated 17th May, 1995

to the District and Sessions Judge, Delhi to the effect that Hon"ble the Chief Justice and Judges of this Court have been pleased to appoint S/Sh.

Jagat Singh, Reader, M R Agnihotri, SAS Accountant and Ajit Singh Dhari, Reader as Superintendents w.e.f. the date they assumed charge of the

post.

8. Challenge of the Petitioners to the aforesaid process and their exclusion is two folded namely, as per the Petitioners, it is an established practice

that while considering the incumbent for the post of Superintendent, inter se seniority amongst Stenographers, Readers, SAS Accountant is

determined on the basis of date on which these incumbents attained the higher scale of pay in their respective posts. Though, the Respondents No.

4 to 6 had longer length of service when counted from the date of entry in the service, according to the Petitioners since these two Petitioners were

put in higher scale before Respondent No. 4 to 6, they stole march over the longer service of Respondent No. 4 to 6 and were treated senior to

them. The service records of Petitioners and Respondent No. 4 to 6 is as under:

Name of official Date of Date of appointment in Date of Date of Entry in

(S/Sh. Appointment in the the Scale of Rs. 550- Appointment in Service

Scale of Rs. 2000- 900/- the scale of Rs.

3200/- 425-700/-

Gian Singh 01.01.1986 01.03.1982 01.01.1973 20.11.1967

Som Kumar 01.01.1986 07.02.1987 01.01.1973 25.08.1960

Khullar

Jagat Singh Still not granted 01.05.1991 01.04.1981 19.10.1956

M.R. Agnihotri -do- 04.09.1985 (500-900 01.03.1982 20.12.1958

& not 550-900)

Ajit Singh Dhari -do- Still not granted 01.03.1982 02.12.1957

9. They have stated that Petitioner No. 1 was put in higher scale w.e.f. 1.3.1982 and Petitioner No. 2 put in the senior scale on 7.2.1987. In

comparison, Respondent No. 4 and 5 entered the senior scale only from 1.5.1991 and 4.9.1995 respectively, whereas Respondent No. 6 had not

got the senior scale till his promotion as Superintendent. On this basis, they were senior to Respondent Nos. 4 to 6 and they could not have been

ignored for the promotion. Petitioner No. 1 has made his claim to the post of Superintendent on an additional ground. He states that he is a

Scheduled Castes (SC) candidate and since one post in the category of SC was available on that day, he could not be ignored for promotion given

to general category candidates. In this behalf he has stated that one post of Superintendent in the office of District & Sessions Judge fell vacant

upon retirement of Sh. Jaswant Singh on February 28, 1993. Another post fell vacant with the retirement of Sh. C.D. Sidhu with effect from May

31, 1993. Yet another post fell vacant upon the retirement of Shri Man Chand Verma with effect from June 30, 1993. It is significant to state that

the said Shri Jaswant Singh and Shri Sidhu were candidates from the reserved category, whose posts could be filled up only by SC/ST candidates.

His submissions is that his non-appointment is contrary to law laid down by the Supreme Court in the case of R.K. Sabharwal and others Vs.

State of Punjab and others,

10. Insofar as, first contention is concerned, we do not find any merit therein. The Petitioners admit that they were junior to the Respondents if the

inter se seniority is to be counted from the date of entry in to the service. They have made their claim of seniority above them only on the ground

that they were given the senior scale of Rs. 2000-3200 earlier to the Respondents No. 4 to 6. Admittedly, there is no such rule of preparing

seniority on this basis. It is for this reason their claim is predicated on the so called established practice. However, we do not find that there was

any practice of fixing the inter se seniority on the basis of entry into the senior scale. The Petitioners have given instance of Mr. M.C. Verma who

was appointed as Superintendent w.e.f. 5.1.1990. Attempt is to show that it was because of the reason that he got the senior scale prior to others

though his date of entry into the service was late. This solitary instance cannot be treated as ""established practice"". One need not forget that the

promotion to the post of Superintendent is by way of selection and, therefore, a person who is junior but is found more meritorious than a senior

can be given the promotion to the post of superintendent. The Respondent in the counter affidavit has specifically refuted and denied any such

practice. It is specifically asserted that seniority is counted only on the basis of total length of service i.e. entry into the service. There is no reason

to disbelieve the same more so, when the Petitioners have not been able to fortify their claim on the basis of any cogent reason.

11. In so far as second contention is concerned, we may note that there were four posts of Superintendent at the relevant time in the office of

District & Sessions Judge, Delhi. Before the exercise in question was undertaken, these posts were manned by the following persons:

(i) Mr. Jaswant Singh,

(ii) Mr. C.D. Sidhu

(iii) Mr. Mam Chand Verma

12. Mr. Jaswant Singh and Mr. Sidhu were from the reserved category who retired w.e.f. 28.2.1993 and 31.5.1993 respectively. Exercise was

undertaken to fill up these two posts as well.

13. As per 40 Point Roster applicable to the post of Superintendent, with the appointment of Sh. M.C. Verma roster was complete. It is

contended that thereafter with the creation of vacancies on the retirement of Mr. Jaswant Singh and Mr. C.D. Sidhu who were in reserved

category, these posts could be filled up only from amongst the incumbent of the reserved categories as per the judgment of the Supreme Court in

the case of R.K. Sabharwal (supra).

14. One of the contentions raised in the aforesaid case before the Constitution Bench of the Supreme Court was that once the post earmarked for

SC/ST and backward classes and the roster are filled, the reservation is complete. The roster cannot operate and should be stopped. Any post

falling vacant in the cadre thereafter is to be filled up from the category - reserved or general - due to retirement etc. This contention was accepted

by the Constitution Bench in the following manner:

We see considerable force in the second contention raised by the learned Counsel for the Petitioners. The reservations provided under the

impugned Government instructions are to be operated in accordance with the roster to be maintained in each Department. The roster is

implemented in the form of running account from year to year. The purpose of "running account" is to make sure that the Scheduled

Castes/Schedule Tribes and Backward Classes get their percentage of reserved posts. The concept of "running account" in the impugned

instructions has to be so interpreted that it does not result in excessive reservation. "16% of the posts..." are reserved for members of the

Scheduled Caste and Backward Classes. In a lot of 100 posts those falling at serial numbers 1, 7, 15, 22, 30, 37, 44, 51, 58, 65, 72, 80, 87 and

91 have been reserved and earmarked in the roster for the Scheduled Castes. Roster points 26 and 76 are reserved for the members of Backward

Classes. It is thus obvious that when recruitment to a cadre starts then 14 posts earmarked in the roster are to be filled from amongst the members

of the Scheduled Caste. To illustrate, first post in a cadre must go to the Scheduled Caste and thereafter the said class is entitled to 7th, 15th, 22nd

and onwards upto 91st post. When the total number of posts in a cadre are filled by the operation of the roster then the result envisaged by the

impugned instructions is achieved. In other words, in a cadre of 100 posts when the posts earmarked in the roster for the Scheduled Castes and

the Backward Classes are filled the percentage of reservation provided for the reserved categories is achieved. We see no justification to operate

the roster thereafter. The "running account" is to operate only till the quota provided under the impugned instructions is reached and not thereafter.

Once the prescribed percentage of posts is filled the numerical test of adequacy is satisfied and thereafter the roster does not survive. The

percentage of reservation is the desired representation of the Backward Classes in the State services and is consistent with the demographic

estimate based on the proportion worked out in relation to their population. The numerical quota of posts is not a shifting boundary but represents

a figure with due application of mind. Therefore, the only way to assure equality of opportunity to the Backward Classes and the general category

is to permit the roster to operate till the time the respective appointees/promotes occupy the posts meant for them in the roster. The operation of

the roster and the "running account" must come to an end thereafter. The vacancies arising in the cadre, after the initial posts are filled, will pose no

difficulty. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category

to which the post belonged in the roster. For example the Scheduled Caste persons holding the posts at Roster-points 1, 7, 15 retire then these

slots are to be filled from amongst the persons belonging to the Scheduled Castes. Similarly, if the persons holding the post at points 8 to 14 or 23

to 29 retire then these slots are to be filled from among the general category. By following this procedure there shall neither be short-fall nor excess

in the percentage of reservation.

15. The Court also pointed out the anomalous result that would follow if the roster is permitted to operate even after the total posts in the cadre In

this direction, the Court explained

We may examine the likely result if the roster is permitted to operate in respect of the vacancies arising after the total posts in a cadre are filled. In

a 100 point roster, 14 posts at various roster-points are filled from amongst the Scheduled Castes/Scheduled Tribes candidates, 2 posts are filled

from amongst the Backward Classes and the remaining 84 posts are filled from amongst the general category. Suppose all the posts in a cadre

consisting of 100 posts are filled in accordance with the roster by December 31, 1994. Thereafter in the year 1995, 25 general category persons

(out of the 84) retire. Again in the year 1996, 25 more persons belonging to the general category retire. The position which would emerge would

be that the Scheduled Castes and Backward Classes would claim 16% share out of the 50 vacancies. If 8 vacancies are given to them then in the

cadre of 100 posts the reserve Categories would be holding 24 posts thereby increasing the reservation from 16% to 24%. On the contrary if the

roster is permitted to operate till the total posts in a cadre are filled and thereafter the vacancies falling in the cadre are to be filled by the same

category of persons whose retirement etc. caused the vacancies then the balance between the reserve category and the general category shall

always be maintained. We make it clear that in the even of non-availability of a reserve candidate at the roster-point it would be open to the State

Government to carry forward the point in a just and fair manner.

16. In the end of the judgment, the Bench clarified that the interpretation given by the Court to the working of the roster and findings on this point

shall operate prospective. This judgment was rendered in February 10, 1995 and, therefore, would govern the present case as the promotions are

made in May, 1995.

17. We have applied the ratio in R.K. Sabharwal judgment (supra) to the present case. The first aspect to be examined is as to whether the roster

was complete on the promotion of Sh. M.C. Verma and thereafter the vacancy was to be filled up depending upon the category of persons who

retired and caused the vacancy. This is what is claimed by the Petitioners.

18. On the other hand, in the counter affidavit filed by the Respondent No. 1, it is denied that with the appointment of Mr. M.C. Verma the roster

was complete. As per the High Court he was appointed as point No. 9 in the 40 Point Roster. As per the chain of appointment given to

Respondent No. 4 to 6 were appointment as point 10,11 and 12 in roster maintained. This is demonstrated in the following manner:

Recruitment Point in the Whether reserved or Name of the officer/official Whether SC/ST or Remarks

yr. roster unreserved appointed from Genl. Line

1981 1. Scheduled caste Sh. NandKishore Scheduled Caste -

(16.3.81

1983 2. Unreserved Sh. R.P. Malik (25.2.83 Neither -

3. -do- Sh. N.M. Manchanda -do- -

(25.2.93

4. Scheduled Tribe Sh. Jaswant Singh Scheduled Caste Since no S/T

(25.2.83) candidate was

available, this

vacancy was given to

S/C officer being

exchangeable

5. Unreserved Sh. K.C. Jain (13.5.83) Neither -

6.

1986 -do- Sh. LaxmiNarain (Nov. -do-

86

7. -do- Sh. Daljit Singh -do

(19.12.86)

1988 8. Scheduled Caste Sh. C.D.Sidhu (Dec.88) Scheduled Caste

9. Unreserved Sh. M.C. Verma Neither

1995 10. -do- Sh. Jagat Singh Filled

1995 11. -do- Sh. M.R. Agnihotri -do-

1995 12. -do- Sh. Ajit Singh Dhari -do-

13. -do-

19. It is thus claimed that ratio of the judgment in R.K. Sabharwal (Supra) does not apply in the present circumstances as 40 point roster had not

been exhausted.

20. We have considered the submissions of both the parties. There is one peculiar feature in the instant case which in fact is not pointed out by

counsel for either party. There are only four posts of Superintendent in the office of District & Sessions Judge, Delhi. When the number of posts

are so less in this cadre, it is difficult to say that the roster was complete on promotion of Mr. M.C. Verma and thereafter vacancies were to be

filled up depending upon the category of staff who retired and caused the vacancy. Reason is simple. Even if we treat one post occupied by SC

candidate and on his retirement, that post always to be filled up by SC Candidates on the application of R.K. Sabharwal (supra), then it would

amount to reserving 25% post for SC candidates for all times together. Such a situation cannot be allowed to prevail nor was contemplated in the

decision rendered in R.K. Sabharwal (supra). The main purpose for prescribing post-based roster was to ensure that on the one hand that the

backward classes get their due representation and on the other hand, it was equally strong reason that does not result therefrom. It is stated at the

cost of repetition that if we accept the contention of the learned Counsel for the Petitioner then, at all times, there would be 25% post reserved for

the SC candidates as against 15% permitted by Rules. This situation can be avoided only if the 40% roster which is in operation is allowed to

continue till end as with the appointment of Respondent 4 to 6, points 10, 11 and 12 in the roster only consumed and, we have no option to hold

that 40. Roster which is maintained has not completed its life and is to be continued. Once this roster is operated, the reserved category candidates

would get due representation at the points reserved for them. There is no other course which could be permissible on the facts of this case.

21. Because of the aforesaid reasons, we do not find any merit in this writ petition which is accordingly dismissed.