
(2011) 5 ILR Delhi 280

Delhi High Court

Case No: Writ Petition (C) 2157 of 1995

Gian Singh and
Another

APPELLANT

Vs

High Court of Delhi and
Others

RESPONDENT

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 send 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 (S/Sh.	Date of Appointment in the Scale of Rs. 2000-3200/-	Date of appointment in the Scale of Rs. 550-900/-	Date of Appointment in the scale of Rs. 425-700/-	Date of Entry in Service
Gian Singh	01.01.1986	01.03.1982	01.01.1973	20.11.1967
Som Kumar Khullar	01.01.1986	07.02.1987	01.01.1973	25.08.1960
Jagat Singh	Still not granted	01.05.1991	01.04.1981	19.10.1956
M.R. Agnihotri	-do-	04.09.1985 (500-900 & not 550-900)	01.03.1982	20.12.1958
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 contention 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 yr.	Point in the roster	Whether reserved or unreserved	Name of the officer/official appointed	Whether SC/ST or from Genl. Line	Remarks
1981	1.	Scheduled caste	Sh. NandKishore (16.3.81	Scheduled Caste	-
1983	2.	Unreserved	Sh. R.P. Malik (25.2.83	Neither	-
	3.	-do-	Sh. N.M. Manchanda (25.2.93	-do-	-
	4.	Scheduled Tribe	Sh. Jaswant Singh (25.2.830	Scheduled Caste	Since no S/T candidate was available, this vacancy was given to S/C officer being exchangeable
	5.	Unreserved	Sh. K.C. Jain (13.5.83)	Neither	-
1986	6.	-do-	Sh. LaxmiNarain (Nov. 86	-do-	
	7.	-do-	Sh. Daljit Singh (19.12.86)	-do	

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.