(2009) 05 DEL CK 0449

Delhi High Court

Case No: Writ Petition (C) No. 1823 of 2002

Sudhanshu Kumar Khare and Others		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision: May 27, 2009

Citation: (2009) 05 DEL CK 0449

Hon'ble Judges: V.K. Jain, J; A.K. Sikri, J

Bench: Division Bench

Advocate: A.K. Behera, for the Appellant; Jyoti Singh, for the Respondent

Judgement

A.K. Sikri, J.

The petitioners herein are the direct recruitees who were appointed to the post of Dy. Suptd. of Police (DSP) in CBI under the relevant recruitment norms. They are challenging the seniority list which was circulated as on 01.01.1999. The petitioners have no grievance in respect of the persons shown at serial No. 2 to 87 in the said seniority list. However, they claim that persons shown at serial No. 88 to 175 should have been treated as juniors to them. We may point out that all those persons who are placed at serial No. 2 to 175 in the said list are promotes, from the post of Inspector to that of DSP. The brief submission of the petitioners is that these persons were promoted to the post of DSP even when no vacancy in the promotion quota was available at that time. This position is not in dispute.

2. Recruitment Rules for the post of DSP were initially framed in the year 1963. Recruitment rules of 1963 which came into place with effect from 28.2.1963 remained in force till 31.03.1987, when they were replaced by recruitment rules of 1987. The promotees shown at serial No. 88 to 175 were given promotions between 1983 and 1993. Thus, some of these promotions were under 1963 rules whereas others were under 1987 rules. As per 1963 rules as well as 1987 rules, 30 per cent posts in the cadre of DSP could be filled by promotions; 20 per cent by direct recruitment and 50 per cent on

deputation.

3. As pointed out above, at the time of promotions of the persons who were shown in the seniority list at serial No. 88 onwards, there was no vacant post for them in promotion quota. The petitioners herein were appointed in June 1997 onward on the basis of Civil Services examination 1995, 1996, 1997 and 1998. They challenged the seniority list by approaching the Central Administrative Tribunal, Principal Bench, New Delhi on the ground that since there were no vacancy in the promotion quota, such promotions were irregular and should have been treated as ad-hoc. In that eventuality, submission of the petitioners was that they should not have been given seniority over and above the petitioners herein. The tribunal noted the contentions of the respondents that prior to 1988, there was no direct recruitment of DSPs through Civil Services examination. On demand from CBI, UPSC used to sponsor candidates from amongst the left over of IPS officers. On the basis of some observations made by Delhi High Court in a case, UPSC advised that in future all vacancies are to be notified through UPSC for filing the same through CSE. Thereafter CBI started notifying to UPSC for sponsoring suitable candidates for the post of DSP. This explanation of the respondent has been accepted by Ld. Tribunal which has led the dismissal of the O.A. filed by the petitioners herein. We may also note that the additional reason given by the tribunal for dismissing the O.A. was that all the promotees over whom the petitioners were claiming seniority, were not impleaded as party in the O.A. and therefore the O.A. was bad for non joinder of necessary parties. When this petition came up for hearing on 25.11.2004; after hearing the counsel for the parties following order was passed:

"Petitioners'' grievance is that respondents had made promotions to Dy. S.P. in excess of the promotion quota prescribed under the rules and the excess promotes could not be treated to be regular promotes and, therefore, could not be given seniority on that basis.

The stand of respondents seem to be that they had utilised the direct recruitment quota in exercise of power of relaxation of rules in consultation with the UPSC and, therefore, any excess promotion made could not be treated to be an ad hoc promotion in terms of OM dated 4.12.1992. The controversy can be clinched by looking at the relevant rule to find out whether said rules contained any power to relax any clause of provisions of the rule.

Learned Counsel for respondents has submitted a copy which he urges to be rules which shows that there was a power to relax any clause or provision of the rules. But it is not a complete document and it is not known which rules are referred to therein.

It is accordingly required to submit the original copy of the rules of 1963 and 1996 and also to file an affidavit by the competent authority on the basis of official record that the relevant quota rule was relaxed in exercise of power conferred under the rules in consultation with UPSC to make excess promotions to the post of Dy. S.P. Requisite affidavit be filed within two weeks.

List thereafter on 03.20.2005.

4. In compliance with the directions as contained in the aforesaid order, an affidavit has been filed by the CBI. In this affidavit it is conceded by CBI that there is no provision either under recruitment rule 1963 or 1987 which empowers the respondent to relax the rules, meaning thereby that there is no specific power for filing up of the post by promotion in excess of the prescribed quota under the rules. The action taken is, however, sought to be justified on the ground that there is inherent power to relax the rules. It is also stated that appointment of DSPs through promotion, in excess of prescribed quota, was taken in consultation with the Department of Personnel and Training as well as UPSC. The submissions of the petitioners, however, is that in the absence of any power of relaxation such steps could not have been taken in violation of the statutory rules and consultation with DOPT and UPSC would not suffice.

5. It is not necessary to consider this submission by us in this writ petition; suffice it to state that the tribunal has not considered the matter from this angle. It was necessary for the tribunal to decide as to whether there could have been promotion in excess of quota in the aforesaid manner in the absence of specific power of relaxation. Our reason for not going into this aspect is simple. We are of the opinion that it was necessary for the petitioners to implead those promotees as respondents in the O.A., over whom they are claiming seniority. Since the matter needs serious consideration on merit, we feel that one opportunity should be given to the petitioners to implead them as parties in the O.A. Influenced by this consideration, we are setting aside the impugned judgment of the Tribunal and remit the case back to the tribunal for fresh consideration after allowing the petitioners to implead those promotees who may be affected by the decision in case it goes in favour of the petitioners. We may also take note of the submissions of Ld counsel for the respondents that such persons were given promotions long ago and they were promoted to even higher posts subsequently and therefore it may not be proper to unsettle their promotions to the post of DCP and further promotions. It would be for the Tribunal to consider these aspects and take an appropriate view. It is not necessary for us to comment upon the course of action which the Tribunal should take, if it finds merits in the OA of the petitioners herein. The Tribunal may make endeavour to dispose of the OA expeditiously, after the service of the respondent to be impleaded, is complete. The parties are directed to appear before the Tribunal on 21.7.2009.