

M.P. SINGH BARGOTI

v.

STATE OF MADHYA PRADESH & ANR.

(Civil Appeal No. 3906 of 2009)

NOVEMBER 27, 2014

[VIKRAMAJIT SEN AND SHIVA KIRTI SINGH, JJ.]

Service Law: Promotion from the post of Inspector to Deputy Superintendent of Police – Tribunal’s direction in cases filed by others and also in case filed by the appellant along with others for preparation of a Combined Gradation List for promotion to the post of Deputy Superintendent of Police and to include names of all those who were petitioners before the Tribunal – In subsequent case also, the Tribunal re-affirmed the said directions passed in earlier case and upheld the Combined Gradation List – Recruitment Rules amended and in view thereof fresh Gradation List prepared which was admittedly only for Inspectors still in service – Appellant’s junior promoted w.e.f. the date when appellant was still in service – Appellant did not challenge the Gradation List of 2000 because his claim was only on the basis of unamended rules – Appellant retired in 1998 while holding the post of inspector – Application by appellant dismissed by Tribunal – High Court upheld the same – Held: Despite directions passed by Tribunal, a Combined Gradation List was not prepared at the appropriate time and ultimately when it was prepared to show compliance with the order of the Tribunal, it was never acted upon because the subsequent directions of the Tribunal for amendment of rules was preferred by the State and the claim of the appellant was never considered till he was in service – Appellant’s junior promoted w.e.f. date when the appellant was still in service – Tribunal and the High Court erred in denying relief to the appellant – Appellant entitled to notional promotion w.e.f date his junior was

A *promoted – Madhya Pradesh Police (Gazetted Officers) Recruitment Rules, 1987.*

Allowing the appeal, the Court

B HELD: 1. The reason for not promoting the appellant
and some others like him appointed on the post of
Inspector on 29.05.1981 was indicated to be non-
inclusion in the Combined Gradation List. One 'VND'
appointed on the post of Inspector in 1983 was
admittedly promoted w.e.f. 29.05.1997 and on that date
C the appellant was still in service. There is no dispute that
despite directions passed since 15.06.1993 by the
Tribunal and lastly reiterated in the case of the appellant
on 11.03.1998, a Combined Gradation List was not
prepared at the appropriate time and ultimately when it
D was prepared to show compliance with the order of the
Tribunal, it was never acted upon because the
subsequent directions of the Tribunal for amendment of
rules was preferred by the State and the claim of the
appellant was never considered by the Departmental
E Promotion Committee till he was in service or even
thereafter when person like 'VND' who was junior to the
appellant in the Combined Gradation List was considered
allegedly on the basis of another subsequent gradation
list and promoted with effect from a date when the
appellant was still in service. The Tribunal and the High
F Court erred in law as well as on facts in denying relief to
the appellant. The position would have been different if
appellant's junior had been promoted from a date
subsequent to his superannuation. Then appellant would
have suffered only on account of passage of time or
G innocuous delay but in the present facts he has suffered
hostile and arbitrary discrimination *vis-à-vis* a junior. The
order under appeal is therefore set aside. Since the
appellant was in service only till 31.03.1998, he is held
entitled to notional promotion to the post of Deputy
H Superintendent of Police w.e.f. 29.05.1997 till 31.03.1998.

He will be deemed to have superannuated on that post and shall be given all the post retirement benefits by recalculating the same. [Paras 7, 9 and 10] [217-F-G; 218C-H; 219-A] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3906 of 2009. B

From the Judgment & Order dated 15.10.2007 of the High Court of Judicature of Madhya Pradesh at Jabalpur in Writ Petition No. 4449 of 2001. C

Shyam Moorjani, Shantanu Bhardwaj, Vishal Arun for the Appellant. D

Sunny Chowdhry, Mishra Saurabh, Ankit Lal for the Respondent. E

The Judgment of the Court was delivered by

SHIVA KIRTI SINGH, J. 1. This appeal is directed against final judgment and order dated 15.10.2007 passed in Writ Petition No.4449 of 2001 whereby the High Court of Madhya Pradesh dismissed the writ petition of the appellant and declined to interfere with order of the M.P. Administrative Tribunal (hereinafter referred to as 'the Tribunal') dated 26.02.2001 passed in O.A.No.1122 of 2000. F

2. The simple case of the appellant is that he has been deprived of benefits of timely consideration and promotion from the post of Inspector to the post of Deputy Superintendent of Police although there was a direction of the Tribunal in cases filed by others and disposed of on 15.06.1993 and 03.11.1997 and also in a case filed by the appellant along with 29 others bearing O.A. No.893 of 1997 allowed on 11.03.1998 for preparation of a Combined Gradation List for promotion to the post of Deputy Superintendent of Police and to include in it the names of all who were petitioners before the Tribunal. G H

A 3. Since the order of the Tribunal dated 11.03.1998 was not challenged by any one and attained finality, the case of the appellant deserves to be considered on the basis of facts noted in paragraph 1 of that order and the relief granted in paragraphs 8 and 9 of that order. They are as follows :

B "The applicants in this case are inspectors in the Finger
Print Branch of the Police Department, which is an
executive Branch of the said department. The applicants
have averred that for promotion to the next higher post of
C Deputy Superintendent of Police the respondents have
from time to time issued a combined gradation list of
inspectors of the executive branches of the department.
The applicants' contention is that the combined gradation
list issued for the year 1996 does not include their names
in it. In this connection they have submitted that all the
D persons belonging to the finger print branch have not been
included in the combined gradation list. The applicants'
contention is that the non-inclusion of their names in the
combined gradation list is in violation of the provisions of
E Madhya Pradesh Police (Gazetted Officers) Recruitment
Rules 1987 – '1987 Rules' for short – and also the
directions of the Tribunal given in order dated 15.6.1993
passed in O.A.No.93/92 placed at Annexure A-1, as also
order dated 3.11.1997 passed in O.A.No.834/93. The
F applicants' submission is that meeting of the departmental
promotion committee is going to be held shortly on the
basis of a combined gradation list excluding their names
and they will therefore, thus be deprived of consideration
for promotion illegally. The applicants have, therefore,
prayed for a direction to the respondents to include their
G names as also names of other inspectors of the Finger
Print Branch in the combined gradation list of inspectors
of the executive branches and to consider the cases of
their promotions on the basis of such a combined
gradation list. By way of interim relief it was directed by
H the Tribunal that the meeting of the departmental promotion

committee for considering promotion to the post of Deputy Superintendent of Police may be held but no orders promoting anyone out of the select list so prepared shall be issued till the disposal of this case.

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8. In view of the above discussion the petition deserves to be allowed. The applicants shall be included in the combined gradation list of Inspectors for consideration of their cases for promotion to the post of Deputy Superintendent of Police in accordance with the inter-se seniority position which may be assigned to them in such a list. If a meeting of the Departmental Promotion Committee has been held already without considering the claims of the applicants then the recommendations of that departmental promotion committee shall not be acted upon and a fresh meeting of the departmental promotion committee shall be held keeping in view the directions given herein.

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9. Cost of the petition amounting to Rs.1500/- shall also be paid to the applicants by the respondents."

4. It is also not in dispute that there was a subsequent adjudication by the Tribunal of a similar dispute wherein there was an opposition to preparation of Combined Gradation List for Inspectors of other disciplines like Finger Print, Motor Transport etc. The appellant and other beneficiaries of order of the Tribunal dated 11.03.1998 were not parties to those cases when such subsequent order dated 22.06.1999 was passed. In paragraph 13 of this order, the Tribunal re-affirmed the correctness and validity of the earlier order of the Tribunal dated 11.03.1998, upheld the Combined Gradation List under challenge and examined various new aspects raised in the subsequent case leading to issuance of additional directions

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A to amend the Rules. The Madhya Pradesh Police (Gazetted
 B Officers) Recruitment Rules 1987 were amended by the State
 Government on 26.05.2000 and in view of the amended rules,
 fresh Gradation List was prepared which was admittedly only
 C for Inspectors who were still in service and were required to be
 governed by the amended Rules of 2000. It is also not in dispute
 that the appellant did not challenge the Gradation List of the
 year 2000 because his claim was only on the basis of
 unamended rules which as per final judicial pronouncement
 noticed earlier, required publication of a Combined Gradation
 D List for promotion to the post of Deputy Superintendent of
 Police. Admittedly, appellant retired on 31.03.1998 while
 E holding the post of Inspector.

5. The appellant preferred a Misc. Application bearing
 D No.113 of 1998 before the Tribunal which was heard along with
 another O.A. bearing No.1122/2000 filed by other Inspectors.
 The Tribunal dismissed the applications vide order dated
 26.02.2001 by holding that the appellant failed to show that the
 order of the Tribunal dated 11.03.1998 had been ignored or
 E violated. The Tribunal further took a technical stand that no
 person was impleaded as a party whose promotion could
 cause a grievance to the appellant. The appellant challenged
 the order of the Tribunal dated 26.02.2001 through a writ
 petition which has been dismissed by the order under appeal
 dated 15.10.2007. The High Court relied upon the observations
 F of the Tribunal and came to an opinion that in the absence of
 any allegation regarding non-consideration in the Departmental
 Promotion Committee, supersession by juniors as well as
 absence of any challenge to the orders of the Tribunal passed
 in O.A.Nos.817 and 818 of 1998, the writ petition deserved to
 G be dismissed as misconceived and meritless.

6. In the course of hearing of this appeal, on 25.06.2014,
 we noted the submissions advanced by learned counsel for the
 H appellant. The order runs as follows :

"We have heard arguments *in extenso*.

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Learned counsel for the appellant's submission is that despite the directions passed on 15.6.1993 and 3.11.1997, a combined list was not prepared. Meanwhile, persons junior to the petitioner were promoted, such as Mr. V.N. Dubey at serial no.42 in Annexure P9 before the writ court who had been promoted with effect from 29.5.1997. It is prayed that even though the petitioner has superannuated on 31.1.1998, he would at least be entitled to pensionary benefits computed from the date on which the persons junior to him in the service were promoted and to simplify this determination, the Appellant has referred to Mr. V.N. Dubey.

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It is in these circumstances that learned counsel for the respondent prays for an adjournment to obtain instructions on the veracity of Annexure P9.

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Re-notify for this purpose only on 7th August, 2014 for further hearing."

7. The date of superannuation of the appellant suffered from a typographical error in the aforesaid order. That date is 31.03.1998. Annexure P9 available before the writ court showed that appellant was at serial no.12, much higher to Mr. V.N. Dubey at serial no.42. The reason for not promoting the appellant and some others like him appointed on the post of Inspector on 29.05.1981 was indicated to be non-inclusion in the Combined Gradation List. Mr. V.N. Dubey appointed on the post of Inspector in 1983 has been admittedly promoted w.e.f. 29.05.1997 and on that date the appellant was still in service.

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8. When the matter was listed for further hearing on 18.11.2014, the learned counsel for the respondents confirmed that Annexure P9 is an authentic document and the particulars noted above on its basis are not under dispute. However, learned counsel for the respondents again sought to defend the

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A stand of the State on the ground that Mr. Dubey belonged to another Section and not to Finger Print Section and, therefore, his promotion made subsequently after the superannuation of the appellant but from an earlier date cannot furnish any cause of action to the appellant for claiming that if not actual
 B promotion, he should be given benefit of notional promotion to that post at least for the purpose of pensionary benefits.

9. We have carefully considered the rival contentions, the relevant facts and the prevailing rules governing promotion at
 C the relevant time. There is no dispute that despite directions passed since 15.06.1993 by the Tribunal and lastly reiterated in the case of the appellant on 11.03.1998, a Combined Gradation List was not prepared at the appropriate time and ultimately when it was prepared to show compliance with the
 D order of the Tribunal, it was never acted upon because the subsequent directions of the Tribunal for amendment of rules was preferred by the State and the claim of the appellant was never considered by the Departmental Promotion Committee till he was in service or even thereafter when person like Mr.
 E V.N. Dubey who was junior to the appellant in the Combined Gradation List was considered allegedly on the basis of another subsequent gradation list and promoted with effect from a date when the appellant was still in service.

10. In the aforesaid circumstances, in our considered view,
 F the Tribunal and the High Court erred in law as well as on facts in denying relief to the appellant. The position would have been different if appellant's junior had been promoted from a date subsequent to his superannuation. Then appellant would have suffered only on account of passage of time or innocuous delay
 G but in the present facts he has suffered hostile and arbitrary discrimination vis-à-vis a junior. The order under appeal is therefore set aside. Since the appellant was in service only till 31.03.1998, he is held entitled to notional promotion to the post of Deputy Superintendent of Police w.e.f. 29.05.1997 till
 H 31.03.1998. He will be deemed to have superannuated on that

post and shall be given all the post retirement benefits by re- A
calculating the same on the premise that he held the post of
Deputy Superintendent of Police from 29.05.1997 till his
superannuation on 31.03.1998. The revised pensionary
benefits as well as arrears on that account should be made B
available to the appellant at the earliest and in any case within
three months from the date of this order. The appellant is held
entitled to a consolidated cost of Rs.50,000/- which should also
be paid along with other benefits within the time indicated
above. The appeal is allowed to the aforesaid extent.

Devika Gujral

Appeal allowed. C