

A UNION OF INDIA AND OTHERS

v.

CHAMAN RANA

(Civil Appeal No. 2763 of 2018)

B MARCH 12, 2018

[ARUN MISHRA AND NAVIN SINHA, JJ.]

Service law: Promotion – Delayed claim for retrospective consideration for promotion from the date of supersession i.e. from the date their junior had been promoted – Repeated representations – Delay in approaching court – Held: In service matters, especially with regard to promotion, there is always an urgency – The aggrieved must approach the Court at the earliest opportunity, or within a reasonable time thereafter as third party rights accrue in the meantime to those who are subsequently promoted – Mere repeated filing of representations could not be sufficient explanation for delay in approaching the Court for grant of relief – Any direction to consider retrospective promotion of the respondents at a belated passage of time of over 17 to 20 years, would cause serious administrative chaos quite apart from the financial implications for the government – Claim not maintainable – Delay/laches.

Allowing the appeals, the Court

HELD: 1. The cause of action first arose to the respondents on the date of initial supersession and again on the date when rejection of their representation was communicated to them, or within reasonable time thereafter. The aggrieved must approach the Court at the earliest opportunity, or within a reasonable time thereafter as third party rights accrue in the meantime to those who are subsequently promoted. Such persons continue to work on the promotional post, ensconced in their belief of the protection available to them in service with regard to seniority. Any belated interference with the same is bound to have adverse effect on those already promoted affecting their morale in service also. Additionally, any directions at a belated stage to consider others for promotion with retrospective effect, after considerable time is bound to have serious administrative implications apart from

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the financial burden on the government that would follow by such orders of promotion. [Para 9] [644-F-G; 645-A] A

P.S. Sadasivaswamy v. The State of Tamil Nadu,
(1975) 1 SCC 152 : [1975] 2 SCR 356 – relied on.

2. Mere repeated filing of representations could not be sufficient explanation for delay in approaching the Court for grant of relief. In the facts and circumstances of the instant case, any direction to consider retrospective promotion of the respondents at such a belated passage of time of over 17 to 20 years, would virtually bring a tsunami in the service resulting in administrative chaos quite apart from the financial implications for the government. [Paras 11, 17] [645-G; 647-H; 648-A] B C

Union of India v. M.K. Sarkar (2010) 2 SCC 59 :
[2009] 16 SCR 249 ; *Union of India and Another v. Major Bahadur Singh* (2006) (1) SCC 368 :
[2005] 5 Suppl. SCR 385 ; *State of Uttaranchal v. Shiv Charan Singh Bhandari* (2013) 12 SCC 179 :
[2013] 9 SCR 609 ; *C. Jacob v. Director of Geology and Mining* (2008) 10 SCC 115 : [2008] 14 SCR 634 – relied on. D

Gandhinagar Motor Transport Society v. State of Bombay AIR 1954 Bombay 202 – approved. E

Sukhdev Singh v. Union of India & Ors. (2013) 9 SCC 566 : [2013] 5 SCR 1004 ; *Dev Dutt v. Union of India & Ors.*, (2008) 8 SCC 725 : [2008] 8 SCR 174 – distinguished. F

Case Law Reference

[2013] 5 SCR 1004	distinguished	Para 3	
[2008] 8 SCR 174	distinguished	Para 3	
[1975] 2 SCR 356	relied on	Para 10	
AIR 1954 Bombay 202	approved	Para 11	G
[2009] 16 SCR 249	relied on	Para 12	
[2005] 5 Suppl. SCR 385	relied on	Para 14	
[2013] 9 SCR 609	relied on	Para 15	
[2008] 14 SCR 634	relied on	Para 16	H

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2763 of 2018.

From the Judgment and Order dated 05.05.2017 of the High Court of Punjab and Haryana at Chandigarh in CWP No.20322 of 2016

WITH

B Civil Appeal No.2764 of 2018.

Sanjai Kumar Pathak, Girish Chaudhary (for B.V. Balaram Das),
Advs. for the Appellants.

Rajeev Sharma, Deepak Goel, Advs. for the Respondent.

C The Judgment of the Court was delivered by

NAVIN SINHA, J. 1. Leave granted.

D 2. These two appeals arise from a common order dated 05.05.2017, directing retrospective consideration for promotion of the respondents to the post of Second-in-Command and Commandant respectively, in the Border Security Force (BSF), from the date that their juniors had been promoted, along with all consequential benefits.

E 3. The respondents in the two writ petitions were superseded in the years 1996 and 2000, respectively. Both of them were subsequently promoted on 28.11.1997 and 16.06.2003 as Second-in-Command and Commandant respectively. Subsequently, both of them submitted several representations for promotion from the date of supersession. Orders rejecting the representations, along with reasons, were duly communicated to them more than once. After the pronouncement in *Sukhdev Singh vs. Union of India & ors.*, (2013) 9 SCC 566 affirming *Dev Dutt vs. Union of India & ors.*, (2008) 8 SCC 725, separate writ petitions were filed by them on 25.09.2016. The common plea taken was that the entry 'good' in their annual confidential reports (ACRs) for the relevant years was an adverse remark in view of the benchmark of 'very good'. Since the adverse entry had not been communicated to them, it could not be taken into consideration, requiring reconsideration for promotion from the date of supersession.

G 4. Learned counsel for the appellants submitted that the claims of the respondents were highly belated and stale. The writ petitions ought to have been dismissed on the ground of delay and laches. Specific

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objection had been taken in the counter affidavit, including the cascading effect that it would have had upon those promoted earlier to the respondents, and which would lead to administrative chaos. Mere filing of representations or a subsequent judgement, could not be sufficient justification to entertain such belated claims, dehors the facts of a case. The High Court ought not to have given directions to consider their candidature with retrospective effect.

5. Learned counsel for the respondents submitted that enunciation of law by this Court will always have to be given retrospective effect, unless it is made prospective specifically. The grading 'good' in the facts of the case was adverse as the benchmark for promotion was 'very good'. In view of the law laid down in *Dev Dutt* (supra) as affirmed in *Sukhdev Singh* (supra), it was mandatory for the appellants to have communicated such adverse remarks to the respondents. In absence of such communication, these remarks could not have been considered to deny promotions. The respondents were genuinely and bonafide pursuing their grievances before the authorities themselves, hoping that they would see reason, and only when they realised that relief would not be forthcoming otherwise, they approached the High Court ultimately.

6. We have considered the submissions on behalf of the parties. The only question for consideration is the applicability of the law as declared in *Dev Dutt* (supra) and affirmed in *Sukhdev Singh* (supra) to the respondents in the facts and circumstances of the present case.

7. The benchmark for promotion to the posts in question under the BSF (Seniority, Promotion and Superannuation of Officers) Rules of 1978, as prescribed in paramilitary Promotion DO letter dated 25.11.1988 was modified on 08.05.1990 from 'Good' to 'Very Good'. The respondent Chaman Rana, a Deputy Commandant was considered for promotion to the rank of Second-in-Command at the departmental promotion committee (DPC) meeting held on 13.09.1996 but could not make the grade in view of the criteria prescribed in DO letter dated 08.05.1990. The respondent represented on 20.02.1997 against his supersession. An order of rejection with reasons was communicated to him on 25.03.1997. The cause of action had, therefore, accrued to seek relief before a court of law. Nonetheless a repeat representation was made on 31.07.1997, and a reasoned rejection was again communicated on 07.05.1998. In the meantime, the respondent was empanelled to be considered for promotion

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A to the rank of Second-in-Command by the DPC held in the year 1997, and he was promoted as such on 28.11.1997. A cause of action again accrued to the respondent for approaching the Court for relief but he again represented on 30.06.1998, followed by further representations on 14.09.1998, 22.08.2000, 22.08.2006. A fresh reasoned order of rejection was again communicated on 16.05.2007. Repeat representations followed on 28.08.2012, 07.11.2015 and 20.11.2015 after which the writ petition came to be instituted.

8. Likewise, the respondent Gulshan Kumar Sharma was considered for promotion as Commandant in the years 2000-2001 and 2001-2002 by the DPC but was superseded as he failed to secure the benchmark. He represented on 25.10.2001 and was informed on 09.01.2002 that he had failed to secure the benchmark. The cause of action to approach the Court for grant of relief had accrued to the respondent but he again represented on 18.03.2002. An order of rejection along with reasons was again communicated to him on 01.09.2004. After he was promoted as Commandant on 16.06.2003, instead of approaching the Court, he again represented on 04.05.2005, followed by another representation on 08.01.2007. A reasoned order of rejection was again communicated to him on 17.04.2008. This was followed by further representation on 11.08.2009 which was again rejected on 02.09.2009 allegedly communicated on 01.01.2016. A further representation dated 03.08.2015 was also rejected on 27.11.2015. The writ petition then came to be instituted.

9. Manifestly, the cause of action first arose to the respondents on the date of initial supersession and again on the date when rejection of their representation was communicated to them, or within reasonable time thereafter. Even if the plea based on *Dev Dutt (supra)* be considered, the cause of action based thereon accrued on 12.05.2008. There has to be a difference between a cause of action and what is perceived as materials in support of the cause of action. In service matters, especially with regard to promotion, there is always an urgency. The aggrieved must approach the Court at the earliest opportunity, or within a reasonable time thereafter as third party rights accrue in the meantime to those who are subsequently promoted. Such persons continue to work on the promotional post, ensconced in their belief of the protection available to them in service with regard to seniority. Any

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belated interference with the same is bound to have adverse effect on those already promoted affecting their morale in service also. Additionally, any directions at a belated stage to consider others for promotion with retrospective effect, after considerable time is bound to have serious administrative implications apart from the financial burden on the government that would follow by such orders of promotion.

10. As far back as in *P.S. Sadasivaswamy vs. The State of Tamil Nadu*, (1975) 1 SCC 152, considering a claim for promotion belated by 14 years, this Court had observed that a period of six months or at the utmost a year would be reasonable time to approach a court against denial of promotion and that it would be a sound and wise exercise of discretion not to entertain such claims by persons who tried to unsettle the settled matters, which only clog the work of the court impeding it in considering genuine grievances within time in the following words :-

“2..... A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner’s petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant’s petition as well as the appeal.”

11. Mere repeated filing of representations could not be sufficient explanation for delay in approaching the Court for grant of relief, was considered in *Gandhinagar Motor Transport Society vs. State of Bombay*, A.I.R. 1954 Bombay 202, by Chief Justice Chagla, observing as follows :-

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A “(2)..... Now, we have had occasion to point out that the only
delay which this Court will excuse in presenting a petition is the
delay which is caused by the petitioner pursuing a legal remedy
which is given to him. In this particular case the petitioner did not
pursue a legal remedy. The remedy he pursued was extra-legal
or extra-judicial. Once the final decision of government is given, a
B representation is merely an appeal for mercy or indulgence, but it
is not pursuing a remedy which the law gave to the
petitioner...”

12. The appellant, in its counter affidavit before the High Court,
had specifically taken the objection that the claim was highly belated,
C and that any direction for a retrospective consideration would have a
destabilising effect in unsettling the settled position which would lead to
complete chaos apart from other administrative consequences. The
High Court failed to consider the objection. In *Union of India vs. M.K.
Sarkar*, (2010) 2 SCC 59, this Court observed as follows:-

D “16. A court or tribunal, before directing ‘consideration’ of a claim
or representation should examine whether the claim or
representation is with reference to a ‘live’ issue or whether it is
with reference to a ‘dead’ or ‘stale’ issue. If it is with reference
to a ‘dead’ or ‘stale’ issue or dispute, the court/tribunal should put
E an end to the matter and should not direct consideration or
reconsideration....”

13. In *Dev Dutt* (supra), the DPC was held on 16.12.1994. The
appellant therein, aggrieved by his supersession moved the High Court
with utmost expedition leading to the pronouncement by the Single Judge
F on 21.08.2001 and by the Division Bench on 26.11.2001. The appeal
was instituted before this Court in the year 2002. If that were not
sufficient to distinguish the case of the respondents, reference may also
be made to the observations in paragraph 36 as follows:

G “36. In the present case, we are developing the principles of natural
justice by holding that fairness and transparency in public
administration requires that all entries (whether poor, fair, average,
good or very good) in the annual confidential report of a public
servant, whether in civil, judicial, police or any other State service
(except the military), must be communicated to him within a
reasonable period so that he can make a representation for its
H upgradation.”

14. The High Court erred in placing absolute reliance on *Dev Dutt* (supra) and *Sukhdev* (supra) without noticing the fact situation of the respondents. In *Union of India and another vs. Major Bahadur Singh*, (2006) (1) SCC 368, it was observed:-

“9. The courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of the courts are neither to be read as Euclid’s theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of the courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments....”

15. A subsequent pronouncement by this Court could not enthrone a fresh lease of life, or furnish a fresh cause of action to what was otherwise clearly a dead and stale claim. In *State of Uttaranchal vs. Shiv Charan Singh Bhandari*, (2013) 12 SCC 179, it was observed that :-

“29.... Not for nothing, has it been said that everything may stop but not the time, for we are all slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time.”

16. The observations with regard to the *modus operandi* of the representation syndrome to revive what are clearly dead and stale claims as discussed in *C. Jacob vs. Director of Geology and Mining*, (2008) 10 SCC 115, and the caution to be exercised by the Court are also considered apposite in the facts of the present case.

17. In the facts and circumstances of the present case, any direction to consider retrospective promotion of the respondents at such a belated passage of time of over 17 to 20 years, would virtually bring a tsunami in the service resulting in administrative chaos quite apart from

A the financial implications for the government. The order of the High Court is therefore held to be unsustainable and is set aside.

18. Both the appeals are allowed for the aforesaid reasons.

Devika Gujral

Appeals allowed.