IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Jai Deo Sharma v. State of Raj. & Anr.

S.B.CIVIL WRIT PETITION NO.4325/1998
under Article 226 of the Constitution of India.

Date of Order : 23rd May, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Anil Bhandari, for the petitioner.
Mr. Shyam Ladrecha, Addl.Govt.Advocate.

BY THE COURT :

The present petition is preferred by the petitioner seeking a direction for respondents to promote him as Assistant Sub Inspector from the date persons junior to him in the cadre of Head Constable were promoted. The petitioner also sought consequential reliefs including promotion as Sub Inspector in Rajasthan Police.

The facts required to be noticed for adjudication of present petition in brief are that the petitioner entered in the services of Government of

Rajasthan being appointed as Constable under an order dated 9.3.1977. The candidature of the petitioner was considered for the purpose of promotion to the post of Head Constable under Rajasthan Police Subordinate Service Rules, 1974 (as then existing) (hereinafter referred to as “the Rules of 1974”) against the vacancies pertaining to the year 1984, however, the petitioner was not found suitable for promotion.

A challenge to the same was given by the petitioner and number of other persons who too were not selected for promotion to the post of Head Constable by way of filing writ petitions before this Court. The writ petition preferred by the petitioner bearing No.1191/91 was accepted by this Court with a direction for the respondents to reconsider the selection proceedings in the event the petitioner submits a representation to ventilate his grievance.

In pursuance of the directions given by this Court the petitioner submitted a representation to the respondents and on basis of that on reexamining the entire record of the selection proceedings the petitioner was found suitable and fit to be promoted as Head Constable by way of selection. Accordingly an order dated 25.1.1997 was passed by the Deputy Inspector General of Police, CID (Crime Branch), Government of Rajasthan, Jaipur giving promotion to the petitioner as Head Constable w.e.f. 1.3.1984. The

petitioner was also declared entitled for all benefits and reliefs for which the other persons were also declared entitled at the time of their promotion in the year 1984.

The petitioner on being promoted as Head Constable w.e.f. 1.3.1984 submitted a representation to the Director General of Police, Government of Rajasthan, Jaipur mentioning therein that number of persons junior to him who were promoted in the year 1984 as Head Constable already stood promoted as Assistant Sub Inspector. The petitioner, therefore, claimed for promotion as Assistant Sub Inspector from the date persons junior to him were promoted. The petitioner also pointed out case of one Shri Jasraj who too was not promoted as Head Constable at first instance but was promoted along with him under the order dated 25.1.1997 w.e.f. 1.3.1984. Promotion to Shri Jasraj was given as Assistant Sub Inspector in the year 1998. The petitioner claimed similar treatment for him also. The claim made by the petitioner under the representation submitted by him was rejected by the respondents by communication dated 24.8.1988.

Before proceeding further, it is also relevant to note that subsequently the petitioner was promoted as Assistant Sub Inspector and during pendency of the writ petition the respondents

conducted selection proceedings for the purpose of promotion to the post of Sub Inspector. The petitioner, therefore, preferred an application seeking interim direction for respondents to promote him to face the selection proceedings. This Court by an order dated 11.12.1998 directed the respondents to promote the petitioner and to take examination/test scheduled to be held on 14th and 15th of December, 1998 for the purpose of promotion as Sub Inspector. The Court, however, restrained the respondents from declaring result of the same till further orders.

The contention of the petitioner is that he was promoted as Head Constable w.e.f. 1.3.1984, therefore, he is required to be promoted as Assistant Sub Inspector against the vacancies of the year 1994 when other persons who were selected as Head Constable in the year 1984 were promoted. The petitioner in continuation of it also contended that he is also required to be declared entitled to face selection proceedings for the purpose of appointment by way of promotion as Sub Inspector.

A reply to the writ petition has been filed on behalf of the respondents stating therein that actual promotion to the petitioner as Head Constable was given in the year 1997. The promotion to him as Assistant Sub Inspector was given subsequent thereto. It is also stated by the respondents in their reply

that under Rajasthan Police Subordinate Service Rules, 1989 (hereinafter referred to as “the Rules of 1989”) the requirement for promotion to the post of Sub Inspector is that the incumbent must have two years' experience if he is not graduate. According to the respondents the petitioner was not possessing such experience and, therefore, he was rightly denied to face the selection proceedings conducted for the purpose of promotion to the post of Sub Inspector. The respondents have also distinguished the case of petitioner with the case of Shri Jasraj on the count that Shri Jasraj was possessing qualification of graduation, as such the experience required for him was of one year only.

A rejoinder to the reply has been filed by the petitioner mainly reiterating the averments contained in the writ petition.

I have heard counsel for the parties.

The petitioner was promoted as Head Constable under an order dated 25.1.1997 w.e.f. 1.3.1984. The petitioner, therefore, is required to be treated as a Head Constable holding the post in substantive capacity from 1.3.1984. The respondents have admitted that the promotions to the persons junior than the petitioner were given in the year 1994 as Assistant Sub Inspector. The petitioner in the year 1994 was

holding the post of Constable, therefore, his case was not considered.

As stated above, the petitioner was promoted as Head Constable under the order dated 25.1.1997 w.e.f. 1.3.1984, therefore, to settle the equities and to restore the actual position of the petitioner it was obligatory for the respondents to promote the petitioner from the date persons junior to him were promoted as Assistant Sub Inspector. The petitioner cannot be denied promotion to the post of Assistant Sub Inspector merely on the count that he was promoted as Head Constable in the year 1997, therefore, the promotion could not be given to him against the vacancies pertaining to the year 1994. If such an interpretation is accepted then the same shall frustrate the order dated 25.1.1997 whereby promotion was given to the petitioner w.e.f. 1.3.1984 as Head Constable. In fact the stand taken by the respondents makes the order dated 25.1.1997 whereby an error was rectified by the respondents totally inoperative. In view of it I am having no doubt that the petitioner is entitled to be promoted as Assistant Sub Inspector from the date persons junior to him were promoted as such in the year 1994.

The respondents came forwarded with the stand that under the Rules of 1989 the required eligibility for the purpose of promotion to the post of Sub

Inspector is that the incumbent must be having experience of two years as Assistant Sub Inspector if not graduate but the petitioner was not having such experience, therefore, he was not found eligible to face selection proceedings. It appears that the respondents have not examined the rules concerned seriously and sincerely. The Rules of 1989 nowhere prescribes requirement of experience on the post of Assistant Sub Inspector. The Rules prescribes two years' service as Assistant Sub Inspector. There is lot of difference in term “experience” and “service”. The service may be actual as well as virtual but experience is always required to be actual. In the present case there is no requirement of experience but is of service. The petitioner is having virtual services in his account as Assistant Sub Inspector, therefore, the respondents wrongly declared the petitioner disentitled for facing selection proceedings conducted for the purpose of promotion as Sub Inspector. In view of it, it is hereby declared that the petitioner is entitled for facing selection proceedings for the purpose of promotion to the post of Sub Inspector against the vacancies for which selection took place in the year 1998. The petitioner has already faced the selection proceedings in pursuance of the interim orders passed by this Court.

In view of whatever discussed above, this writ petition succeeds and, therefore, is allowed. The

respondents are directed to promote the petitioner as Assistant Sub Inspector from the date persons junior to him were promoted in the year 1994. The respondents are further directed to treat the petitioner person eligible to face selection proceedings for the purpose of promotion as Sub Inspector pertaining to which selection proceedings took place in the month of December, 1998. As the petitioner has already faced the selection proceedings in pursuance of interim directions given by this Court, the respondents are directed to declare the result of the same forthwith and in event the petitioner is found selected, promotion be accorded to him in accordance with law.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.