

Non-Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3692 OF 2006

Union of India & Ors. ... Appellants

Versus

B.S. Darjee & Anr. ... Respondents

J U D G M E N T

A. K. PATNAIK, J.

This is an appeal against the order dated 26.08.2004 of the Division Bench of the Madras High Court in Writ Petition No. 7929 of 2000 (for short 'the impugned order').

2. The facts very briefly are that the respondent no.1 was working as Constable (General Duty) under the Central Industrial Security Force (for short 'the CISF'). In 1993, he was considered for promotion to the rank of Lance Naik and was empanelled for such promotion. Before he was appointed as Lance Naik, however, he was awarded the punishment of withholding of one increment for a period of

one year and as per circulars of the Department of Personnel and Training, Government of India, his empanelment for promotion to the rank of Lance Naik had to be cancelled on account of the punishment. In 1994, respondent no.1 was again considered for promotion and he was found fit, but before his actual promotion he was awarded punishment of withholding of one increment for a period of one year and his promotion was again cancelled. In 1995, he was again considered and empanelled for promotion to the post of Lance Naik, but before he could be appointed, he was awarded the punishment of censure and his empanelment for promotion was cancelled. In 1996-1997, he was again considered for promotion but he was not found fit by the Departmental Promotion Committee (for short 'the DPC').

3. The rank of Lance Naik in CISF was rationalized and Lance Naiks also became Constables with effect from 10.10.1997, but in the seniority list, Constables who were junior to respondent no.1 in service but had been promoted as Lance Naiks were placed above the respondent no.1 as he had not been promoted to the rank of Lance Naik. From

1998 onwards, Constables who had completed ten years of service in the rank of Constables including the service rendered by them in the rank of Lance Naik prior to 10.10.1997 were eligible for promotion to the post of Head Constables. Under the relevant circulars, however, such Constables were to be considered only if they came into the zone of consideration as per the seniority list and as the respondent No.1 did not come into the zone of consideration for promotion to the post of Head Constable in the years 1998, 1999 and 2000, he was not considered for such promotion.

4. Aggrieved, the respondent no.1 filed Writ Petition No. 7929 of 2000 before the High Court and contended that though as a Constable he had put in ten years of service and was eligible for consideration for promotion, he has not been considered for promotion since 1998. By the impugned order, the High Court held that the respondent no.1 was considered by the DPC for promotion in the year 1997 and was not found fit for promotion, but he has not been considered for promotion in the years 1998, 1999 and 2000. The High Court further held in the impugned order

that in the counter affidavit it was indicated that as per the messages received from the Head Quarters, only Lance Naiks had been considered for promotion, but such consideration was not proper as under the rules, Constables on completion of ten years of service were also eligible and there was no justification to ignore the case of the respondent no.1 for promotion to the post of Head Constable in the years 1998, 1999 and 2000. Accordingly, the High Court, by the impugned order, directed the appellants to consider the case of respondent no.1 for promotion from 1998 onwards.

5. We have heard Mr. A.S. Chandhiok, learned Additional Solicitor General appearing for the appellants. No one has, however, appeared for the respondents despite notice.

6. We find that under the relevant rules and circulars issued by the Directorate General, CISF, Constables who have completed ten years of service in the rank of Constable including the service rendered in the rank of Lance Naik prior to 10.10.1997, were eligible for promotion to the post of Head Constable and also came within the zone of

consideration, could only be considered for promotion to the post of Head Constable. The case of the appellants in the counter affidavit filed before the High Court was that the respondent no.1, though eligible, did not come within the zone of consideration for promotion to the post of Head Constable in the years 1998, 1999 and 2000. The relevant portion of the counter affidavit filed on behalf of the appellants before the High Court is extracted hereinbelow:

“The DPC held in the years 1998, 1999 and 2000 for promotion to the rank of HC/GD had considered the cases of L/Naiks upto PSL No. 9197, 9286 and 11704 respectively. Since the petitioner is not holding the rank of L/Naik, he could not come under the zone of consideration for promotion to the rank of HC/GD on the basis of his seniority in the rank of Constable so far.”

The aforesaid averments made in the counter affidavit filed on behalf of the appellants before the High Court are supported by circulars dated 21.01.1998, 07.01.1999 and 08.01.2000, copies of which are annexed to the Special Leave Petition as Annexures P5, P6 and P7.

7. We, therefore, find that although the respondent no.1 was eligible for consideration for promotion to the post of

Head Constable having completed ten years of service as Constable, he could not be considered for promotion in the years 1998, 1999 and 2000 on account of his lower position in the seniority list of Constables and Lance Naiks, who had been rationalized as Constables, were considered for promotion because they had been placed above respondent no.1 in the seniority list. The High Court has by impugned order directed consideration of the respondent no.1 for promotion to the post of Head Constable during the years 1998, 1999 and 2000 because it took the view that not only Lance Naiks but also Constables who have put in ten years service were eligible to be considered for promotion to the post of Head Constable. The High Court has failed to appreciate that, for consideration for promotion, a Constable must not only be eligible, but also must come within the zone of consideration and as per the circulars dated 21.01.1998, 07.01.1999 and 08.01.2000 (Annexures P5, P6 and P7 to the Special Leave Petition), the respondent no.1, though eligible, did not come within the zone of consideration for promotion to the post of Head Constable. The High Court was, therefore, not right in issuing a

direction in the impugned order to the appellants to consider respondent no.1 for promotion in the post of Head Constable for the years 1998, 1999 and 2000. (We may mention here that the respondent no.1 has been considered, in the meanwhile, and has been promoted as Head Constable in the year 2000).

8. We accordingly allow this appeal and set aside the impugned order of the High Court with no order as to costs.

.....J.
(P. Sathasivam)

.....J.
(A. K. Patnaik)

New Delhi,
October 20, 2011.