

CASE NO.:
Appeal (civil) 3997 of 1983

PETITIONER:
M.D. HABIBUL HAQUE

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT: 17/08/1994

BENCH:
K. RAMASWAMY & S.C. AGRAWAL

JUDGMENT:
JUDGMENT

1994 SUPPL. (2) SCR 717

The following Order of the Court was delivered :

This appeal by special leave arises from the Judgment of the Division Bench of the High Court of Calcutta, dated December 23, 1982 in F-M A T. No. 3515/80. The appellant, while working as a Preventive Officer, Grade II, was dismissed from service by way of disciplinary measure. But, one appeal the Division Bench of the High Court set aside the order of dismissal and remitted the matter to the disciplinary authority to consider the case on all aspects and pass appropriate order. Thereafter, the disciplinary authority by Order dated August 9, 1973 considered the matter and imposed the penalty of reducing the scale of pay for one year with cumulative effect. Thereafter, the appellant was promoted as Preventive Officer, Grade-I by proceedings dated August 9, 1974. Thereafter, he approached the High Court claiming seniority from the date to which he is eligible for fitment as Preventive Officer, Grade I. The Learned Single Judge issued the writ and directed the authorities to grant him seniority according to the relevant rules. On appeal, the Division Bench, relying upon the procedure prescribed in the Circular F. No. 3/5/69-Ad.III-A, dated April 25, 1972 and placing reliance on paragraph 7, held that since the appellant was imposed punishment of withholding scale of pay for one year, he was not eligible to count the seniority from the date on which his junior was promoted and that therefore, the fixation of seniority with effect from August 9, 1974 was in order. Thus, this appeal by special leave.

It is contended by Shri Ganguli, learned senior counsel for the appellant that in the proceedings of the Department in F. No. 2/18/68- Ad.IV(i), dated June 6, 1968 pursuant to the recommendations made by the Customs Study Team, the posts of Preventive Inspectors were abolished and equal number of posts, namely 245 permanent and 15 temporary posts were created and directions were given to fit grade-II officers in a phased manner as and when vacancies arise in Grade ,I and that on their own showing of the respondents that one Mr. Sarup Kumar Ghosh, who was immediate junior below the appellant was promoted w.e.f.. February 29, 1968. The appellant is entitled to the fitment of his seniority as on February 29, 1968. We find force in the contention.

Though the learned counsel for the State seeks to rely on the above instructions prescribing the procedure that unless the DPC considers and promotes the appellant to the post of Preventive Officer-Grade I, he is not eligible to be considered and that therefore, the procedure adopted by the Department to give him Seniority w.e.f. August 9, 1974 is perfectly in accordance with the instructions referred to hereinbefore, we find no substance in the contention.

It is seen that in the decision taken by the Department on June 6, 1968

reorganising the preventive officers cadre and sanction of posts, it was specifically stated that the creation of the usual scale of pay of the allowances of 245 earmarked posts of Preventive Officers-Grade I and consequent abolition of 245 posts of Preventive Officers-Grade II would indicate that the officers holding the posts of Preventive Officer Grade-II as on that date are entitled to be considered for fitment as and when the vacancies would arise. But for the removal of the appellant from service, he would have been entitled to be considered for fitment in the grade of Preventive Officers, Grade I when his junior most officer, namely, Sarup Kumar Ghosh was considered and promoted w.e.f: February 29, 1968. The High Court fell in error in considering that there was a punishment imposed upon the appellant in the order dated August 9, 1973. It is seen that the punishment imposed was only reduction of scale of pay for one year with cumulative effect. That does not have the effect of reducing his seniority nor would it be a punishment of reduction of seniority of any placement which the appellant would be entitled to hold in the order of seniority. Under those circumstances, we are of the view that the appellant is entitled to be adjusted in the cadre of Preventive Officers, Grade I w.e.f. February 29, 1968, the date on which his immediate junior was considered and was given fitment as Preventive Officer, Grade-I.

The appeal is accordingly allowed. The order of the Division Bench is set aside and that of the Single Judge is confirmed. The appellant is entitled to all the consequential benefits: But in the circumstances, there will be no order so to costs.