

Ex. Capt. Ashok Kumar Sawhney

Vs

Union of India and Others

Writ Petition No. 1337 of 1979

(D. A. Desal, A. D. Koshal, V. B. Eradi JJ)

13.01.1982

ORDER

1. The short question which falls for determination in this petition under Article 322 of the Constitution of India praying for the issuance of appropriate writs quashing the letter dated March 16, 1979, by which the representation made by the petitioner against the seniority assigned to him in the cadre of Income Tax Officers, Class I was rejected and he was informed that the seniority list forming an appendix to Annexure 1 had been correctly framed in accordance with the rules then in force.

2. The answer to the question posed by the petition has to be answered with reference to Rules 4, 6 and 8 of the Released Emergency Commissioned Officers and Short Service Commissioned Officers [Reservation of Vacancies] Rules, 1971 [hereinafter called 'the Rules']. The relevant part of Rule 4[1] reads thus :

4. [1] Twenty per cent of the vacancies in the Indian Foreign Service, and 25 per cent of the vacancies in all the Central Civil Services and Posts, Class I, to which these rules apply... shall be reserved for being filled by the Emergency Commissioned Officers and the Short Service Commissioned Officers of the Armed Force of the Union who were commissioned after November 1, 1962 but before January 10, 1968, and who -

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[ii] in the case of Short service Commissioned Officers are released on the expiry of the tenure of their service; or.

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3. Rule 6 insofar as it is relevant for our purpose provides :

#6. [1] * * *###

[2] Seniority inter se of candidates who are appointed against the vacancies reserved under sub-rule [1] of Rule 4 and allotted to a particular year shall be determined according to the merit list prepared by the Commission on the basis of the results of their performance at the examination or test or interview.

[3] All candidates who have been appointed against the vacancies reserved under

sub-rule [1] of Rule 4 shall rank below the candidates who were appointed against unreserved vacancies in the service or posts through the competitive examination or test or interview conducted by the Commission corresponding to the year to which the former candidates are allotted.

4. It is not disputed that the petitioner is an officer who is entitled to the benefit of reservation under the above abstracted portion of Rule 4 [1] and to have his seniority in accordance with the sub-rule [3] of Rule 6. As we read the sub-rule last mentioned we do not find it to be ambiguous in any manner whatsoever. It lays down in clear terms that the officers appointed against vacancies reserved under sub-rule [1] of Rule 4 shall rank below candidates who were appointed against unreserved vacancies in the services concerned through a competitive examination, etc. Respondents 2 to 14 who have been placed in the impugned seniority list above the petitioner were appointed to the cadre of Income Tax Officers, Class I, through a competitive examination or test as envisaged by sub-rule [3] of Rule 6. Now if they were appointed against unreserved vacancies, they are entitled to rank above the petitioner but not otherwise. It is conceded before us that respondents 2 to 14 have been appointed against vacancies reserved for Scheduled Castes and Scheduled Tribes. Clearly, therefore, they must rank below the petitioner inasmuch as it cannot be said with any plausibility that they were appointed against unreserved vacancies.

5. Mr. Abdul Khader appearing for the Union of India has contested the interpretation just above placed by us on sub-rule [3] of Rule 6. According to him that interpretation makes the sub-rule retrospective in operation, which it is not. We agree that the sub-rule is intended to be prospective only and that the above interpretation would be operative only after the date on which the sub-rule was promulgated and not before that. But then that means that every seniority list prepared after the date of the promulgation of the sub-rule would be governed by it. Similarly, every promotion made and every question relating to seniority cropping up after the date of the promulgation of the sub-rule [which is August 28, 1971] shall be determined according to that sub-rule. No question of retrospectivity of the sub-rule is thus involved. Of course, the inter se seniority of officers of the cadre prevailing up to August 28, 1971 had to be determined under the Rules as they existed before that date and any promotion made earlier to that date would continue to be good if made in accordance with those rules. However, the position changed with the promulgation of the Rules and any promotion made thereafter has to conform to them.

6. Faced with the above situation Mr. Abdul Khader argued that the word 'unreserved' in sub-rule [3] of Rule 6 would embrace the vacancies reserved for candidates belonging to the Scheduled Castes and scheduled Tribes who had joined the cadre through open competition, etc., because the sub-rule meant to take within its ambit all such persons who had been recruited in that manner. The logic of the argument is not clear to us because it makes the whole sub-rule meaningless. If the argument were to be accepted, the use of the word 'unreserved' would be wholly uncalled for as we just cannot hold that the word is redundant, forms part as it does of subordinate legislation. The word 'unreserved' and has to be applied only to vacancies which do not fall within the reserved categories.

7. Mr. Abdul Khader took another point and that was to the effect that the rules of the service in question had been amended earlier to 1971 so as to place candidates covered by Rule 4 [1] below those who had been appointed to reserved vacancies through a competitive examination. That may well have been so but then that makes no difference to the interpretation which is given above to sub-rule [3] of Rule 6. rule 8 of the Rules declares in no uncertain terms that all rules regulating the recruitment of persons to Central Civil Services and Posts, Class I, to which the Rules apply, shall

be deemed to have been amended to the extent provided for in the Rules. If the rules regulating the seniority of the petitioner and respondents 2 to 14 were so amended earlier to 1971 as to assign to the petitioner seniority below respondents 2 to 14, the situation would be wholly irrelevant to the present dispute because after the amendment brought about Rule 8 of the Rules, the members of the service to which the contested parties belong, have to be governed by the amendment of which sub-rule [3] of Rule 6 forms a part. This is the inescapable consequence flowing from Rule 8 of the Rules.

8. We may take note here of the only other argument raised by Mr. Abdul Khader and that is that Rule 8 regulates only the recruitment of persons to Central Civil Services and Posts. Class I, and not to their conditions of service. We do not find any substance in this argument either. The word 'recruitment' is comprehensive enough to embrace the content of all the rules preceding Rule 8 including the fitment of candidates recruited to the service vis-a-vis each other.

9. In the result, we accept the petition, quash the seniority list abovementioned as well as the letter by which the representation thereagainst made by the petitioner was rejected and direct respondent 1 to re-frame the seniority list assigning the petitioner seniority in accordance with a law as explained above. There will be no order as to costs.

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