

Paramjit Singh Sandhu and Others

Vs

Ram Rakha Mal and Others

Civil Miscellaneous Petition No. 18565 of 1981

(D. A. Desai, A. P. Sen JJ)

30.09.1982

ORDER

1. This Court pronounced judgment in *Paramjit Singh Sandhu v. Ram Rakha* ((1979) 3 SCR 584 : (1979) 3 SCC 478 : 1979 SCC (L&S) 309.), on March 22, 1979.
2. One Jaspal Singh Dhaliwal has filed the present civil miscellaneous petition styling it as one for clarification/directions but in substance one for quashing the seniority list prepared by the State of Punjab and published on June 4, 1981, in respect of Police in Punjab Service. The contention is that the seniority list prepared by the State is not in conformity with the judgment by in contravention of the same and that is likely that the State may have committed an error in drawing up the seniority list on account of its misunderstanding or lack of understanding of the ratio of the judgment and, therefore, this Court may clarify the relevant portion of the judgment and in order to make the judgment effective, give direction to prepare a fresh seniority list in accordance with the clarification which would necessarily require quashing of the seniority list already published. It is this fact situation which provoked Mr Tarkunde, learned counsel for the respondent State to contend that this application for clarification/direction is a camouflage and that a substantive petition ought to have been filed and in fact has been filed in the High Court of Punjab & Haryana and therefore, this Court should refrain from entertaining the application. Alternatively, it was contended that the judgment is clear and unambiguous and that the seniority list has been drawn up in conformity with the direction contained in the judgment.
3. The judgment in respect of which clarification is sought was concerned with the construction of Rules 3, 6, 8 and 10 of Punjab Police Service Rules, 1959 ('Rules' for short). The rules provided for the constitution of Punjab Police Service concerning the cadre of Deputy Superintendents of Police. Recruitment to the service was to be made from two sources as directed in Rule 6 in the proportion of 80 per cent by promotion from the rank of Inspector and 20 per cent by direct recruitment. The special feature of the relevant Rules was to be found in Rule 10 which provided that the seniority of members of the service shall be determined by the date of confirmation in the service. There was thus a quota rule for recruitment and seniority was to be determined by the date of confirmation in the service. Ordinarily, when recruitment is from two sources after recruitment is made according to the quota rule, recruits from both the sources have to be integrated into one service. This always raised the thorny question of how to regulate seniority inter se amongst recruits from two independent sources. The Rules sought to solve the problem by making it obligatory to fix seniority of the members of the service with reference to the date of confirmation in the service. This, however, raised another question as to in what manner confirmation is to be given. That brought in for construction Rule 8 which provided that the members of the service shall be on probation for two years which shall include the period of training at the Police Training School, Phillaur, and in

the districts and in the case of members promoted the Government may be a special order in each case, permit periods of officiating appointment to the service to count towards the period of probation. Thus, recruits from both the sources were to be on probation for a period of two years. However, clause (b) of Rule 8 provided that the services of a member recruited by direct appointment may be dispensed with by Government on his failing to pass the final examination at the end of his period of training, or on his being reported on, during or at the end of his period of probation, as unfit for appointment. The proviso to clause (b) of Rule 8 enables the Government to extend the period of probation by not more than one year. On a conspectus of these Rules the Court came to the conclusion that at the end of three years a direct recruit, if not found unfit for appointment, would automatically stand confirmed. That led to the other consequences that once the direct recruit either at the end of two years or by the maximum extended period of probation by one year would automatically get confirmation and from that very date his seniority would be reckoned. Now there was no provision for such automatic confirmation of the promotees to the service. A grievance was made that the promotee hangs on for a long period and gets confirmation later than the direct recruit with the result that he is adversely affected in seniority in comparison to a direct recruit who gets automatic confirmation and once by the operation of Rules the direct recruit on account of automatic confirmation becomes senior he obtains an advantage of being considered for nomination to the I.P.S. earlier than the promotee. The bone of contention between the parties flows from the following two paragraphs in the judgment. They must be extracted :

Where recruitment to a cadre is from two sources and the Service Rules prescribed quota for recruitment for both sources a question would always arise whether the quota rule would apply at the initial stage of recruitment or also at the stage of confirmation. Ordinarily, if quota is prescribed for recruitment to a cadre, the quota rule will have to be observed at the recruitment stage. The quota would then be correlated to vacancies to be filled in by recruitment but after recruitment is made from two different sources they will have to be integrated into a common cadre and while so doing, the question of their inter se seniority would surface. Seniority is ordinarily determined from the date of entry into cadre on the principle of continuous officiation. Confirmation in a post would ordinarily depend upon such circumstances as satisfactory completion of probationary period, efficiency in the discharge of duty, capacity to discharge functions of the post, availability of permanent vacancy, etc. Now, if seniority is to be determined according to the date of confirmation and the quota rule is not made relatable to confirmation in various posts falling vacant in the cadre it would directly impinge upon the seniority of members of the service.

4. The next paragraph which has to be read in conjunction with this paragraph is as under :

It may be pointed out that where recruitment is from two sources and the seniority in the cadre is determined according to the date of confirmation, to accord utmost fair treatment a rotational system has to be followed while giving confirmation. The quota rule would apply to vacancies and recruitment has to be made keeping in view the vacancies available to the two sources according to the quota. If the quota rule is strictly adhered to there will be no difficulty in giving confirmation keeping in view the quota rule even at the time of confirmation. A roster is introduced while giving confirmation ascertaining every time which post has fallen vacant and the recruit from that source has to be confirmed in the post available to the source. This system would breakdown the moment recruitment from either source in excess of the quota is made. In fact a strict adherence to the quota rule at the time of recruitment would

introduce no difficulty in applying the rule at the time of confirmation because vacancies would be available for confirmation to persons belonging to different sources of recruitment. The difficulty arises when recruitment in excess of the quota is made and it is further accentuated when recruits from one source, to wit, in this case direct recruits get automatic confirmation on completion of the probationary period while the promotees hand out for years together before being confirmed.

5. After referring to these two paragraphs Mr Sanghi, learned counsel for the applicant urged that once the Court found that quota rule would apply to vacancies and recruitment has to be made keeping in view the vacancies available to the two sources according to the quota and a roster is introduced, while giving confirmation ascertaining every time which post has fallen vacant and the recruit from that source has to be confirmed to the post available to that source, it would mean that after the seniority list is drawn up whenever in future recruitment is to be made and/or confirmation has to be given the appointing authority has to first ascertain who retired which caused the vacancy and further ascertain from what source he was recruited and accordingly make recruitment from that source, and also give confirmation accordingly, Mr Tarkunde on the other hand urged that when a roster is introduced it does not mean that every time a vacancy occurs the appointing authority has to ascertain as to from what source the person retiring was recruited and then fill in the vacancy from that source but by roster it is meant that whenever vacancies occur irrespective of the source from which the retiring persons were retired the appointing authority must go on making recruitment accordingly to the quota rule and confirmation must also follow the same pattern. These are the two rival contentions arising from the judgment.

6. In our opinion there is no ambiguity in the judgment. Ordinarily speaking, where recruitment is from two sources with a view to integrating recruits from both sources after the recruitment seniority is determined from the date of entry into the cadre except where there has been a substantial violation of the quota giving undeserved advantage to one or the other source. Seniority ordinarily speaking is determined with reference to the date of entry into the cadre which in service jurisprudence is styled the date of continuous officiation. These notions of service jurisprudence may have to yield place to the specific rules and the fact situation with reference to Rule 10 did compel this Court to depart from the normal concept in service jurisprudence. However, introduction of a roster system is very well known in service jurisprudence. What this Court meant while saying that when a quota rule is prescribed for recruitment to a cadre it meant that quota should be co-related to the vacancies which are to be filled in. Who retired and from what source he was retired may not be very relevant because retirement from service may not follow the quota rule. Promotees who come to the service at an advanced age may retire early and direct recruits who enter the service at a comparatively young age may continue for a long time. If, therefore, in a given year larger number of promotees retire and every time the vacancy is filled in by referring to the source from which the retiring person was recruited it would substantially disturb the quota rule itself. Therefore, while making recruitment quota rule is required to be strictly adhered to. That was what was meant by this Court when it said : (SCC p. 486, para 14 : SCC (L&S) p. 318)

The quota rule would apply to vacancies and recruitment has to be made keeping in view the vacancies available to the two sources according to the quota.

The quota in the present case is 4 : 1 that is, four promotees to one direct recruit. Therefore, whenever vacancies occur in the service the appointing authority has to go on recruiting according to quota. In other words, whenever vacancies occur, first recruit four promotees irrespective of the factors or circumstances causing the vacancies and as soon as four promotees are recruited bring in

a direct recruit. That was what was meant by this Court when it said that a roster has to be introduced and this roster must continue while giving confirmation. The sentence which seems to have created a difference of opinion reads as under : (SCC p. 486, para 14 : SCC (L&S) p. 318)

A roster is introduced while giving confirmation ascertaining every time which post has fallen vacant and the recruit from that source has to be confirmed in the post available to the source.

7. The sentence cannot be read in isolation. It has to be read with the earlier sentence that the quota rule would apply to the vacancies and recruitment has to be made keeping in view the vacancies available to the two sources according to the quota. The Court then proceeded to say that if the quota rule is strictly adhered to there will be no difficulty in giving confirmation keeping in view the quota rule even at the time of confirmation.

8. Introduction of a roster system is well known to service jurisprudence. When a roster is to be introduced it only means that ascertain the available number of vacancies and proceed to make recruitment keeping in view the quota. Now, if recruitment is strictly made according to quota there will be no difficulty in applying the very rule of quota even while giving confirmation. To illustrate, assuming there are five vacancies in a given period, the recruitment will be four from the cadre from which promotion can be given and one would be a direct recruit. Naturally when the date of confirmation comes it would obviously follow that confirmation will proceed along that very line. In our opinion, therefore, there is neither any ambiguity nor any blurred area which requires to be explained.

9. There was some discussion that seniority list as at present drawn up is not in conformity with the judgment of this Court. The rules constituting the service were brought into force in 1959. Therefore, those who were recruited/promoted to the service prior to the constitution of the service under 1959 Rules would maintain their seniority as given and they cannot be disturbed by retrospective operation of the 1959 Rules. Subsequently Mr Tarkunde, learned counsel for the State of Punjab assured us that both the recruitment and confirmation have strictly been made according to the quota rule, namely, when vacancies occur recruit first four promotees and the fifth post will go to the direct recruit and the same rule is followed in confirmation.

10. It is not necessary for us to examine the validity of the seniority list. With these observations we dispose of the petition. There will be no order as to costs in this Court.

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