

Karam Pal and Others

Vs

Union of India and Others

and

Ram Swarup Kanwar

Vs

Union of India

Writ Petitions Nos. 9323 to 9333 of 1982 and 4830 of 1983

(P. N. Bhagwati, A. N. Sen, Ranganath Misra JJ)

12.03.1985

JUDGMENT

RANGANATH MISRA, J. -

1. These 12 applications under Article 32 of the Constitution are by Assistants covered by the Central Secretariat Service Rules, 1962 ('Rules' for short), and challenge is to the Select List for the grade of Section Officers for the years 1978, 1979 and 1980, and the common seniority list dated April 26, 1979, as also the provisional supplementary list of Assistants dated August 21, 1980. They have further prayed that the Select List and seniority list be republished on the basis of length of continuous service in the grade of Assistants and promotion to the grade of Section Officers be granted from the dates when Assistants junior to them were promoted as Section Officers.

2 The Rules framed under the proviso to Article 309 of the Constitution came into force from October 1, 1962. Under the Rules, the Central Secretariat Service was constituted and as per Rule 3 there are four grades in the Service classified as follows :

(i) Selection Grade (Deputy Secretary to the Government of India or equivalent);

(ii) Grade I (Under Secretary to the Government of India or equivalent);

(iii) Section Officers;

(iv) Assistants.

The first two grades are classified as Central Civil Service, Grade 'A' while the other two are known as the Central Civil Service, Grade 'B' Ministerial. Post in the first three grades are gazetted while posts in the Assistants' Grade are non-gazetted. The Rules contemplate that there shall be separate cadres in respect of Section Officers' grade and the Assistants' grade and these shall be constituted for each Ministry or office specified in column 2 of the First Schedule. Under Rule 4, a single point gradation list in respect of officers of the Selection Grade and Grade I for all the Ministries or

offices specified in column 2 and for the offices specified against such Ministries or offices in column 3 of the Schedule is to be maintained. The Rules contemplate direct recruitment as also promotion in respect of certain grades.

3. According to the petitioners the quota rule had broken down as direct recruitment had not been made in many years and on account of such failure, fixation of seniority with reference to the rotational method was not available to be followed. The petitioners also contended that select lists as contemplated by the Rules had not been framed for quite a long period and in the absence of such a select list framed in time, select lists of 1978, 1979 and 1980 prepared without following the criterion of length of service of officers in the grade of Assistants was not only unfair and arbitrary but worked out prejudicially to the petitioners. The main grievance of the petitioners in short is that the scheme for fixation of seniority and consequently the provisions relating to promotion having not worked out as contemplated, the manner of determination of seniority should be usual rule of total length of service and action taken otherwise should be struck down and seniority should be directed to be re-determined on the basis of length of service only.

4. Respondent 1, Union of India, has challenged these allegations by contending that the manner of fixation of seniority is covered by statutory rules and the petitioners are, therefore, not entitled to claim determination of seniority on the basis of length of service; the plea of the petitioners that there had been no direct recruitment for several years is denied and it had been pleaded that direct recruits have come into the Service in all years except only two, viz., 1966 and 1970. The quota rule has, therefore, really not broken down as pleaded by the petitioners and the rules having contemplated a scheme of direct recruitment and promotion, quota and rota have to work together. Therefore, fixing seniority with reference to the rotational method was not open to challenge. The Rules have been in force for well over the two decades. Great care has been taken in making provision in the Rules to safeguard the interest of the different groups and greater care has also been taken by the Department of the Personnel in the Ministry of Home Affairs to give effect to the Rules. Since the officers are drawn from different Ministries for promotion and working out the scheme involves a somewhat complicated process, as long as the policy under the Rules has been given effect to, the working should not be allowed to be attacked merely on account of a casual failure to work up to mathematical precision.

5. Before we start examining the correctness of the rival contentions advanced on either side, it is appropriate that a detailed reference to the Rules is made in order to ascertain the scheme.

6. 'Cadre' has been defined in Rule 2, sub-rule (2) to mean the group of posts in the grades of Section Officer and Assistant in any of the Ministries or offices specified in column 2 of the First Schedule and any of the offices specified against such Ministry or office in column 3 of that Schedule. 'Cadre Officer' in Rule 2(g) in relation to the Section Officers' grade or the Assistants' grade means a member of the Service of the Section Officers' grade or Assistants' grade, as the case may be, and includes a temporary officer approved for long-term appointment to that grade. 'Long-term appointment' means under Rule 2(1) appointment for an indefinite period as different from a purely temporary or ad hoc appointment. 'Common Seniority List' has been defined in Rule 2(hh) in relation to any grade to mean the seniority list of officers in that grade serving in all the cadres specified in the First Schedule as on the appointed day and revised from time to time in accordance with the regulations to be framed in that behalf by the Central Government. 'Probationer' has been defined in clause (o) of Rule 2 to mean a direct recruit appointed to a grade on probation in or against a substantive vacancy, and 'select list' under Rule 2(q) is defined to mean the Select List prepared in accordance with the regulations made under Rule 12(4) or under the regulations

contained in the Fourth Schedule. Rule 8 contemplates the initial constitution of each cadre and provides that the permanent and temporary officers of the Section Officers' grade and the Assistants' grade in each cadre on the appointed day shall be determined by the Central Government in the Department of Personnel and Administrative Reforms in the Ministry of Home Affairs.

7. Rule 12 makes provision for recruitment to Selection Grade and Grade I. We are not concerned with this rule in the present case as the dispute is raised by the Assistants and the Promotional rank to which claim has been laid is that of Section Officer. For them Rule 13 is the relevant rule. Sub-rules (1) to (5) relate to Section Officers while the remaining sub-rules (6) to (10) relate to Assistants. At the time when the service was constituted sub-rule (1) read thus :

Subject to the provisions of sub-rule (3) for a period of five years from the appointed day, one-fourth of the substantive vacancies in the Section Officers' Grade in any cadre and thereafter, one-third of the substantive vacancies in that grade, shall be filled by direct recruitment on the results of the competitive examinations held by the Commissions for this purpose from time to time.....

Sub-rule (1) of Rule 13 as it now stands reads thus :

One-sixth of the substantive vacancies in the Section Officers' grade in any cadre shall be filled up by direct recruitment on the results of the competitive examinations held by the Commission for this purpose from time to time. The remaining vacancies shall be filled by the substantive appointment of persons included in the select list for the Section Officers' grade in that cadre. Such appointments shall be made in the order of seniority in the Select List except when for reasons to be recorded in writing, a person is not considered fit for such appointment in his turn.

It is thus clear that the proportion of direct recruits has been reduced from the initial one-fourth or one-third to the present one-sixth.

8. Sub-rule (2) of Rule 13 prescribes :

Temporary vacancies in the Section Officers' grade in any cadre shall be filled by the appointment of person included or approved for inclusion in the select list for the Section Officers' grade in that cadre. Any vacancies remaining thereafter shall be filled in equal proportion from among the (a) officers of the Assistants' grade who have rendered not less than 8 years' approved service in the grade and are within the range of seniority on the basis of seniority subject to the rejection of the unfit... and (b) officers of the Assistants' grade in that cadre with the longest period of continuous service in that grade on the basis of length of service subject to the rejection of the unfit.

Sub-rule (5) prescribes the preparation of select list of Assistants for promotion to the Section Officers' grade and the manner of preparing and revising the select list has been set out in the Fourth Schedule.

9. Sub-rule (6) prescribes that 50% of the vacancies in the Assistants' grade in any cadre is to be filled by direct recruitment on the results of the competitive examinations to be conducted by the Commission from time to time and the remaining vacancies are to be filled by substantive appointment of persons included in the select list for the Assistants' grade in that cadre. Such appointments are to be made in the order of seniority in the select list except when for reasons to be recorded in writing, a person is not considered fit for appointment in his turn. When difficulties were experienced in working out the rule, two provisos were added to sub-rule (6), one with effect

from December 15, 1979. These were to the following effect :

Provided further that substantive vacancies in any cadre reserve for direct recruitment on the appointed day against which no direct have been appointed may be filled by substantive appointments made after the date of commencement of the Central Secretariat (Third Amendment) Rules, 1970, of persons included in the Select List for the Assistants' grade in that cadre.

Provided also that if sufficient member of candidates are not available for filling up the vacancies in a cadre in any year by direct recruitment as aforesaid, the unfilled vacancies in the direct recruitment quota in that cadre shall be filled by the substantive appointment of persons included in the Select List for the Assistants' Grade in that cadre.

10. Sub-rule (6)(a) which was inserted along with the latter proviso authorised :

Notwithstanding anything contained in sub-rule (6), the substantive vacancies reserved for direct recruitment as on June 30, 1979 on each cadre against which no direct recruits have been appointed till that date plus 50% of the number of such substantive vacancies in the cadre may be filled by substantive appointments made after the date of commencement of Central Secretariat Service (Third Amendment) Rules, 1979, of persons included in the select list for the Assistants' grade in that cadre.

Under Rule 15 every direct recruit to the grade of Assistant is initially to be appointed on probation for the period of two years from the date of appointment and every person other than a direct recruit when he is appointed would be on trial for a period of two years also. Rule 16 makes provision for confirmation of probationers subject to passing of prescribed tests and satisfactory completion of probation.

11. Rule 18 prescribes seniority in the different grades as on the appointed day. Sub-rule (1) indicates that relative seniority shall be as already determined on that day and if there had been no such determination the same has to be determined by the Department of Personnel and Administrative Reforms. Sub-rule (2) provides that all permanent officers included in the initial constitution of a grade shall rank senior to all persons substantively appointed to that grade after the appointed day and all temporary officers included in the initial constitution of a grade under Rule 8 shall rank senior to all temporary officers appointed to that grade after the appointed day. Rule 18, sub-rule (3) makes provision for the rule in the matter of fixation of inter se seniority for the Assistants' Grade. Direct recruits are to rank inter se in the order of merit in which they are placed in the competitive examination on the result of which recruitment is effected. Recruits of an earlier examination are to rank senior to those of a later examination. Persons appointed substantively to the grade from the select list for that grade shall rank inter se according to the order in which they are so appointed and the inter se seniority between direct recruits and persons substantively appointed to the grade for that grade shall be regulated in accordance with the provision made in the Fourth Schedule.

12. Regulation 3 in the Fourth Schedule deals with seniority. Clause (3) of this regulation provides :

Direct recruits to a grade and person substantively appointed to the grade from the Select List for the grade shall be assigned seniority inter se according to the quotas of substantive vacancies in the grade reserved for direct recruitment and the

appointment of person included in the Select List, respectively.

From December 1977, contemporaneously with the insertion of the second proviso to Rule 13(6) of the Rules, the following was added as proviso to clause (3) of Regulation 3 :

Provided that persons appointed substantively in accordance with the provisions of sub-rule (6) of Rule 13 to the grade from the Select List in any cadre in any year, against direct recruitment vacancies for which direct recruits are not available shall be placed en bloc below the last direct recruit appointed in that year irrespective of the quotas reserved for direct recruits and persons included in the Select List.

13. In course of the hearing counsel for the petitioners referred to instances where a direct recruit coming into the cadre several years after others coming into the cadre from the Select List had been assigned seniority over such promotees. This was explained by counsel for the respondents to have been the outcome of giving effect to clause (3) of Regulation as it stood prior to December 1977 without the proviso. The instances relied upon were found to be events prior to the introduction of the proviso. In the absence of challenge to the Rules and the Regulations, resultant situations flowing from compliance of the same are not open to attack. Occasion for similar grievance would not arise in future as the proviso in the relevant regulation and clauses (4) and (5) of the Regulation 3 will now meet the situation.

14. Neither in the writ petitions nor in arguments before us any challenge was advanced against the vires of the Rules. One of the known patterns of constituting public service, particularly in the executive side, is to draw officers both by promotion as also by direct recruitment. The proportion is fixed depending upon the nature of the service, the availability of suitable manpower and other relevant considerations. The petitioners have, therefore, rightly not challenged before us the scheme under which a moiety of the substantive vacancies in the Assistants' grade is to be filled by direct recruitment and the other by promotion through select lists.

15. The Rules have held the field for 22 years now. During this period direct recruitment had not been made only in two being 1966 and 1970. Though in the writ petitions a general stand had been adopted that direct recruitment had not been made in several years, after the counter-affidavit was filed and it was emphatically asserted that excepting in these two years direct recruitment had been made in other years, there has been no challenge to the assertion. We agree with the contention that quota and rota have got to go hand in hand and if the quota is not properly adhered to, the rota system must fail. In fact, the scheme is such that it can operate in an appropriate way only when recruitment is effected through both the processes as envisaged.

16. As we have already pointed out, difficulty was experienced in working out the process when the quota fixed by the Rules had not been adhered to for one reason or the other and vacancies were being carried forward for being filled up in future years. This section necessitated insertion of the first proviso to sub-rule (6) of Rule 13 in August 1970 and the other proviso in 1977 has also sub-rule (6)(a) in 1979. The grievance voiced in these writ petitions obviously relates to a period to the modification of the scheme.

17. The petitioners had, inter alia, prayed for the relief of striking down the select lists and for direction that the select lists be reframed on the basis of the length of continuous service in the grade of Assistants. In view of what we have said regarding the claim of seniority on the basis of length of continuous service, it is not at all necessary to examine the validity of that contention and

give any direction regarding the select lists, particularly because the claim relating to reconsideration select lists was grounded upon length of continuous service. Nothing was also shown in course of arguments as to why the select lists were bad. In fact, unless the rules and Regulations are successfully assailed, the select lists are not at all disputable.

18. The field which these Rules cover is indeed very wide one. Assistants in all the Ministries or offices specified in the First Schedule are covered by the Rules. With a view to maintaining the efficiency of the Service and at the same time to meet the requirements and exigencies of the service, separate cadres have been formed in respect of Assistants and Section Officers in the different Ministers and offices attached to such Ministries. Notwithstanding the fact that these cadres are different, the scheme makes provision for promotional avenue taking all of them into consideration. Obviously, working it out keeping in view the interests of so many employees in the different cadres is indeed a very onerous and difficult task. This has, therefore, been assigned to the Department of Personnel. Unless there is any serious failure in implementing the Rules and grave injustice is done to some individuals or a group of officers, we do not think it would be proper to interfere with the working of the scheme and dislocate the inter se seniority of the officers in these grades. No mala fides has been pleaded nor has any grave injustice been established in the writ petitions. At the most a case of improper working of the scheme with reference to some of the officers had been alleged. Hair-splitting arguments, if accepted, might indicate that some of the petitioners have not been promoted to be grade of Section Officers as and when due. We are of the view that if there has been substantial compliance in implementing the scheme under the rules, judicial interference is not called for. In a vast country such as ours, a strong and independent bureaucratic set up is indispensable. At the same time it is equally necessary that the Service from top to bottom must be alive to the fact that it is its obligation to maintain proper attitudes, discipline and duty-oriented working. While it is the right of every person in the Service set-up to expect just and fair treatment in regard to his employment, frequent litigation between him and the State involving countless other co-employees in the Service in the battle is a deviation from the right direction. It is true that very often instances come to light where the grievance is genuine and the treatment meted is unwarranted and uncalled for. Government in a democratic polity runs on impersonal basis but on the cardinal code that every one shall perform his duty. We may recall what this Court observed in *Dr G. Marulasiddaiah v. Dr T. G. Siddapparadhya* ((1971) 1 SCC 568 : (1971) 2 LLJ 349) : (SCC p. 573, para 16)the canker of litigiousness has spread even to a sphere of life where discipline should check ambition concerning personal preferment. A teacher is justified in taking legal action when he feels that a stigma or punishment undeserved but he is expected to bear with fortitude and reconcile himself to his lot suppressing disappointment when he finds a co-worker raised to a position which he himself aspired after.

19. There has been a phenomenal rise in service disputes in the last three decades. It is time that serious attention is devoted to discover the reason for it and take effective steps to ensure curtailment thereof. Whether such litigations come before courts or tribunals is of no consequence here. Frequent litigations between the State and its employees ultimately affect the efficiency of the service and bring about indiscipline, lack of loyalty and an attitude of indifference.

20. In the course of arguments reference was made to certain decisions of this Court. In *N. K. Chauhan v. State of Gujarat* ((1977) 1 SCR 1037 : (1977) 1 SCC 308 : 1977 SCC (L&S) 127 : AIR 1977 SC 251), this Court held that quota system does not necessitate the adoption of the rotational rule in practical application and many ways of working out quota prescribed can be devised of which rota is certainly one. It was further held that while laying down a quota when filling up vacancies in a cadre from more than one source, it is open to Government, subject to tests under

Article 16, to choose 'a year' or other period or vacancy by vacancy basis, to work out the quota among the sources. But once the Court is satisfied, examining the constitutionality of the method proposed, that there is no invalidity, administrative technology may have free play in choosing one or the other of the familiar processes of implementing the quota rule. This Court did indicate that as Judges we cannot strike down a particular scheme because it is unpalatable to forensic taste. This Court further pointed out that ordinarily seniority is measured by length of continuous officiating service. This, however, does not preclude different prescription, constitutionality tests being satisfied. When the Court found that promotees had been appointed in excess of their quota, the following direction was given : [SCC para 40, p. 329 : SCC (L&S) p. 147]

Promotees who have been fitted into vacancies beyond their quota during the period B - the year being regarded as the unit - must suffer survival as invalid appointees acquiring new life when vacancies in their quota fall to be filled up. To that extent they will step down, rather be pushed down as against direct recruits who were later but regularly appointed within their quota.

The rationale of this decision is indeed very much against the contentions of the petitioners.

21. Reference was also made to case of S. B. Patwardhan v. State of Maharashtra ((1977) 3 SCC 399 : 1977 SCC (L&S) 391 : (1977) 3 SCR 775 : 1977 Lab IC 1367). The dispute that fell for adjudication in that case was done of seniority in the cadre of Deputy Engineers and grievance had been laid that notwithstanding the length of continuous service, later appointees had been shown as senior. Attention in the decision was mainly confined to the terms of the provisions of the Rules applicable to the State Engineering Service. In the view we have taken of the matter this decision indeed does not help the petitioners.

22. Next is the case of Baleshwar Dass v. State of U.P. ((1981) 1 SCR 449 : (1980) 4 SCC 226 : 1980 SCC (L&S) 531 : (1981) 1 LLJ 140) This Court pointed out that for the purposes of seniority appointment to the service in a substantive capacity was necessary. But that again was said with reference to Rule 23 of the U.P. Service of Engineers (Junior and Senior Scales - Irrigation Branch) Rules.

23. This Court in V. T. Khanzode v. Reserve Bank of India ((1982) 3 SCR 411 : (1982) 2 SCC 7 : 1982 SCC (L&S) 147 : 1982 Lab IC 1217), took note of the fact that "no scheme governing service matter can be foolproof and some section or the other of employees is bound to feel aggrieved on the score of its expectation being falsified or remaining to be fulfilled. Arbitrariness, irrationality, perversity and mala fides will of course render any scheme unconstitutional but the fact that the scheme does not satisfy the expectations of every employee is not evidence of these".

24. Next is the case of A. Janardhana v. Union of India ((1983) 2 SCR 936 : (1983) 3 SCC 601 : 1983 SCC (L&S) 467 : 1983 Lab IC 849). That was a case relating to dispute of inter se seniority of direct recruits and promotees in the Military Engineering Service. Seniority lists drawn up earlier on the basis of length of service including continuous officiation were subsequently altered to lists based on quota between direct recruits and promotees leading to rota for confirmation and this led to the dispute. The Court found that some of the officers had been promoted prior to the enforcement of the Rules in 1969. The Rules had no retrospective effect and, therefore, seniority lists drawn up prior to the enforcement of the Rules were not open to be revised and re-drawn up after the Rules became operative. The Court further found that the quota rule had not been worked out and if rotational confirmation was to be done, many of the employees considered hitherto senior would be very badly affected. Here again we must point out that this decision has no application to the facts

before us since on the finding reached by us the quota rule was substantially complied with.

25. The writ petitions must accordingly fail. We make no order for costs.

</html