

Union of India and Others

Vs

S.D. Gupta and Others

Civil Appeals No. 3767 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

12.02.1996

ORDER

1. Delay condoned. Impleadment is allowed.

2. Leave granted.

3. We have heard the counsel on both sides. The admitted facts are that the respondents are promotee Extra Assistant Directors (Class III) in Central Water Commission Engineering Class I Service. Rules were made w.e.f. 15-10-1965. The Tribunal in the earlier litigation had found that V.P. Misra, Extra Assistant Director was promoted on ad hoc basis on 31-3-1978 and he was required to be confirmed w.e.f. the date on which vacancy was available to him in the quota of promotees. It is not in dispute that vacancy had arisen in the quota of promotees on 3-5-1979 and he was fitted into that vacancy. While doing so, the appellants had applied the principle of rota and quota and determined inter se seniority of the promotees and the direct recruits. Consequently, the promotees were pushed down in the order of their seniority. That led to the second round of litigation. In the impugned order dated 20-4-1995 made in OA No. 1050 of 1994, the CAT at Delhi had directed the appellants to determine the seniority in the light of the directions issued by this Court in civil appeal arising out of SLP (C) No. 14389 of 1988 on 23-4-1991 and the relevant rules applicable to the candidates. Since it created confusion in the implementation of the order, the appellants have come before us by special leave. The Tribunal in paragraph 5 has stated thus :

"We find substance in the submission of the learned counsel for the applicants that the intention of the judgment of the Supreme Court was to ignore the ad hoc period prior to the occurrence of vacancy. The continuous officiation period was, therefore, to count only from the date a vacancy in the promotees' quota arose. This principle has not been observed while preparing the impugned seniority list, which, therefore, has to be quashed."

In ultimate paragraph 7, this was held thus :

"In view of the above, the original application is allowed and the impugned seniority list dated 19-1-1994 is hereby quashed. The administration shall redraw the seniority list taking into account the observations made."

4. The question, therefore, is what will be the principle applicable to the respondent and the direct recruits, in appeal arising out of SLP (C) No. 2293 of 1996. It is not in dispute that as on 3-5-1979 the Rules applicable to the candidates were as under :

"5. Promotees. - (i) The relative seniority of persons promoted to the various grades shall be determined in the order of their selection for such promotion :

Provided that where persons promoted initially on temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their promotion seniority shall follow the order of confirmation and not the original order of the merit.

(ii) where promotions to a grade are made from more than one grade, the eligible persons shall be arranged in a separate list in the order of their relative seniority in their respective grades. Thereafter, the Departmental Promotion Committee shall select persons for promotion from each list up to the prescribed quota and arrange all the candidates selected from different lists in a consolidated order of merit which will determine the seniority of the persons on promotion to the higher grade.

Note. - If separate quotas for promotion have not already been prescribed in the relevant recruitment rules, the Ministries/Departments may do so now, in consultation with the Commission wherever necessary.

6. Relative seniority of direct recruits and promotees. - The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules."

A reading thereof would clearly indicate that the seniority of the persons promoted to the various grades shall be determined in the order of the selection for such promotion and the relative seniority of the direct recruits and the promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quota of various vacancies reserved for direct recruits and promotees respective in the recruitment rules. The rules were made in 1959 which would indicate the fixation of the quota-rota as available. They read thus :

"These Rules provided for filling up of 60% of posts in the grade of Assistant Directors by direct recruitment, 25% of posts by promotion and 15% of posts by deputation. The seniority of Assistant Directors was being fixed as rota-quota system as per provisions of erstwhile Department of Personnel and Administrative Reforms OM No. 19/11/55-RPS dated 22-12-1959. While fixing the seniority of Assistant Directors, the deputationists were not coming to the picture and the vacancies were rotated between the direct recruits and the promotees in the following manner :

#Point 1 PromoteePoints 2, 3, 4 Direct RecruitsPoint 5 PromoteePoints 6 & 7 Direct RecruitsPoint 8 PromoteePoints 9, 10, 11 Direct RecruitsPoint 12 PromoteePoints 13 & 14 Direct RecruitsPoint 15 PromoteePoints 16, 17 Direct Recruits and so on."##

5. It is contended by Shri Krishnamani, learned counsel for the respondent promotees that 1982 statutory rules have been made regulating the service conditions of the candidates holding the post under the service at the initial constitution of the service and the existing candidates became members of the service. Rule 8 thereof prescribes the inter se seniority of the candidates. Those who are substantively appointed to the posts would be junior to those continuing at the initial constitution of the service. So direct recruits are not seniors to the promotees. Consequentially, the direct recruits must be considered to be juniors to the promotees since the direct recruits were admittedly recruited

from 1982 onwards after the statutory rules came into force. It is contended by Shri Sitaramiah, learned Senior Counsel for direct recruits and for the Union of India that the contention is not correct. So long as the rota and quota is available, the interpretation should be such that both rota and quota should be allowed to operate in their respective fields; if so operated, the direct recruits, though recruited later, are entitled to be fitted into the vacancy to which they were recruited. Consequentially, they may become seniors in the seniority list though they were appointed later to the promotees who are to be fitted in the very respective quota as and when vacancy arises within the quota. This construed, it must be held that the direct recruits would gain seniority over the promotees.

6. In view of the respective contentions the question arises whether the fitment of seniority determined by the appellant Union is in accordance with the rules ? It is seen that the fitment of rota and quota is not specifically provided in 1982 statutory rules. But it prescribed admittedly 60% of the substantive vacancies for the direct recruits and 40% for the promotees. Among the 40% quota, they further made a demarcation in the ratio of 25 : 15 between the Extra Assistant Directors and the appointees by transfer. We are not concerned with each class in this case. Admittedly, the promotees are entitled to their fitment within 25% of the quota prescribed for them under the rules. Since rules are silent, sub-rule (2) of Rule 8 clearly mentions that the determination of seniority in accordance with the rules of the Government of India, Ministry of Home Affairs, Personnel and Administrative Reforms Department will be applicable to the members of the service. It is seen that under 1959 instructions, the quota and rota procedure has been prescribed as extracted hereinbefore. In other words, since the statutory rules are silent as regards the fitment of the rota and quota and determination of the inter se seniority, the administrative instructions issued by the Government, would supplement the rules and accordingly they must be worked out.

7. It is seen that admittedly the vacancies for the promotees had arisen on 3-5-1979 and thereafter V.P. Misra is entitled to the vacancy that arose on that date. Therefore, when the inter se seniority is determined between the promotees to the substantive vacancies that have arisen on 3-5-1979 and thereafter, though direct recruits were recruited later, their fitment in the order of seniority should be determined with reference to rota and quota prescribed under the aforesaid administrative instructions and the statutory rules. It would appear that the Government of India had worked out the rota and quota in tune with the above rules.

8. It is then contended that the direct recruits were not born in the service when the promotees were promoted and equity requires that they cannot be pushed down. The object of direct recruitment is to blend talent and experience to augment efficiency when direct recruits, though came from green pastures, were imbued with dedication and honesty. So long as system continues, consequences are inevitable. The question of equity does not arise. Shri Krishnamani then contended that direct recruits are shown temporary and so they cannot be similar to promotee substantive appointees. The quota of 60% of direct recruits is to substantive vacancies, though their initial appointment is temporary; on completion of period of probation they became substantive appointees. That is the settled principle of law in this behalf. The Tribunal, therefore, is not right in giving direction to consider their fitment vis-a-vis the order passed by this Court in their quota above the direct recruits.

9. The appeals are accordingly allowed but, in the circumstances, without costs.