

D. Radhakrishnan

Vs

Union of India and Others

Civil Appeal No. 11997 of 1996

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

02.09.1996

ORDER

1. Leave granted.

2. We have heard learned counsel on both sides.

3. This appeal by special leave arises from the order of the Central Administrative Tribunal, Madras Bench made on 23-1-1995 in OA No. 3 of 1992. The admitted position is that the appellant was appointed to Tamil Nadu State Police Services by direct recruitment on 7-10-1979. He was transferred and posted as DCP, Law and Order, Madras (South) which is a cadre post, w.e.f. 27-7-1980 and ever since he had been continuously officiating in the cadre post. He was included in the select list, for the first time, on 26-10-1979 approved by the UPSC on 12-12-1979. The same list was continued for the year 1980. But in the select list for the year 1981, he was not included for want of requisite vacancy allotable to the State cadre. Consequently, he came to be included again on 16-12-1982 in the select list approved by the UPSC on 28-3-1983. When his seniority was determined, the order of allotment indicated that 1978 was fixed as his year of allotment. He questioned the correctness thereof on two grounds, namely, his non-inclusion in the list for the year 1981 was bad in law; he also contended that since he was continuously officiating from 1980 and was included in the select list for the first time in the year 1979, his year of allotment should be 1980. Both the contentions were negatived by the Tribunal. The question for consideration, therefore, is whether the Tribunal is right in its conclusion? Rule 3(3) of the IPS (Regulation of Seniority) Rules reads as under :

"3. Assignment of year of allotment. - (1) Every officer shall be assigned a year of allotment in accordance with the provisions hereinafter contained in this rule.

#(2) * * *##

(3) The year of allotment of an officer appointed to the service after the commencement of these rules shall be -

(a) where the officer is appointed to the service on the results of a competitive examination the year following the year in which such examination was held;

(b) where the officer is appointed to the service by promotion in accordance with

Rule 9 of the Recruitment Rules, the year of allotment of the juniormost among the officers recruited to the service in accordance with Rule 7 of these Rules who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former :

Provided that the year of allotment of an officer appointed to the service in accordance with Rule 9 of the Recruitment Rules who started officiating continuously in a senior post from a cadre earlier than the date on which any of the officers recruited to the service, in accordance with Rule 7 of those Rules, so started officiating shall be determined ad hoc by the Central Government in consultation with the State Government concerned.

Explanation 1. - In respect of an officer appointed to the service by promotion in accordance with sub-rule (1) of Rule 9 of the Recruitment Rules, the period of his continuous officiation in a senior post shall, for the purposes of determination of his seniority count only from the date of the inclusion of his name in the select list, or from the date of his officiating appointment to such senior post whichever is later."

4. This rule was considered by a Bench of three Judges of this Court in Syed Khalid Rizvi v. Union of India [1993 Supp (3) SCC 575 : 1994 SCC (L&S) 84 : (1994) 26 ATC 192]. After an elaborate consideration, in paragraph 21 of the judgment, this Court had held as under : (SCC pp. 596-97)

"Thus it is settled law that a promotee officer appointed temporarily under Regulation 8 of Promotion Regulations and Rule 9 of Cadre Rules to a cadre post does not get his/her continuous officiation towards seniority. Seniority would be counted only from the date on which he/she was brought into the select list by the selection committee in accordance with Recruitment Rules, Promotion Regulations and Seniority Rules and was approved by the UPSC, appointed under Rule 9 of Recruitment Rules and Regulation 9 of Promotion Regulations and has continuously officiated without break. Seniority would be entitled from the date of select list or continuous officiation whichever is later. He/she is entitled to appointment by the Central Government to substantive vacancy under Regulation 9 of Promotion Regulations from that date. The Central Government and the UPSC should approve temporary appointment by an order in writing and also of such officiation. In that event seniority would be counted only from the date, either of his/her inclusion in the select list or from the date of officiating appointment to the cadre post whichever is later. By operation of Explanation 1 to Rule 3(3)(b) of the Seniority Rules his seniority will be counted only from either of the later dates and the necessary effect is that the entire previous period of officiation should be rendered fortuitous and the appointment as ad hoc appointment or by local arrangement."

5. This was again reconsidered by another Bench of two Judges of this Court in R.R.S. Chouhan v. Union of India [1995 Supp (3) SCC 109 : 1995 SCC (L&S) 1098 : (1995) 30 ATC 539]. This Court in the latter judgment has held that in the matter of year of allotment, the basis should be the date of inclusion or of continuous officiation, whichever is later. It was held that where an officer continuously officiating as Officer on Special Duty, was promoted to the IFS after his name was included in the select list for the IFS in different years except in the year immediately preceding the year of his promotion, assuming that the post of OSD was a senior post, benefit of such officiation was held to be not available in assignment of year of allotment to him since he was included in the

select list in the later year by operation of Explanation II to Rule 3(3) of the Rules.

6. Thus, we hold that the appellant was entitled to his year of allotment only from the date when he was later included in the select list in the year 1982. Accordingly, 1978 as his year of allotment was immediately below the year of the direct recruits in the cadre.

7. The appeal is accordingly dismissed. No costs.