

Mohan Karan

Vs

State of U.P.

(K. Venkataswami, A. P. Misra JJ)

18.03.1998

JUDGMENT

K. VENKATASWAMI J

1. The appellant, feeling aggrieved by the promotion given to the second respondent herein as Chief Town Planner, Bareilly, as per the order dated 6/7.7.92, moved the Allahabad High Court, Lucknow Bench, with a prayer for the issue of Writ of Certiorari to quash the selection of the second respondent as Chief Town Planner (Mukhya Nagar Niyojak) and also for the issue of Writ of Mandamus directions the first respondent to consider his case for the post of Chief Town Planner and to promote him to the said post with consequential benefits.

2. Short facts leading to the filing of the Writ Petition No.3849/92 before the High Court are the following :

3. On the coming into force of the U.P. Urban Planning and Development Act, 1973, the Development Authorities' were constituted for the declared development areas. One such Development Authority constituted in September, 1974 was the Lucknow Development Authority. The said Authority had the power to appoint officers and employees for the performance of functions entrusted to it under Section 5(2) of the 1973 Act. A proposal for creation of certain posts in the Planning Section of the Lucknow Development Authority was moved for consideration on 3.3.76. Pursuant to that, in the meeting held on 15.10.76, the Vice Chairman of the Lucknow Development Authority intimated about the creation of posts in the Planning Section inter alia Assistant Architect and Executive Officer (RBO). By a letter of appointment dated 29.12.76, the appellant was appointed on the post of Assistant Architect in the pay scale of 550-1200, which was revised by the Pay Commission to 850-1720 w.e.f. 1.7.79. The appellant joined the service as Assistant Architect on 7.2.77. Subsequently, the appellant was promoted on ad hoc basis as Executive Officer (RBO) on 7.2.83 in the pay scale of 800-1450, which was subsequently revised as 1250-2050 with effect from a date prior to 7.2.83. However, the appellant was reverted to the original post of Assistant Architect by an order dated 2.4.83. This order of reversion was challenged by the appellant before the Lucknow Bench of the Allahabad High Court in Writ Petition No.1929/83 on 14.4.83. The High Court finally heard and disposed of the Writ Petition on 22.7.87 accepting the case of the appellant and consequently quashing the order of reversion and directing the Authorities to restore the appellant to the post of Executive Officer (RBO) with all consequential benefits. In the meanwhile, the 1973 Act was amended on 22.10.84 by inserting Section 5-A, which enabled the creation of 'Development Authorities Centralised Services'. Later on, the U.P. Development Authorities Centralised Services Rules, 1985 were framed under Section 5-A read with Section 55 of 1973 Act. These Rules came into force on and from 25.6.85. According to Rule

3, certain posts in the cadre of service of 'Town Planning and Architectural' were enumerated. For our purpose, the following four posts need a reference:

1. Mukhya Nagar Niyojak 1780-2300
2. Nagar Niyojak 1250-2050
3. Sahayak Nagar Niyojak 850-1720
4. Vastuvid/Statistical Assistant 570-1100

4. As contemplated under the Centralised Services Rules, the appellant was absorbed as Assistant Town Planner/Assistant Architect which post the appellant was holding when he was reverted in the pay scale of 850-1720 by an order dated 14.5.87. This order of absorption was passed when the matter was pending before the Allahabad High Court, which was disposed of only on 22.7.87, as noticed above, allowing the appellant's case. The judgment of the Allahabad High Court was given effect to by the Authorities by making an entry in the Service Book of the appellant on 13.6.1991 to the effect that the appellant stood promoted to the post of Architect w.e.f. 7.2.83 in the pay scale of Rs. 1250-2050.

(emphasis supplied)

5. However, the Authorities, without noticing the judgment dated 22.7.87 of the Allahabad High Court, gave promotion to the appellant to the post of Town Planner on 29.7.87 in the pay scale of 1250-2050. It must be noted that as per the Allahabad High Court judgment, which was given effect to subsequently on 13.6.91, the appellant was holding the post of Architect in the pay scale of 1250-2050 w.e.f. 7.2.83.

6. As against the above history of the appellant, let us now look into the service record of the second respondent. The second respondent was appointed as Architect, equivalent to Assistant Town Planner, on 29.10.76 in the pay scale of 850-1720. However, the second respondent was promoted as Senior Architect in the pay scale of 1250-2050 only on 16.5.84, whereas the appellant was promoted as Executive Officer (RBO) in the pay scale of 1250-2050 w.e.f. 7.2.83, i.e., much earlier to the promotion of the second respondent to the post of Senior Architect in the pay scale of 1250-2050. Further promotion will be to the post of Chief Town Planner. For this, the second respondent was preferred and given appointment on 6.7.1992. Hence, the appellant moved the Allahabad High Court, Lucknow Bench, for the relief mentioned above by filing W.P. 3849/92.

7. The High Court was of the view that the post of Executive Officer (RBO) held by the appellant was not a cadre post in the Centralised Services Rules and he was absorbed in a lower grade when the second respondent was holding a post in the higher grade. Even though, the High Court noticed the Judgment allowing the Writ Petition No.1929/83 and which enabled the appellant to draw salary in the pay scale of 1250-2050 from 7.2.83, held that he was promoted in the pay scale of 1250-2050 only on 13.6.91 when the entry was made on that date in the Service Book of the appellant. The High Court herein again failed to notice that the entry made on 13.6.91 expressly gave effect to the promotional order w.e.f. 7.2.83. Ultimately, the High Court dismissed the Writ Petition of the appellant.

8. Aggrieved by the decision of the High Court, the present appeal by special leave has been preferred by the appellant.

9. Learned counsel appearing for the appellant elaborately argued the case of the appellant by bringing to our notice, in detail, the facts as well as the relevant Rules. According to the learned counsel, the criteria for determining the seniority between the appellant and the second respondent must be on the basis of Rule 7 of the U.P. Development Authorities Centralised Services Rules, 1985 and not on the basis of Rule 6 of the U.P. Government Servants Seniority Rules, 1991 or Rule 28 of the Centralised Services Rules. According to the learned counsel, Rule 7 of the Centralised Services Rules is a special one which excludes all other general rules. In this connection, he placed reliance on the well-known Latin Maxim: 'generalia specialibus non derogant'. In substance that maxim means the special excludes the general. According to the learned counsel, Rule 7 of the Centralised Services Rules being special one excludes Rule 6 of the U.P. Government Servants Seniority Rules a general one. In support of that, he placed reliance on a judgment of the Constitution Bench in *Ashoka Marketing Ltd. & Anr. etc. Vs. P.N.B. & Ors. etc.* [(1990) 4 SCC 406]. He also contended that the scope of Rule 3 of the Centralised Services Rules had not been properly interpreted by the High Court when it held that in the absence of express enumeration of the post of Executive Officer (RBO) in the Centralised Services Rules, the appellant cannot claim the services rendered in that post notwithstanding the scale of pay drawn by him for the purpose of further promotion. A proper reading of Rule 3, read with the Note-1 and also Rule 7, will clearly indicate, according to the counsel, that the post held in various Development Authorities with different nomenclature will have to be co-related to the post enumerated under the Centralised Services Rules with reference to the scale of pay attached to the particular post and not on the basis of enumeration/nomenclature in the Centralised Services Rules. Likewise, the learned counsel contended that the High Court has made certain factual errors, which led to the judgment being rendered against the appellant. For instance, the High Court made a mistake in thinking that the appellant was promoted to the post of Town Planner only on 13.6.91 whereas factually he was promoted to the post of Executive Officer (RBO), which is the post equivalent in the cadre of Town Planner, on and from 7.2.83. Similarly, the High Court also went wrong in mentioning that the appellant was promoted in the pay scale of 570-1100 when his original appointment itself was in the pay scale of 850-1720. In the light of these submissions, learned counsel submitted that the judgment of the High Court is liable to be set aside and the reliefs sought by the appellant should be granted.

10. Learned counsel appearing for the respondents, contending contra, submitted that the interpretation of the High Court on Rule 3, read with Note-1 under Rule 3 and also Rule 7 of the Centralised Services Rules, was the correct one and so far as the position of seniority is concerned, it must be reckoned on the basis of Rule 6 of the U.P. Government Servants Seniority Rules, 1991 and not on the basis of Rule 7 of the Centralised Services Rules. Rules 28 and 37 of the Centralised Services Rules also, according to the learned counsel, support the view taken by the High Court. Learned counsel for the respondents, therefore, submitted that the judgment of the High Court does not call for any interference.

11. On facts regarding the dates of appointment and promotion, there is no controversy.

12. We have considered the rival submissions. As noticed earlier, the facts are not in dispute, in particular, the fact that the appellant was promoted as Executive Officer (RBO) on 7.2.83 in the pay scale of 1250-2050, cannot be disputed in the light of the judgment of the High Court in Writ Petition No.1929/83. It is also an admitted fact that the initial appointment of the second respondent was earlier to that of the appellant. However while the appellant was promoted to a post in the pay scale of 1250-2050, the second respondent was promoted to an analogous post in the same pay scale only on 16.5.84. In that situation, how the seniority between the two has to be settled is the only

question before us. For deciding this, it is necessary to set out the relevant portion of the Rules. They are as follows:

Rule 3 of the U.P. Development Authorities Centralised Services Rules, 1985:

PART II - CADRE AND STRENGTH

"Rule 3(1) There shall be the following categories of the posts in the cadre of the service and they shall consist of the posts mentioned against them :

Service	Posts included in the service	Scales of Pay in Rs.
1	2	3
I. to III	Omitted	
IV. Town Planning & Architectural	1. Mukhya Nagar Niyojak	1780-2300
	2. Nagar Niyojak	1250-2050
	3. Sahayak Nagar Niyojak	850-1720
		4. Vastuvid/Statistical Assistant
		570-1100
		5. to 10 Omitted V. to VTIJ Omitted

NOTE- The undernoted posts, as specified above, shall include the post or posts mentioned against them as also the posts carrying identical scales of pay in the same or equivalent cadre. (Emphasis supplied)

Post	Post(s) included
(1) to (8)	Omitted
(9)	Mukhya Nagar Niyojak Vastuvid Niyojak
(10)	Sahayak Nagar Niyojak Vastuvid (Rs.850-1720)/ Sahayak Vastuvid/Land Scape Vastuvid/Vastuvid -Niyojak/Research Officer.

(11) to (22) Omitted

Note: (2) The post or posts specified above but not existing in any Development Authority on the date of enforcement of these rules, shall not mean to have been created or come into existence by virtue of the provisions of this rule."

"Rule 7 (1) Notwithstanding anything in rule 28 the seniority of such officers and other employees who are finally absorbed in the service under sub-section (2) of section 5-A of the Act shall be determined on the criterion of continuous length of service including the services rendered in a Development Authority, Nagar Mahapalika, Nagarpalika or Improvement Trust on similar posts.'

Rule 28 (1) : Except as hereinafter provided, the seniority of persons in any category of post, shall be determined from the date of order of appointment and if two or more persons are appointed together, by the order in which their names are arranged in the appointment order:

Provided that if more than one order of appointment are issued in respect of any one selection the seniority shall be as mentioned in the combined order of appointment issued under sub-rule (3) of rule 25.

Rule 28 (3): The seniority inter se of persons appointed by promotion shall be the same as it was in the cadre from which they were promoted.

"Rule 37(2) : In regard to the matters not covered by these rules or by special orders, the members of service shall be governed by the rules, regulations and orders applicable generally to U.P. Government servants serving in connection with the affairs of the State.

Relevant Rules of the U.P. Government Servants Seniority Rules 1991 -

Rule 2: These rules shall apply to all Government servants in respect of whose recruitment and conditions of service, rules may be or have been made by the Governor under the proviso to Article 309 of the Constitution.

Rule 3: These rule shall have effect notwithstanding anything to the contrary contained in any other service rules made heretobefore

Rule 4: In these rules, unless there is anything repugnant in the subject or context, the expression-

(f) : "service" means the service in which the seniority of the member of the service has to be determined;

(g) : "service rules" means the rules made under the proviso to Article 309 of the Constitution, and where there are no such rules, the executive instructions issued by the Government regulating the recruitment and conditions of service of persons appointed to the relevant service;

Rule 6 : Where according to the service rules, appointments are to be made only by

promotion from a single feeding cadre, the seniority inter se of persons so appointed shall be the same as it was in the feeding cadre.

13. Undoubtedly, on a perusal of the judgment of the High Court, we are convinced that the High Court has committed certain factual and legal errors. None the less, in our view, the conclusion reached by the High Court has to be sustained for the reasons, which are given below.

14. As per Rule 2, the U.P. Government Servants Seniority Rules, 1991 apply to all government servants in respect of whose recruitment and conditions of service, rules are made or to be made by the Governor under the proviso to Article 309 of the Constitution. Rule 4 (f) defines "service" to mean the service in which the seniority of the member of the service has to be determined. "Service rules" are defined in Rule 4(9) to mean the rules made under the proviso to Article 309 of the Constitution, and where there are no such rules, the executive instructions issued by the Government, regulating the recruitment and conditions of service of persons appointed, to the relevant service. The more important rule, namely Rule 3 reads as follows:

"These rules shall have effect notwithstanding anything to the contrary contained in any other service rules made here to before."

15. We have already extracted Rule 6 of these Rules, which relates to seniority where the appointments by promotion only from a single feeding cadre. But for Rule 3 above mentioned, we would have accepted the contentions of learned counsel for the appellant and upset the judgment of the High Court. Rule 3, in our view, overrides all other rules made earlier in other services in the State, whereas Rule 7 of the Centralised Services Rules has the overriding effect against Rule 28 of those Rules only. Further, the title of 1991 Rules clearly suggests that the seniority among the Government servants in U.P. should be fixed in the light of these Rules. Therefore, we are inclined to hold that Rule 6 of the U.P. Government Servants Seniority Rules, 1991 cannot be ignored as it has overriding effect on Rule 7 of the Centralised Services Rules. The decision relied on by the learned counsel for the appellant, no doubt, has laid down the law in para 50 of the Ashoka Marketing Ltd. case (supra), which is as follows :

One such principle of statutory interpretation which is applied is contained in the latin maxim : *leges posteriores priores contrarias abrogant* (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim : *generalia specialibus non derogant* (a general provision does not derogate from a special one). This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in the earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Bennion, Statutory Interpretation pp.433-34)."

16. We do not think that the ratio laid down in the above mentioned judgment can be applied to the facts of this case as the U.P. Government Servants Seniority Rules prevail for the purpose of deciding seniority over Rule 7 of the Centralised Services Rules. Learned counsel also cited another judgment of this Court in *R.K. Sethi & Anr. Vs. Oil & Natural Gas Commission & Ors.* [(1997) 10 SCC 616] to support the claim of the appellant that in any event if a junior employee (meaning thereby the second respondent) is given promotion without considering his' senior (meaning thereby the appellant), the senior employee can claim the right to be considered for such promotion from the date the junior was promoted. We do not think that we need go into this question as on facts and

applying the Rule 6 of the U.P. Government Servants Seniority Rules, the second respondent must be deemed to be senior in view of the admitted fact that he entered into the service (feeding cadre) much earlier to that of the appellant. We, however, make it clear that if the appellant has earned his right for promotion dehors claiming seniority over the second respondent, that right should be decided independently without reference to this judgment. If Rule 6 of the U.P. Government Servants Seniority Rules is applied, the appellant is junior to the second respondent in the cadre of Town Planner cannot be disputed. If so, further promotion given to the second respondent as Chief Town Planner cannot be faulted.

17. The result, the appeal is dismissed and the order of the High Court is sustained though for different reasons. There will be no order as to costs.