

Union of India and Others

Vs

S. N. Dubey and Others

Civil Appeal No. 1755 of 1991

(S. C. Agrawal, M. Srinivasan, A. P. Mishra JJ)

13.08.1998

JUDGMENT

S. C. Agrawal, J.

The question that falls for consideration in this appeal relates to assignment of year of allotment for the purpose of fixation of seniority in the Indian Administrative Service (hereinafter referred to as "the Service") to Shripati Narain Dubey, the contesting respondent (hereinafter referred to as the "respondent"). The respondent was appointed as an Assistant Professor of Civil Engineering in the Department of Industries and Technical Education, a Class II of service of the Government of Bihar, in July 1968 and he joined the said post on 13-6-1968. He was confirmed on the said post vide Notification No. 5036 dated 13-12-1969. He was promoted as Associate Professor of Civil Engineering on 21-5-1975. He worked in various posts under the Government of Bihar and vide Notification No. 37 dated 1-5-1976, he was appointed as Assistant Director in the Bureau of Public Enterprises. By order dated 3-9-1977, the post of Assistant Director was upgraded to that of a Deputy Secretary-cum-Deputy Director. Subsequently by notification dated 30-10-1978, the post of Deputy Secretary-cum-Deputy Director of the Bureau of Enterprises was redesignated as Joint Secretary-cum-Joint Director. The respondent was appointed to the Service by notification dated 12-5-1981. He was assigned 1977 as the year of allotment. In this regard, letter dated 11-4-1986 was addressed by the Under-Secretary from the Department of Personnel and Training, Government of India, to the Chief Secretary, Bihar, Patna, wherein it was stated that the matter of determination of the year of allotment of the respondent has been examined in consultation with the Union Public Service Commission in accordance with the provisions of Rule 3(3)(c) of the Indian Administrative Service (Regulation of Seniority) Rules, 1954 (hereinafter referred to as "the Seniority Rules") and that the year of allotment of the respondent cannot be determined earlier than 1977 since, as per the information furnished by the State Government, Shri Yadu Nath Jha is the juniormost officer of the State Civil Service who was appointed in the Service before and in comparison to the length of service of the respondent in the State in a gazetted post, Shri Yadu Nath Jha had served in the State Civil Service for a longer period and hence, as per the proviso to Rule 3(3)(c) of the Seniority Rules, the year of allotment of the respondent could not be determined earlier than 1977. The representation submitted by the respondent against the said determination of 1977 as the year of allotment was rejected by the Government of India, Department of Personnel and Administrative Reforms, Ministry of Home Affairs, by letter dated 14-7-1987. Feeling aggrieved by the aforesaid decision whereby 1977 was determined as the year of allotment for the purpose of fixation of his seniority in the Service, the respondent moved the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as "the Tribunal"), by filing OA No. 424 of 1988, wherein he claimed that the year of allotment should have been determined as 1971 and not 1977. The said application of the respondent was allowed by the Tribunal by judgment dated 17-9-1990. The Tribunal quashed

the orders dated 11-4-1986 as well as 14-7-1987 and directed the Union of India to fix 1971 as the year of allotment of the respondent and place him below Shri Dev Das Chhotray, the juniormost direct recruit of the year 1971. In the said judgment, the Tribunal following its earlier judgment in K. V. Nambiar v. Union of India decided by the Ernakulam Bench of the Tribunal held that the proviso to Rule 3(3)(c) of the Seniority Rules was unconstitutional and void. In Special Leave Petitions Nos. 8773 of 1990 and 3127 of 1991 filed by the Union of India against the decisions of the Tribunal in the case of K. V. Nambiar and the respondent, this Court, by order dated 8-4-1991, granted special leave to appeal and passed the following order.

"Special leave granted.

Heard counsel.

We are inclined to take the view that the Central Administrative Tribunal should not have struck down Rule 3(3)(c) of the Indian Administrative Service (Regulation of Seniority) Rules, 1954, merely on the basis that the two instances which had come before it for consideration were not being adequately answered under the Rules. These Rules have been in force for almost 36 years and the challenge that has now come for consideration was the rare instance where under the Rules, it became difficult to deal with the matter. The Union of India has in its affidavit indicated that exceptional situations as arising in the case of two respondents should be answered under the residual Rules and if not covered under the Rules, under the administrative powers and for that purpose, the Rules should not have been struck down. Counsel for the Union of India has told us during the course of hearing of the appeals that the relief granted by the Central Administrative Tribunal so far as the two officers are concerned may be sustained in terms of the directions of the Tribunal but the further direction that the Rule referred to above is struck down may be set aside. Counsel for the respondents have no objections to the submission of the appellant being accepted.

We are inclined to accept the submission and while vacating the decision of the Tribunal on the question of vires of the Rules, we sustain the reliefs granted by the Tribunal in terms. Both the appeals are partly allowed.

No costs."

2. Civil Appeal No. 1755 of 1991 arises out of special leave petition filed against the judgment of the Tribunal dated 17-9-1990 in OA No. 424 of 1998 filed by the respondent. The Union of India filed a review petition for the review of the said order dated 8-4-1991 passed by this Court. In the said review petition, it was pointed that in the case of the respondent the seniority has been fixed in accordance with the provisions of Rule 3(3)(c) of the Seniority Rules and that the relief granted by the Tribunal could be sustained insofar as K. V. Nambiar was concerned but the said relief could not be sustained in the case of the respondent. The review petition filed by the Union of India was dismissed by this Court by order dated 31-7-1991. Thereafter the Central Government passed an order dated 19-8-1991 whereby the year of allotment of the respondent was revised from 1977 to 1971 and it was directed that for the purpose of inter se seniority, he would be placed below Shri D. D. Chhotray (RR 71) in the gradation list of the IAS Officers borne on the cadre of Bihar. The said order dated 19-8-1991 adversely affected the seniority of the officers who had been assigned years of allotment between 1971 to 1977. Mukesh Nandan Prasad and Ashok Kumar were appointed to the Service by direct recruitment and had been assigned 1972 and 1974 as the years of allotment

respectively. As a result of order dated 19-8-1991 whereby his year of allotment was revised from 1977 to 1971, the respondent became senior to both these officers. The said officers filed a Writ Petition [WP (C) No. 290 of 1992] in this Court wherein they challenged the validity of the order dated 19-8-1991 regarding the revision of the year of allotment of the respondent. It was urged that the respondent had been correctly assigned 1977 as the year of allotment on the basis of the proviso to Rule 3(3)(c) of the Seniority Rules and since the validity of the said provision has been upheld by this Court, the year of allotment of the respondent cannot be altered from 1977 to 1971. On 21-7-1998, the learned counsel for the petitioners in the said writ petitioners in the said write petition submitted that the write petition may be permitted to be treated review petition for review of the judgment of this Court dated 8-4-1991 in Civil Appeals Nos. 1755 and 1784 of 1991 for the reason that the petitioners were not parties in those proceedings but are adversely affected by the judgment of this Court dated 8-4-1991 and that the said judgment of this Court came to the knowledge of the petitioners only after the order dated 19-8-1991 was passed on the basis of the said judgment and that soon thereafter the petitioners had filed the writ petition in this Court. In view of the said statement of the learned counsel, this Court, by order dated 21-7-1998, directed that the said writ petition be treated as review petition for review of the judgment of this Court in Civil Appeals Nos. 1755 and 1784 of 1991 and thereafter the said writ petition was registered as Review Petitions Nos. 1391-1392 of 1998.

3. At the time of the hearing of the review petition on 30-7-1998, Shri Ranjit Kumar, the learned counsel for the petitioners, stated that the petitioners have a grievance only against the order passed by this Court in Civil Appeal No. 1755 of 1991 relating to the respondent and they do not have any grievance against the order passed in Civil Appeal No. 1784 of 1991 relating to K. V. Nambiar and that the review petition may, therefore, be treated as seeking review of the order dated 8-4-1991 passed by this Court in Civil Appeal No. 1755 of 1991. After hearing Ranjit Kumar, the learned counsel for the petitioners in the review petition, and Shri H. N. Salve, the learned Senior Counsel appearing for the respondent, this Court, by order dated 30-7-1998, allowed the review petition and the order dated 8-4-1991 to the extent it related to Civil Appeal No. 1755 of 1991 was set aside. Civil Appeal No. 1755 of 1991 was thereafter taken up for hearing and the petitioners, Mukesh Nandan Prasad and Ashok Kumar, were ordered to be impleaded as parties in the said appeal.

4. We have heard Shri Ranjit Kumar and Shri P. P. Malhotra, the learned Senior Counsel for the Union of India in support of the appeal and Shri H. N. Salve, the learned counsel for the respondent.

5. Under Rule 4 of the Indian Administrative Service (Recruitment) Rules, 1965 (hereinafter referred to as "the Recruitment Rules"), recruitment to the Service can be made (i) by competitive examination; (ii) by selection of persons among the Emergency Commissioned Officers and Short-Service Commissioned Officers of the Armed Forces of the Union; (iii) by promotion of substantive members of a State Civil Service; and (iv) by selection in special cases from among persons, who hold in a substantive capacity gazetted posts in connection with the affairs of a State and who are not members of a State Civil Service. Sub-rule (1) of Rule 8 of the Recruitment Rules deals with recruitment to the Service by promotion from amongst the substantive members of a State Civil Service and sub-rule (2) of Rule 8 deals with recruitment by selection of a person of outstanding ability and merit serving in connection with the affairs of the State who is not a member of the State Civil Service of that State but who holds a gazetted post in a substantive capacity. Seniority in the service is determined on the basis of year of allotment. Rule 3(1) of the Seniority Rules lays down that officer shall be assigned a year of allotment in accordance with the provisions of the said Rule. Sub-rule (2) of Rule 3 deals with assigning the year of allotment to an officer in the Service at the commencement of the Seniority Rules. Sub-rule (3) of Rule 3 relates to the assigning of year of

allotment to an officer appointed to the Service after the commencement of the Seniority Rules. Clause (b) of sub-rule (3) of Rule 3 deals with assigning the year of allotment to an officer appointed to the Service after the commencement of the Rules where the officer is appointed to the Service by promotion in accordance with sub-rule (1) of Rule 8 of the Recruitment Rules, with clause (c) of sub-rule (3) of Rule 3 relates to assigning the year of allotment to a non-State Civil Service officer who is appointed to the Service by selection in accordance with sub-rule (2) of Rule 8 of the Recruitment Rules. In the present case, we are concerned with assigning of year of allotment to the respondent, a non-State Civil officer, who was appointed to the Service by selection in accordance with sub-rule (2) of Rule 8 of the Recruitment Rules. The determination of the year of allotment of the respondent is governed by Rule 3(3)(c) of the Seniority Rules which, at the relevant time, provided as under :

"(3) The year of allotment of an officer appointed to the Service after the commencement of these Rules, shall be -

(c) where the officer is appointed to the Service by selection in accordance with sub-rule (2) of Rule 8 of the Recruitment Rules, such year as may be determined ad hoc by the Central Government on the recommendations of the State Government concerned and in consultation with the Commission :

Provided that he shall not be allotted a year earlier than the year of allotment of an officer appointed to the Service in accordance with sub-rule (1) of Rule 8 of the Recruitment Rules, whose length of service in the State Civil Service is more than the length of continuous service of the former in connection with the affairs of the State."

6. The Government of India had issued a circular/letter dated 6-6-1978, with regard to fixation of seniority under Rule 3(3)(c) of the Seniority Rules of non-State Civil Service officers recruited to the Service by selection. In para 1 of the said circular/letter it was stated :

"I am directed to say that in this Department's Letter No. 14014/83/76-AIS(I) dated 15-2-1977 on the above-mentioned subject, it is laid down that the seniority of a non-State Civil Service officer appointed to IAS by selection shall be determined in consultation with UPSC on the analogy of Rule 3(3)(b) of the IAS (Regulation of Seniority) Rules, 1954 subject to the proviso to Rule 3(3)(c) of the said Rules."

7. In accordance with para 1 of circular dated 6-6-1978, the seniority of a non-State Civil Service officer appointed to the Service by selection was required to be determined in consultation with UPSC on the analogy of Rule 3(3)(b) of the Seniority Rules subject to the proviso to Rule 3(3)(c) of the Seniority Rules. The respondent has to be allotted the year of allotment by applying the provisions laid down in Rule 3(3)(b) of the Seniority Rules and the proviso to Rule 3(3)(c) of the said Rules.

8. The letters of the Government of India dated 11-4-1986 and 14-7-1987, whereby the respondent was allotted 1977 as the year of allotment, are based on Rule 3(3)(b) read with the proviso to Rule 3(3)(c) of the Seniority Rules. The letter dated 11-4-1986 proceeds on the basis that as per the information furnished by the State Government, the post of Associate Professor (Civil Engineering) in the pay scale of Rs. 1200-1900 under the State Government held by the respondent till 22-5-1975 can be considered as equivalent to senior scale of pay of the Service and hence the relevant date for

determination of his seniority in equivalence to Rule 3(3)(b) of the Seniority Rules could be 22-5-1975 and Shri Dev Das Chhotray (RR 71) is the juniormost regular recruitment officer who was appointed in the senior scale of pay of the Service with effect from 20-12-1974, i.e., on a date prior to 22-5-1975, the respondent would have been entitled to given the seniority of the year 1971 in the Bihar cadre of the Service as per Rule 3(3)(c) of the Seniority Rules but, as per the information furnished by the State Government, Shri Yadu Nath Jha (State Civil Service, 1977) is the juniormost officer of the State Civil Service who was appointed in the Service before and in comparison to the length of service of the respondent in the State in a gazetted post, he has served in the State Civil Service for a longer period and hence as per the proviso to Rule 3(3)(c) of the Seniority Rules, the year of allotment of the respondent cannot be determined earlier than 1977, the year of allotment of Shri Yadu Nath Jha. It would thus appear that the year 1977 was assigned as the year of allotment to the respondent in accordance with the proviso to Rule 3(3)(c). The said order has been quashed by the Tribunal by its judgment dated 17-9-1990 on the ground that the proviso to Rule 3(3)(c) had been held to be unconstitutional and void by the Tribunal in the case of K. V. Nambiar. Thus, the only ground on which the Tribunal has proceeded to quash the orders assigning 1977 as the year of allotment to the respondent was that the proviso to Rule 3(3)(c) could not be applied since it had been held to be unconstitutional and void in the case of K. V. Nambiar. The said view of the Tribunal regarding the validity of the proviso to Rule 3(3)(c) was not accepted by this Court in its order dated 8-4-1991 in the appeal filed by the Union of India against the judgment of the Tribunal in the case of K. V. Nambiar. In the said order, this Court was observed :

"We are inclined to take the view that the Central Administrative Tribunal should not have struck down Rule 3(3)(c) of the Indian Administrative Service (Regulation of Seniority) Rules, 1954, merely on the basis that the two instances which had come before it for consideration were not being adequately answered under the Rules. These Rules have been in force for almost 36 years and the challenge that has now come for consideration was the rate instance where under the Rules, it became difficult to deal with the matter. The Union of India has in its affidavit indicated that exceptional situations as arising in the case of the two respondents should be answered under the residual Rules and if not covered under the Rules, under the administrative powers and for that purpose, the Rules should not have been struck down."

9. This Court, while vacating the decision of the Tribunal on the question of the vires of Rule 3(3)(c) of the Seniority Rules, has sustained the relief granted by the Tribunal to K. V. Nambiar in view of the statement made by the learned counsel for the Union of India that the said relief may be sustained. The said decision thus reverses the view of the Tribunal regarding validity of Rule 3(3)(c) of the Seniority Rules.

10. In *Union of India v. G. K. Sangameshwar* (1993 Supp (3) SCC 697 : 1994 SCC (L&S) 116 : (1994) 26 ATC 92) the question regarding the validity of Rule 3(3)(c) and the circular/letter dated 6-6-1978 case up for consideration before this Court. After taking note of the order dated 8-4-1981 passed by this Court in appeals filed by the Union of India in the case of K. V. Nambiar and the respondent, this Court upheld the validity of the proviso to Rule 3(3)(c) and has observed : (SCC p. 706, para 17)

"We find nothing unjust or unreasonable in this provision whereby the seniority of the two officers (one belonging to the State Civil Service and the other a non-State Civil Service officer) who have been found suitable for appointment to the Service is

so fixed that a non-State Civil Service officer does not become senior to a State Civil Service officer whose length of service in the State Civil Service is more than the length of continuous service in the connection with the affairs of the State of the non-State Civil Service officer."

11. Shri Salve has urged that the said decision in G. K. Sangameshwar (1993 Supp (3) SCC 697 : 1994 SCC (L&S) 116 : (1994) 26 ATC 92) needs reconsideration and has contended that under Rule 8(2) of the Recruitment Rules, only a person of outstanding ability and merit serving in connection with the affairs of the State who is not a member of that State but who holds a gazetted post in a substantive capacity can be appointed to the Service by selection and, therefore, in the matter of inter se seniority, a non-State Civil Service officer and a State Civil Service officer cannot be compared and seniority of a non-State Civil Service officer cannot be made dependent on the seniority of a State Civil Service officer. We do not find any merit in this contention. The State Civil Service is composed of officers who are entrusted with the task of public administration. The administrative experience gained by them on various posts involving general administration enables an officer in the State Civil Service to tackle the more responsible administrative functions on his promotion to the Service. A non-State Civil Service officer would not be having the same degree of administrative exposure as a State Civil Service officer. The State Civil Service constitutes the main source for promotion to the Service because under the Recruitment Rules, the two principal modes for recruitment to the Service are (i) by direct recruitment by competitive examination, and (ii) by promotion of substantive members of the State Civil Service. The appointment of non-State Civil Service officers is limited to a small proportion (15%) of the posts falling in the quota reserved for recruitment by promotion and selection. [see Rule 9(1) of the Recruitment Rules] In view of the limited degree of administrative exposure, the experience gained by a non-State Civil Service officer cannot be equated with the experience gained by a State Civil Service officer. For the purpose of seniority in the Service the length of service of non-State Civil Service officer cannot, therefore, be equated with the length of service of a State Civil Service officer. The proviso to Rule 3(3)(c) of the Seniority Rules proceeds on this basis since it provides that a non-State Civil Service officer shall not be allotted a year earlier than the year of allotment of a State Civil Service officer whose length of service in the State Civil Service is more than the length of continuous service of a non-State Civil Service officer. The requirement of Rule 8(2) of the Recruitment Rules that selection for appointment to the Service from amongst non-State Civil Service officers is to be made of a person of outstanding ability and merit only means that only the best among such officers would be selected for appointment to the Service. The said provision does not have any bearing on the nature of the experience gained by such person prior to his appointment to the Service for the purpose of seniority in the Service. The proviso to Rule 3(3)(c) of the Seniority Rules does not, therefore, suffer from any infirmity and no ground is made out for reconsideration of the decisions of this Court upholding the validity of the said proviso.

12. It must, therefore, be held that the respondent has to be assigned the year of allotment in accordance with the proviso to Rule 3(3)(c) of the Seniority Rules. The learned counsel for the respondent has not been able to show that if the proviso is applied, the respondent could be assigned a year of allotment earlier than the year 1977. The determination of 1977 as the year of allotment of the respondent under the letters of the Government of India dated 11-4-1986 and 14-7-1987 was, therefore, in accordance with Rule 3(3)(c) read with the proviso and the Tribunal was in error in quashing the said orders.

13. In the circumstances, the judgment of the Tribunal dated 17-9-1990 in OA No. 424 of 1988 filed by the respondent quashing the orders regarding determination of the year of allotment of the

respondent contained in the letters dated 11-4-1986 and 14-7-1987 is set aside and the said OA No. 424 of 1988 is dismissed. The order of the Central Government dated 19-8-1991 which was passed in compliance with the judgment of the Tribunal dated 17-9-1990 is also set aside. The appeal is allowed accordingly. No order as to costs.