

M. Ramachandran

Vs

Govind Ballabh and Others

Civil Appeal No. 2704 of 1997

(S. P. Kurdukar, R. P. Sethi JJ)

21.09.1999

JUDGMENT

SETHI, J.:-

1. The dispute sought to be resolved in this appeal is regarding Inter se seniority of the employees of the Central Administrative Tribunal (hereinafter referred to as "CAT") who were recruited from time to time as per requirement but came to be absorbed on the same day in terms of sections(1) of the Central Administrative Tribunal (Groups B and C Miscellaneous Posts) Recruitment Rules, 1989 (hereinafter referred to as "the rules"). One set of employees claim their seniority from the date of their deputation to the aforesaid service of CAT and the other set of employees pray for counting of the period of their service to the equivalent post held by them in their parent department, before their deputation and absorption in the service. On the application filed by Respondent 1, CAT accepted the former plea and directed the determination of the seniority of the employees of CAT from the date of their deputation. Such directions were issued on the basis of the official memoranda and departmental instructions after holding that there did not exist any provision in the rules for the purposes of determination of the seniority of persons recruited to the service by absorption on the same day. Not satisfied with the findings of the Tribunal, the appellant herein has preferred this appeal.

2. Most of the facts in the case are admitted. The controversy revolves upon the interpretation of the rules. The appellant contends that Rule 5(2) and its proviso governs the method for determining the seniority but Respondent 1 who has appeared in person and learned counsel appearing for the Union of India have contended that the inter se seniority of the employees of CAT has to be determined on the basis of the official memoranda on the subject which were consolidated by the Government of India on 3-7-1986. The necessary admitted facts are that the Central Administrative Tribunal was constituted on 1-11-1985. The CAT (Staff) (Conditions of Service) Rules, 1985 came into effect on 31-10-1985. Rule 4 of the said rules prescribed that the condition of service of the officers and other employees of CAT in matters of pay, allowances, leave, provident fund, age of superannuation, pension and retirement benefits, medical facilities and other conditions of service were to be regulated in accordance with such rules and regulations as were, for the time being, applicable to the officers and employees belonging to Groups A, B, C and D, as the case may be, of the corresponding scales of pay stationed at those places. Respondent 1 was in the service of the Delhi High Court and sent on deputation to CAT, Principal Bench as Court Officer on 8-1-1986. The terms of his deputation were extended from time to time in the public interest. The appellant, who was holding the post of Section Officer in his parent department with effect from 31-12-1982, joined CAT on deputation as Section Officer on 1-6-1987. Respondent 1 is alleged to have become entitled to hold equivalent post in his parent department on 1-8-1986. The rules for the post of Section

Officer/Court Officer in CAT were notified, for the first time, on 20-9-1989. All willing and fit deputation including all private parties in this appeal were absorbed in the service on 1-11-1989. The draft seniority list of Section Officers/Court Officers/Private Secretaries in CAT was published on 16-11-1990. Final seniority list as on 1-11-1989 is admitted to have been published on 17-5-1994. Respondent 1 filed original application before the Principal Bench of the Central Administrative Tribunal on 2-6-1995 seeking the following reliefs:

"(i) to quash erroneous guidelines (Annexure A-6 collectively) issued by Respondent 2 being contrary to the statutory rules and DOPT's instructions / OMs ;

(ii) to quash Letter No. PB/7/1 2/94-Estt.I dated 24-1-1995 (Annexure A-12) issued by Respondent 2;

(iii) to direct the respondents to take 26-11-1985 as the date of regular appointment to the applicant in the Delhi High Court as determined by the Chief Justice, Delhi High Court for all purposes;

(iv) to quash all the DPC proceedings held in June 1994 for appointment/selection to the posts of Deputy Registrar in CAT;

(v) to direct the respondents to assign the applicant appropriate placement in the final seniority list of SO/CO/PS above Respondents 4 to 10 circulated vide Letter No. 1/55/90-Estt. dated 17-5-1994 in accordance with Rule 5(2) of CAT (Groups B and C Miscellaneous Posts) Recruitment Rules, 1989 read with DOPT's consolidated OM dated 3-7-1986;

(vi) to direct the respondents to hold fresh/review DPCs for appointment to the posts of Deputy Registrar in the Tribunal according to the CAT (Group A Posts) Recruitment Rules, 1988 on the basis of appropriate placement of the applicant in the final seniority list of SO/CO/PS(s) as on 1-11-1989 as prayed at (v) above;

(vii) to direct the Respondents 1 and 2 to fill up the 50% posts of Deputy Registrar by promotion first as envisaged in the CAT (Group A) Rules, and further absorption of deputationists be taken up only thereafter in consonance with the Recruitment Rules;

(viii) any other or further orders/directions to redress the grievance of the applicant as may be deemed proper in the circumstances of the case with costs."

It was contended on behalf of Respondent 1 that by letter dated 9-6-1989 CAT had called for options for absorption to the post of PAs /Senior PA and Section Officer in CAT in response to which he consented for absorption along with Respondents 4 to 10. Respondent 1 and Respondent 10, namely, Shri Govind Ballabh and Shri A. K. Ajmani are stated to have been absorbed with effect from 1-11-1989 vide order dated 14-12-1989 allegedly on the basis of the first DPC's recommendation while Respondents 4 to 9 including the appellant, who are stated to have exercised their option for absorption after the first DPC met in November 1989, were absorbed with effect from 1-11-1989 on the basis of subsequent DPC's recommendation made in February 1990. He contended that he and Respondents 4 to 10 were, in June 1994, considered for selection to the post of Deputy Registrar and all of them recommended for selection but no orders for their regular appointments were issued till the date he filed the original application before CAT. It was alleged

that instead of finalising the tentative seniority list circulated on 16-11-1990, CAT issued its own guidelines one after another in the years 1991, 1992 and 1993 allowing the deputationists / absorbees the benefit of service rendered by them in their parent department towards seniority allegedly contrary to DOPT's own rules and instructions on the subject which, according to him, adversely affected his rights. The second seniority list is stated to have been circulated on 25-3-1992 and the third on 14-6-1993. The final seniority list, as noted earlier, was circulated on 17-5-1994.

3. The Central Administrative Tribunal found that the guidelines issued by it, which were sought to be quashed, were not legal and thus not sustainable. It also noticed that the correctness of the impugned guidelines had been doubted by CAT itself which withdrew the same vide its letter dated 5-5-1995. No party is aggrieved by such findings of the Central Administrative Tribunal.

4. Referring to Rule 5 of the rules, the Central Administrative Tribunal noticed that the rule-making authority had visualised a situation where a problem in fixing seniority could arise from the persons recruited from the same source and working in the same parent department. It erroneously interpreted the term "source" to mean the Central/State Government/High Court/subordinate courts and that the proviso to Rule 5(2) lay down that the seniority of officers recruited from such alleged sources in the post held by them in the parent department was not to be disturbed, which according to it, only meant that where two persons were recruited from a single source i.e. the Central Government or the State Government or the High Court or subordinate courts and the parent department was the same, it was then and only then that the seniority which they brought with them would not be disturbed and in all other cases the seniority was to be determined with reference to their date of regular appointment to the post in CAT. The Tribunal further held:

"22. The question may then arise that if all the existing employees were absorbed on the same date i.e. 1-11-1989 although by different orders, how then is their inter se seniority to be determined. In the absence of anything in the Recruitment Rules themselves to answer this point, we would necessarily have to fall back on DOPT's OM dated 3-7-1986 extracted in para 8 above and in respect of deputationists (applicant as well as Respondents 4 to 10 are deputationists) who were holding the same or equivalent grade on regular basis in their parent department, determine their inter se seniority from the date they were holding the post on deputation or the date from which they were appointed on a regular basis to the same or equivalent grade in their parent department whichever is later.

23. In our view this is the only way in which the provisions of Rule 5 of the CAT (Groups B and C Miscellaneous Posts) Recruitment Rules, 1989 can be harmoniously interpreted with DOPT's instructions dated 3-7-1986 on the subject and CAT 's impugned guidelines which serve counter to the same are therefore, not in accordance with law.

24. We would add that it is only this interpretation which can obviate results which would otherwise be quite extraordinary in grant of seniority to persons in CAT from a date even prior to the inception of CAT on 1-11-1985; or two sets of principles for determination of seniority one laid down by DOPT and the other by CAT, or a distinction wholly invidious between employees absorbed on or before 1-11-1989 and those absorbed thereafter."

It has to be noticed that the learned counsel appearing for the Central Administrative Tribunal

submitted at the hearing that despite filing of a joint counter it supported the case of the appellant herein.

5. Learned counsel appearing for the Union of India and Respondent 1 who argued the case in person took us through the pleadings and various memoranda issued to persuade us to agree that the rules do not envisage the determination of the inter se seniority of the persons recruited to the service by absorption in terms of Rule 5(1) of the rules.

6. In order to appreciate rival contentions it is necessary to have a glance at Rule 5 which provides:

"5 . Absorption / regularisation of existing employees .-(I) Notwithstanding anything contained in the provisions of these rules, the persons holding the posts of Court Officers/Section Officers, Hindi Translator, Assistant, Junior Librarian, Caretaker, Upper Division Clerk/ Receptionist/Storekeeper and Lower Division Clerk on the date of commencement of the rules either on transfer or on deputation basis or, as the case may be, on direct recruitment basis and who fulfil the qualifications and experience laid down in the rules and who are considered suitable by Departmental Promotion Committee shall be eligible for absorption/ regularisation in the respective grade subject to condition that such persons exercise their option for the absorption and that their parent departments do not have any objection to their being absorbed in the Tribunal.

(2) The seniority of officers mentioned in sub-rule (1) shall be determined with reference to the dates of their regular appointment to the posts concerned:

Provided that the seniority of officers recruited from the same source and in the posts held by them in the parent department shall not be disturbed.

(3) The suitability of persons for absorption may be considered by a Departmental Promotion Committee." Rule 4 deals with the method of recruitment and provides that the recruitment to the post, age limit, qualifications and other conditions relating thereto shall be as specified in columns 5 to 14 of the Schedule attached to the rules. Column 11 refers to the method of recruitment and column 12 to the source from which the posts are to be filled up. Column 12 provides:

"(i) Promotion

Assistant with 8 years' regular service in the scale of pay of Rs 1400-2600 or equivalent.

(ii) Transfer on deputation/Transfer:

Persons working under Central/State Government/High Court/ subordinate courts.

(a)(i) holding analogous post on regular basis; or

(ii) holding posts of Assistant or equivalent in the scale of Rs 1400-2600 with 8 years' regular service; and

(b) possessing the educational qualifications prescribed for direct recruits in column 8.

Note: The period of deputation including the period of deputation in another ex cadre post held immediately preceding this appointment in the same or some other organisation/department of the Central Government shall ordinarily not exceed 3 years."

There is no dispute that appointment/recruitment to any service can be made from different sources, i.e., by direct appointment, by promotion or by absorption/transfer. The source of recruitment can either be internal or external. Internal source would relate to cases where the appointments are made by promotion or by transfer and by absorption. External source would conceive the recruitment of eligible persons who are not already in service in the organisation to which the recruitment is to be made. For the purposes of posts in the service regarding which the dispute has arisen, the source of recruitment for the purposes of sub-rule (I) of Rule 5 are: (i) promotion, (ii) appointment. Reference to the persons and the departments cannot be held to mean that such reference was to the "source" as admittedly the sources are either promotion or by transfer on deputation/transfer. It is not disputed that in the instant case all the contesting parties have been recruited to the service from source (ii). It is also conceded that before their recruitment on deputation they possessed the requisite qualifications as prescribed under column 12(ii)(a)(i), (ii) and (b). The Tribunal was, therefore, not justified in holding that the source of appointment of parties to the dispute was either the Central or the State Government or the High Court or the subordinate courts. The proper interpretation of the rule read with the Schedule is that all such parties were recruited from the same source, i.e., transfer on deputation/transfer and possessed requisite qualifications for recruitment to the new service.

7. Referring to the official memorandum dated 3-7-1986, it has been contended on behalf of the contesting parties that the relative seniority of all the direct recruits has to be determined in terms of para 3.4.1 of the said memorandum. The aforesaid para prescribes:

"3.4.1. In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for 'transfer on deputation/transfer'), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from-

the date he has been holding the post on deputation,

OR

the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department, whichever is later."

The interpretation put on the said para centres around the words "whichever is later" occurring at its end. It is contended that the seniority must be determined from the date a person is holding the post on deputation or the date from which he had been appointed on a regular basis to the same or equivalent grade in its parent department "whichever is later", meaning thereby if a person gets himself deputed earlier to the service, he would be entitled to seniority notwithstanding the length of

service or earlier holding of the equivalent post or grade by a person who incidentally happens to be sent on deputation at a later date. Such a contention, if accepted, would be against the settled principles of service jurisprudence. We also feel that, as the rules hold the field, the official memorandum has to give way in the matter of determination of inter se seniority of the persons recruited to the service on the same date.

8. Relying upon its earlier decisions in *R. S. Makashi v. I. M. Menon* ((1982) 1 SCC 379 : 1982 SCC (L&S) 77) and *Wing Commander J. Kumar v. Union of India* ((1982) 2 SCC 116: 1982 SCC (L&S) 177 : (1982) 3 SCR 453) this Court in *K. Madhavan v. Union of India* ((1987) 4 SCC 566 : 1987 SCC (L&S) 496 : (1987) 5 ATC 91) held: (SCC p. 580, para 21)

"It will be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service in the post from which he has been transferred. It has been observed by this Court that it is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new service that their pre-existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre."

9. In *K. Anjaiah v. K. Chandraiah* ((1998) 3 SCC 218 : 1998 SCC (L&S) 801 this Court held: (SCC Headnote)

"It is a just and wholesome principle commonly applied to persons coming from different sources and drafted to serve a new service to count their previous length of service for determining their ranking in the new service cadre."

10. In *M. Hara Bhupal v. Union of India* ((1997) 3 SCC 561 : 1997 SCC (L&S) 833 this Court considered the scope of Rule 5(1) of the rules but did not refer to either Rule 5(2) or its proviso for the purposes of deciding the question regarding the principles to be applied in determining the seniority of the persons recruited by absorption from the same date. The general principle, as noticed by the Court, is that if the post held in the parent department and the post held on deputation were analogous, the persons holding such posts would be entitled to the benefits of the official memorandum dated 3-10-1989. The Court did not distinguish any of its earlier decisions mentioned hereinabove.

11. The reliance of the respondents on *A. K. Bhatnagar v. Union of India* ((1991) 1 SCC 544 : 1991 SCC (L&S) 601 : (1991) 16 ATC 501 : JT (1990) 4 SC 610) is of no help to them in any way. The Court in that case held that: (SCC p. 548, para 7)

"7. The law is clear that seniority is an incidence of service and where the service rules prescribe the method of its computation, it is squarely governed by such rules. In the absence of a provision ordinarily the length of service is taken into account. A dispute of this nature normally arises between recruits from two sources, namely, direct and promotees. In this group of cases, however, we are concerned with the inter se seniority between direct recruits alone. The note to Schedule VIII indicated that the inter se seniority of recruits of one year would be on the basis of merit."

To the same effect is the judgment of this Court in *Union of India v. H.R. Patankar* (1984 Supp SCC 359 : 1985 SCC (L& S) 19 : AIR 1984 SC 1587)

12. We are of the considered opinion that sub-rule (2) of Rule 5 is the relevant rule relating to the determination of the seniority of the officers recruited to the service under sub-rule (1) of Rule 5. The seniority of such recruited officers is required to be determined with reference to the dates of their regular appointment to the posts. The proviso to sub-rule (2) shall cover the case of such officers whose seniority cannot be determined under subrule (2) as is the present case of the persons appointed/recruited on the same date. In such a case the seniority of the officers recruited from the same source has to be determined by giving them the benefit of the equivalent post held by them in their parent departments. Sub-rule (2) and its proviso is based upon the general principle of service jurisprudence. It is not correct to say that the rules do not provide any method of determining the seniority of the persons recruited to the service and that in the absence of there being a specific rule, resort be had to the official memorandum relied upon by the respondents. Seniority is a relevant (sic) term having reference to the class, category and the grade to which the reference is made. Length of service is a recognised method of determining the seniority. Such length of service shall have reference to the class, category or grade which the parties were holding at the relevant time. It, therefore, follows that total length of service is not relevant for determining the seniority but length of service to a particular class, category or grade is relevant consideration for the purposes of counting the period with respect to length of service for the purposes of determining the seniority. In other words the period of holding of the equivalent post in the parent department would be the relevant period to be taken note of for the purposes of determining the seniority under Rule 5(2) and its proviso. Any other interpretation would be against the settled rules of service jurisprudence and is likely to create many anomalies resulting in failure of justice and defeating the acquired rights of the civil servants based upon their length of service. A perusal of the rules does not, in any way, show and rightly so that the rule-making authority had ever intended to take away the benefit of the length of service of a person in his parent department before his deputation and absorption in the service.

13. We are of the opinion that the Tribunal has taken a very casual approach while passing the order impugned in this appeal and completely ignored the basic principles of service jurisprudence as confirmed and applied by this Court by way of pronouncements in various cases, some of which have been noted hereinabove. We are of the view that all the employees recruited in the service under Rule 5(1) are entitled to the benefit of the service on equivalent post in their parent departments.

14. Under the circumstances, the appeal is allowed and the order impugned is set aside. The respondent officials are directed to finalise the seniority list of all the employees recruited in the service under Rule 5(1) of the rules strictly applying the provisions of sub-rule (2) and its proviso keeping in mind the observations made hereinabove. All orders passed consequent upon the order of the Tribunal impugned herein shall be deemed to be non est and not given effect to. Fresh seniority list be finalised at the earliest and if possible within a period of three months from today. Till the finalisation of the seniority list, the parties shall be permitted to hold the posts presently held by them.

15. No costs.