

SUPREME COURT OF INDIA

Sushma Mutreja

Vs.

Union of India

C.A.No.4995-4996 of 1997

(G.B. Pattanaik and Ruma Pal JJ.)

01.08.2001

JUDGMENT

G.B.Pattanaik, J.

1. The appellant, on the basis of a competitive examination held by the Union Public Service Commission was selected in the year 1966 under Rule 12 of the *Central Secretariat Clerical Service Rules, 1962* (hereinafter referred to as the Rules) and joined in the Ministry of Commerce as Lower Division Clerk on 7.3.1967. While she was so continuing, in November 1969, the Government of India, Ministry of Home Affairs, introduced a Zoning Scheme for promotion to the post of Upper Division Clerk from that of the Lower Division Clerk. The aforesaid scheme had been promulgated, as it was found that there exist considerable disparities in the promotional prospects of the different categories of staff in different cadres, because of decentralisation. It was decided that while the decentralised set up would continue, but unevenness of promotion could be remedied by prescribing zones for promotion in the decentralised grades. Recruitment to the post of Upper Division Grade is required to be made in accordance with Rule 11 of the Rules. Under the aforesaid Rule, substantive vacancies in the Upper Division Grade in any cadre can be filled up by substantive appointments of persons included in the select list for the grade in that cadre. The select list is prepared and is revised from time to time, as provided in sub-rule (3) of Rule 11, and the procedure for preparing such list is set out in the Third Schedule to the Rules. Sub-rule (2) of Rule 11, however provides that even temporary vacancies in the Upper Division Grade in any cadre shall be filled up by appointment of persons, included in the select list and if any vacancies remain unfilled after exhausting the list, then it can be filled up by temporary promotion, on the basis of seniority subject to rejection of the unfit of permanent officers of the lower division grade in that cadre, who have rendered not less than eight years approved service in the grade. But such promotions would be terminated when persons included in the select list for the upper division grade become available to fill in the vacancies. On 30th July, 1982, two Lower Division Clerks from the Ministry of Commerce, including one Shri Y.N.Sota had been nominated for being promoted to the Upper Division Clerk in the Labour Ministry under the Zoning Scheme. On 2.11.1982, the appellant on the basis of seniority in the Commerce Ministry was nominated and appointed to the Post of UDC in the Labour Ministry under the aforesaid zoning scheme on long term basis. The

appellant continued in the Labour Ministry with effect from that date. It is the case of the appellant that respondents 3 to 30, who had been recruited to the post of Lower Division Clerk in the Labour Ministry itself, were allowed to officiate in the post of Upper Division clerk, on ad hoc basis, since posts in the Upper Division Clerks were lying vacant and they could be reverted to their post of Lower Division Clerk, as and when regular select list candidates are available for being posted as Upper Division Clerk. There is no dispute that the Upper Division Clerks of the Labour Ministry, constitute a cadre. A seniority list provisionally was drawn up in the year 1987 of the Upper Division Clerks in the Labour Ministry, whereunder, the appellant was shown junior to respondents 3 to 30 on the basis of erroneous datas. The appellant, therefore, made a representation to the employer and after due consideration, a fresh seniority list of the Upper Division Clerks in the Department of Labour was issued in 1989. In that seniority list, the appellant was shown senior to respondents 3 to 30 and the list had been drawn up, after due consultation with the Department of Personnel and after obtaining clarifications from the Personnel Department, in accordance with Rule 25 of the Rules. It may be quoted hereunder:

“Rule 25. Interpretation. Where a doubt arises as to the interpretation of any of the provisions of these rules, or the regulations made thereunder, the matter shall be referred to the Central Government whose decision thereon shall be final.”

2. While this was the position, a fresh seniority list was drawn up in the year 1991 and the position of seniority of the appellant vis-a-vis respondents 3 to 30 again was altered. It may be stated that when a fresh seniority list of 1991 was drawn up, no reasons were ascribed and even there is nothing on record to indicate as to what necessitated the drawing up of a fresh seniority list of Upper Division Clerks in the Ministry of Labour, particularly, when the earlier seniority list of 1989 had been drawn up after considering the objections of the appellant to the provisional select list of 1987 and after due consultation with the Department of Personnel, in accordance with Rule 25 of the Rules. It may be stated further that the Union of India, neither before the tribunal, nor in this Court, has indicated the reasoning for which a fresh seniority list was required to be drawn up and further, on what basis, it was re-drawn up and also the fact whether the Labour Ministry consulted the Department of Personnel, before re-drawing up of the seniority list in 1991. Being aggrieved by the seniority list re-drawn up in the year 1991, the appellant approached the Tribunal. Before the Tribunal, it was contended on behalf of the appellant, that the seniority list having been drawn up in the year 1989 after obtaining the advice of the Personnel Department with regard to the interpretation of the relevant Rules governing the seniority, the same could not have been altered in the year 1991, without even obtaining further advice from the Personnel Department. It was also contended, that the case of Mr. Sota, who also had been similarly nominated to the post of UDC in the Labour Department from Commerce Department is almost identical with the case of the appellant, but in the matter of determining the seniority while Mr. Sotas case has been disposed of granting him the seniority at the lowest of the existing cadre on the date he was brought on transfer from Commerce Department to Labour Department, the said principle has not been followed in the case of the appellant, and on the other hand, arbitrarily in re-drawing up the list in the year 1991 she has been shown junior to respondents 3 to 30. It was the contention of the appellant that the relevant Rules governing the inter se seniority of

the appellant vis-a-vis the existing employees in the Labour Ministry have not been properly interpreted , accordingly the conclusion of the Tribunal was erroneous. The Tribunal, however, dismissed the application filed by the appellant on the ground that the seniority list of 1991 has been prepared in accordance with the relevant Rules and Regulations and observed that the earlier seniority list was prepared contrary to the Rules even if, had been prepared on the advice of the Personnel Department, the same will not out-weigh the seniority list prepared in accordance with the Rules. Against the order of the Tribunal a Review Application had been filed and Review Application also was dismissed, hence the appellant has approached this Court.

3. Mrs. Rani Chhabra, learned counsel appearing for the appellant, vehemently contended that the Tribunal committed serious error in not examining the case of Mr. Sota, whose case was identical to that of the appellant, and erroneously dismissed the application filed before it. The learned counsel further urged that the promotion on the basis of nomination from different other cadre in accordance with the Zoning Scheme, which is a subsequent innovation to the Rules in force, and therefore, when a person is brought from one cadre to the other on promotion and possesses the requisite qualification for being promoted to the post of UDC then there is no rhyme or reason not to treat such employee to be born in the cadre with effect from the date he is brought into the new cadre. Judged from the aforesaid stand point the appellant having brought in the cadre of UDC in Labour Department her services in the cadre of UDC in the Labour Ministry has to be reckoned with effect from 3.11.1982 and she would be senior to all those LDCs on that date as well as those of the LDCs who might have got promotion on ad hoc basis with the condition that they may be reverted back to the parent post of LDC when qualified persons become available. According to the learned counsel, Tribunal therefore, committed serious error in deciding the inter se seniority between the appellant and respondent nos. 3 to 30. The counsel also further urged, that the seniority list was drawn up in the year 1989 after due consultation with the Department of Personnel, whose advice has the effect of some finality with regard to interpretation of Rules as indicated in Rule 25. The seniority list thus drawn out, could not have been arbitrarily altered even without obtaining fresh advice from the Personnel Ministry and in the absence of any denial on the assertion made by the appellant the seniority list drawn up in the year 1991 is bound to be set aside. Mr. C.V.S. Rao, learned counsel appearing for Union of India, on the other hand contended, that the seniority list drawn up in the year 1991 is in accordance with the relevant Rules and Regulations and, therefore, the Tribunal rightly refused to interfere with the same. He further contended that the so called consultation with Personnel Ministry under Rule 25 will not out-weigh the statutory provisions contained in the Recruitment Rules and, as such if under the Rules the appellant cannot claim seniority over respondent nos. 3 to 30, the list drawn up in the year 1991 cannot be interfered with. The learned counsel, however, was not in a position to assail the assertions made by the appellant that her case and the case of Mr. Sota stand on the same footing and there is no justification for deciding the seniority in a different way. Mr. Rao also was not in a position to indicate the reasons for which the seniority determined in the year 1989 was altered again in the year 1991. In fact there does not exist an iota of material to indicate what necessitated re-drawing up of seniority list in the year 1991 and what was the basis of the same.

4. Having considered the rival submissions and bearing in mind the peculiar facts and circumstances under which the appellant was appointed as UDC in the Labour Department, on being nominated by the Commerce Department, after she has acquired necessary qualification for such promotion we are of the considered opinion that the re-drawing up of the seniority list in the year 1991 must be held to be an arbitrary exercise of power and the employer has failed to indicate any reason for altering the seniority list which had been drawn up in the year 1989. That apart, on first principle also when a person is brought from one cadre to other and joins a new cadre then he must be treated to be lowest in the cadre on that date, but he cannot be junior to all those who were not even born in the cadre on that date. In other words, respondent nos. 3 to 30 were in the Lower Division Clerks and some were officiating on ad hoc basis, not being born in the Select List in the post of Upper Division Clerks in the Commerce Ministry, whereas the appellant was brought after being nominated by the Commerce Ministry to the Labour Ministry and was allowed to join the post of UDC on 3.11.1982. That being the position, rightly she was shown senior to respondent nos. 3 to 30 in the seniority list of the year 1989. That list could not have been altered without any reason by the employer. In the aforesaid premises, we set aside the impugned judgment of the Tribunal, allow this appeal and hold that the appellant would be senior to respondent nos. 3 to 30 in the cadre of UDC in the Labour Ministry. If she would be entitled to any consequential benefits on that score, then her case may be duly considered and given accordingly.