

SUPREME COURT OF INDIA

Director, C.B.I.

Vs.

D.P. Singh

C.A.No.1485 of 2003

(Markandey Katju and R. M. Lodha JJ.)

16.12.2009

JUDGEMENT

R.M. Lodha, J.

1. This appeal by special leave is directed against the judgment of the High Court of Delhi dated March 8, 2002 whereby writ petition preferred by the present respondent was allowed and it was directed that his seniority to the post of Deputy Superintendent of Police (Dy.S.P.) should be counted from November 24, 1977 in place of June 29, 1987.

2. D. P. Singh-respondent-joined U. P. Police Service on February 16, 1964 as Sub-Inspector. On May 11, 1966, he was sent on deputation to the Central Bureau of Investigation (CBI) as Sub-Inspector. While he was on deputation, he was appointed to the post of Inspector on December 31, 1970 against deputation quota as per the then existing Special Police Establishment (Executive Staff) Recruitment Rules, 1963 (for short, 'Rules, 1963'). He continued to be on deputation with CBI and vide Order dated November 24, 1977, he was appointed to the post of Dy. S.P. on ad-hoc basis. He appears to have exercised his option for absorption to the post of Dy.S.P. in CBI in 1980 and the request for absorption also seems to have been accepted in 1983 but no formal order was issued and it was only vide order dated May 15, 1995 that respondent was absorbed in the service of CBI and appointed as Dy.S.P. on transfer basis with effect from June 29, 1987 on the recommendation of Union Public Service Commission (UPSC) and as per the guidelines issued by Department of Personnel and Training (DOPT) vide Office Memorandum dated May 29, 1986. The respondent, however, made representation and claimed his seniority with effect from November 24, 1977 when he was initially appointed to the post of Dy.S.P. in CBI. No favorable response on his representation was received by the respondent. He, then, approached Central Administrative Tribunal (CAT), Principal Bench, New Delhi by filing original application praying therein that direction be issued to the present appellants to fix his seniority in the grade of Dy. S.P. with effect from November 24, 1977 in place of June 29, 1987.

3. On February 3, 1998, CAT dismissed original application filed by the present respondent. The respondent sought review of the order dated February 3, 1998 from the CAT but the review application, too, was dismissed on September 10, 1999.
4. The present respondent aggrieved by the aforesaid orders of CAT, filed writ petition before the High Court which, as indicated above, has been allowed by the impugned order.
5. We heard Mr. P.P. Malhotra, Additional Solicitor General for the appellants and Mr. Rakesh K. Khanna, Senior Counsel for the respondent at quite some length.
6. It is important to notice here that although respondent joined CBI as Sub-Inspector on May 11, 1966 on deputation from U.P. Police and he continued to be on deputation for more than two decades and during this period he was appointed by CBI on next higher posts, viz; Inspector and Dy.S.P. but until his absorption as Dy.S.P. in CBI with effect from June 29, 1987, he continued his lien in the parent department and was not promoted to the post of Dy.S.P. in U.P. Police (i.e. his parent department).
7. In this backdrop, we deem it appropriate to reproduce the order dated December 26, 1977 whereby the respondent was appointed to officiate as Dy.S.P. with effect from November 24, 1977.

"F.No.A-19036/11/77-Ad.V Govt. of India Ministry of Home Affairs, Deptt. of Personnel & A.R., Central Bureau of Investigation Kotah House Hutments, New Delhi.

Dated 26 Dec 1977 NOTIFICATION (TO BE PUBLISHED IN GAZETTE OF INDIA PART III SEC.I) The director, Central Bureau of Investigation and Inspector General of Police, Special Police Establishment hereby appoints Shri D.P. Singh, Inspector of Police, C.B.I. CIU (II), Branch and an officer of Uttar Pradesh Police Deptt. to officiate as Dy. Supdt. of Police in Central Bureau of Investigation, Special Police Establishment with effect from the forenoon of 24.11.77 in a temporary capacity until further order.

(V.P.....) Administrative Officer (E) Central Bureau of Investigation."

8. Rules, 1963 have been made by the President in exercise of the powers conferred by the proviso to Article 309 of the Constitution. These rules apply to the post of Superintendent of Police and Deputy Superintendent of Police in the Special Police Establishment. Inter alia, Schedule appended thereto provides that post of Deputy Superintendent of Police which is classified as General Central Service Group, gazetted and non-ministerial post, shall be filled in by selection. The schedule provides for quota for selection to the post of Dy. S.P. for deputationists. There is a note appended to the Schedule for the post of Superintendent of Police and Deputy Superintendent of Police which provides that when these posts are held by deputation by officers of the State or Central Government Department, these posts will be treated as tenure posts. The note further provides that deputationists will not be eligible for

promotion in the quota shown against the higher posts but if they are otherwise suitable and if vacancies are available, such deputationists may be appointed against deputation quota.

9. Rules, 1963 were amended in 1972 whereby in columns 10 and 11 in Schedule the following provisions were made:

"Column 10:

(a) Promotion - 30 per cent failing which by transfer on deputation failing both by direct recruitment.

(b) Transfer/deputation-50 per cent failing which by direct recruitment.

(c) Direct recruitment-20 per cent in consultation with the Union Public Service Commission."

Column 11:

Inspector of Police in the Central Bureau of Investigation with 5 years service in the grade rendered after appointment thereto on a regular basis.

Transfer/deputation:

Suitable officers of the State or Central Government Department who are holding equivalent posts or who, though holding posts in the next lower grade, are officer approved for promotion to equivalent posts, Deputation:

Deputationist Inspector in the Central Bureau of Investigation who have put in at least 5 years service in the rank in the State/Central Bureau of Investigation out of which at least 3 years is in the Central Bureau of Investigation.

(Period of deputation ordinarily not exceeding 5 years)."

10. Further amendment was brought in the Rules, 1963 as amended in 1972 by amendment Rules, 1987.

11. On May 29, 1986, an Office Memorandum was issued by Department of Personnel and Training (DOPT), Government of India dealing with the subject of seniority of persons absorbed after being on deputation whereby sub-para (iv) to para 7 of earlier Office Memorandum dated December 22, 1959 was added. Since the whole controversy centres around this Office Memorandum, we deem it appropriate to reproduce it as it is:

"No. 20020/7/80-Estt(D) Government of India/Bharat Sarkar Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training New Delhi, the

29th May, 1986 OFFICE MEMORANDUM Subject : Seniority of persons absorbed after being on deputation.

The undersigned is directed to say that the existing instructions on seniority of transferees contained in paras 7 of the Annexure to this Department's O.M. No. 9/11/55-RPs dated the 22nd December, 1959 (copy enclosed) mainly deal with cases where persons are straight way appointed on transfer. It is, however, observed that most of the cases of permanent absorption are those where the officers were taken on deputation initially under the method of 'transfer on deputation/transfer' contained in the relevant recruitment rules. This O.M. is intended to fill this gap in the existing instructions.

2. Even in the type of cases mentioned above, that is, where an officer initially comes on deputation and is subsequently absorbed, the normal principle that the seniority should be counted from the date of such absorption, should mainly apply. Where, however, the officer has already been holding on the date of absorption in the same or equivalent grade on regular basis in his parent department, it would be equitable and appropriate that such regular service in the grade should also be taken into account in determining his seniority subject only to the condition that at the most it would be only from the date of deputation to the grade in which absorption is being made. It has also to be ensured that the fixation of seniority of a transferee in accordance with the above principle will not affect any regular promotions made prior to the date of absorption. Accordingly, it has been decided to add the following sub-para (iv) to para 7 of general principles communicated vide O.M. dated 22nd December, 1959:

"(iv) In the case of a person which 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 fixation of seniority of a transferee in accordance with the above principle will not, however, affect any regular promotions to the next higher grade made prior to the date of such absorption. In other words, it will be operative only in filling up of vacancies in higher grade taking place after such absorption.

In cases in which transfers are not strictly in public interest, the transferred officers will be placed below all officers appointed regularly to the grade on the date of absorption."

3. All the Ministries/Departments are requested kindly to bring these instructions to the notice of all concerned in the Ministries/Departments and Attached and Subordinate Offices under them for their guidance and to ensure their compliance.

4. These orders will not be applicable to transfers within the Indian Audit and Accounts Department which are governed by orders issued by the C & A.G. from time to time.

5. Hindi version is attached.

Sd/- (K.S.R. Krishna Roa) Deputy Secretary to the Government of India."

12. Mr. P.P. Malhotra, Additional Solicitor General urged that since the respondent was not Dy.S.P. in his parent department in 1977 nor was he holding equivalent grade of Dy.S.P. on regular basis in his parent department (U.P. Service), his seniority in the grade of Dy.S.P. has to be counted from June 29,1987 when he was absorbed. He, thus, submitted 9 that the judgment of the High Court is unsustainable in the light of sub-para (iv) as mentioned in O.M. dated May 29, 1986.

13. On the other hand, Mr. Rakesh K. Khanna, learned Senior Counsel for the respondent submitted that since the respondent has been holding the post of Dy.S.P. in CBI since November 24, 1977, as per sub-para (iv), his seniority from the date he has been holding such post must be counted. He relied upon decisions of this court in the case of *K. Madhavan and Another v. Union of India and Others*¹, *Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and Others*², *Union of India and Another v. Harish Chander Bhatia and Others*³ and *Rameshwar Prasad v. Managing Director, U.P. Rajkiya Nirman Nigam Limited and Others*⁴. He also submitted that part of the Office Memorandum dated May 29, 1986 has been declared unconstitutional by this Court in *Sub- Inspector Rooplal and Another v. Lt. Governor through Chief Secretary, Delhi and Others*⁵.

14. The question involved in the case of sub-Inspector Rooplal⁵ was whether a Sub-Inspector, who was appointed as such in the Border Security Force when transferred on deputation to the Delhi Police in the cadre of Sub-inspector (Executive) on being permanently absorbed with the transferred post, was entitled to count his substantive service as Sub- Inspector in BSF for the purpose of seniority in the cadre of Sub-Inspector (Executive) in the Delhi Police or not. While dealing with the aforesaid question, this Court referred to long line of cases and, particularly, relying upon the decisions of this Court in *R.S. Makashi v. I.M. Menon*⁶ and *Wing Commander J. Kumar v. Union of India*⁷ held that right of deputationist to count his service for the purpose of seniority in the transferred department was well settled and, therefore, when a deputationist is absorbed in a department, he would certainly have expected that his seniority in the parent department would be counted. The court, however, clarified that if the previous service of a transferred official is to be counted for seniority in the transferred post, then two posts should be equivalent. This Court, however, declared the expression "whichever is later" unconstitutional. The judgment of this

Court in Sub-Inspector Rooplal⁵ is of no help to the respondent as he did not hold the post of Dy. S.P. or equivalent post in his parent department at the time of transfer or absorption.

15. As a matter of fact, the plain reading of sub-para (iv) which has been added to earlier O.M. dated December 22, 1959 vide O.M. dated May 29, 1986 would show that it provides that a deputationist whose services are absorbed later would get his seniority in the grade in which he is absorbed normally from the date of his absorption. However, in a case of person who has already been holding the same or equivalent grade in his parent department on regular basis, his seniority shall be counted from the date he was holding same or equivalent grade in his parent department. Insofar as the present case is concerned, admittedly, respondent did not hold the rank of Dy.S.P. or the equivalent post in his parent department on the date of his appointment as Dy.S.P. on ad-hoc basis in 1977 or at the time of his absorption in 1987 and, therefore, his seniority in Dy.S.P. can only be counted from the date of his absorption, 12 i.e., June 29, 1987. If the construction put by the learned Senior Counsel for the respondent to sub-para (iv) is accepted, it would render the first part of sub-para (iv), viz., "In the case of a person which 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," redundant and surplussage. Such construction would be against the basic rule of construction that language of the statute should be read as it is and a construction which results in rejection of words as redundant must be avoided. In *Aswini Kumar Ghose v. Arabinda Bose*⁸, this Court observed that it is not a sound principle of construction to brush aside words in a statute as being inapposite surplussage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute.

16. In *K. Madhavan*¹, this Court, while holding that 'deputation' may be regarded as a 'transfer' from one government department to another, reiterated that transfer cannot wipe out length of service in the post from which an employee has been transferred and if a government servant holding a particular post is transferred to the same or equivalent post in another government department, the period of his service in the post before his transfer ought to be taken into consideration. This legal position admits of no doubt but the respondent herein did not hold the post of Dy.S.P. or equivalent grade on regular basis in his parent department prior to his absorption and, therefore, the principle laid down in *K. Madhavan*¹ has no application.

17. It is true that respondent was appointed as Dy.S.P. on officiating basis by CBI in 1977 and he continued as such until his absorption in 1987, the question is, should the said period be taken into account for considering his seniority. The answer, in our opinion, has to be in the negative. It is so because sub-para (iv) of Office Memorandum as quoted above plainly provides that date of absorption, ordinarily, would be the date from which seniority in the grade is to be reckoned. In the present case, no departure from the aforesaid position is possible as the respondent was not holding the post of Dy.S.P. or equivalent post in his parent department anytime prior to his absorption. The two decisions in *Direct Recruit Class II Engineering Officers' Association*² and *Harish Chander Bhatia*³ heavily relied upon by the Senior Counsel for the respondent, in our view, are not of much help to the respondent

because his initial appointment as Dy.S.P. was purely on ad-hoc basis and there is nothing to indicate that his selection was according to Rules. As a matter of fact, the respondent could have been absorbed only after receipt of recommendation from UPSC.

Thus, the period during which the respondent worked as Dy.S.P. in CBI on officiating basis prior to his absorption, in our considered view, cannot be counted. The Tribunal in this regard held thus:

"3. We are of the view so long as the applicant could claim no lien on the post of Dy. Superintendent of Police in C.B.I., he could not claim any seniority in C.B.I. After he was absorbed on 9.11.1994, he could claim lien on that post and the earlier lien with U.P. Police would cease to exist from that date. Accordingly, we find no merit in the claim of the applicant for his seniority from 1977 as Dy. Superintendent of Police in C.B.I. Further, the claim also appears to be barred by time. If the applicant considered himself entitled to seniority from 1977, he ought to have come immediately after the date he was denied seniority by the respondents."

We find no infirmity in the aforesaid view of the Tribunal.

18. For the foregoing reasons, appeal deserves to be allowed and is allowed. The judgment dated March 8, 2002 impugned in the present appeal is set aside. Parties shall bear their own costs.

¹(1987) 4 SCC 566

²(1990) 2 SCC 715

³(1995) 2 SCC 48

⁴(1999) 8 SCC 381

⁵(2000) 1 SCC 644

⁶(1982) 1 SCC 379

⁷(1982) 2 SCC 116

⁸AIR 1952 SC 369