

SUPREME COURT OF INDIA

Rajendra Pratap Singh Yadav & Ors.

Vs.

State of U.P. & Ors.

C.A.No.4949 of 2011

(Dalveer Bhandari, Deepak Verma,JJ.,)

05.07.2011

JUDGMENT

SLP (Civil) No.5098 of 2007

Dalveer Bhandari, J.

1. Leave granted in all the Special Leave Petitions.

2. Since common questions of law arise in all these appeals, therefore, these appeals are being disposed of by a common judgment. The facts of Civil Appeal No. 4949 of 2011 arising out of Special Leave Petition (Civil) No.5098 of 2007 entitled Rajendra Pratap Singh Yadav & Others v. State of U.P. & Others are recapitulated for the sake of convenience.

3. The appellants and respondent No.4 - Rakesh Kumar Jolly are direct recruits to the Uttar Pradesh Provincial Police Service. It is stated that the appellants are 4 to 10 years senior to respondent No. 4, who was selected and appointed in the year 1994 as Deputy Superintendent of Police in Uttar Pradesh Provincial Police Service. Respondent No.4 was given benefit of his past service in the Indian Army as a Short Service Commissioned Officer of eight years vide order dated 29.11.2004 issued by the State Government. Since respondent No.4, though junior was placed above the appellants, therefore, the appellants filed a writ petition before the High Court of judicature at Allahabad.

4. According to the appellants, respondent No.4 could not have been given the benefit of past service. The benefit of back seniority was given to respondent No.4 under the U.P. Non-technical (Class-II/Group `B') Services (Appointment of Demobilised Officers) Rules, 1980, as amended in 1990. Demobilised Officer has been defined in Rule 3(b) of the Demobilization Rules, 1980, which reads as under:

"3. Definitions - In these rules unless the context otherwise requires -
(a)

- (b) "Demobilised Officer" means Disabled Defence Service Officer, Emergency Commissioned Officer and the Short Service Commissioned Officer of the Armed Forces of the Union who was commissioned on or after November 1, 1962 but before January 10, 1968 or on or after December 3, 1971 and released at any time thereafter.
- (c)"

5. Respondent No.4 joined the Indian Army in 1981 and was discharged from the Army in 1986. He was a Short Service Commissioned Officer. The appellants raised the following questions in this case.

“(1) Whether a Short Service Commissioned Officer who was commissioned in the Army during the normal period is entitled to the certain benefits given to the Army officers who were commissioned during the emergency when the nation was at war with the foreign enemy.

(2) Whether a demobilized Short Service Commissioned Officer who was commissioned in the army during normal period and whose selection in the civil post is not against the vacancies reserved for demobilized officers under U.P. Non-

Technical (class-II) Services (Reservation of Vacancies for Demobilised Officers) Rules, 1973 (hereinafter referred to as "1973 Rules") is entitled to seniority under the Uttar Pradesh non-technical (Class II/Group-B) Services (Appointment of Demobilised Officers) Rules, 1980 (hereinafter referred to as "1980 Rules")?

(3) Whether a demobilized Short Service Commissioned Officer who is not selected for appointment to a non-technical Class-

II/Group-B service or post against the vacancies reserved for demobilised officers, as a result of recruitment, the process of which was concluded or commenced prior to 6th August, 1978, in accordance with the provisions of 1973 Rules is entitled to seniority and pay as meant for the persons appointed against the vacancies reserved under the 1973 Rules?

(4) Whether when a Short Service Commissioned Officer who has been selected and appointed against the vacancies reserved for such officers under the Government Order of 1977 which does not contemplate any seniority for the past services rendered in the Army, is entitled to seniority under the 1980 Rules?

(5) When the order of appointment itself provides that the seniority of the selected Short Service Commissioned Officer shall be determined according to the Uttar Pradesh Police Service Rules, 1942, can the Government dehors the terms of the appointment order grant him seniority of 8 years because he happened to be a Short Service Commissioned Officer?"

6. The main argument articulated by the appellants is whether a Short Service Commissioned Officer who was commissioned in the Army during the normal period is entitled to the certain benefits given to the Army officers who were commissioned during the emergency when the nation was at war with the foreign enemy.

7. It was submitted before the High Court that the person who had joined the Army after declaration of emergency due to foreign aggression and those who joined after the war came to an end stand on an entirely different footing. Those who joined the Army after revocation of emergency joined the Army as a career and belong to different class distinct from those who had joined the Army during war and emergency.

8. It is well known that many persons who joined the Army service during the foreign aggression could have opted for other career or other softer career or service but the nation itself being under peril, impelled by the spirit to serve the nation, they opted for joining the Army where the risk was little more. Such persons formed a class by themselves and by framing Rules an attempt had been made to compensate those who returned from the war if they compete in different services.

9. The persons who joined the Army service after cessation of the foreign aggression and revocation of emergency cannot be treated like persons who have joined the Army during emergency due to foreign aggression and similar benefits cannot be given to such persons even by making rules.

10. The appellants also submitted that whenever any particular period is spent in any service by a person is added to the service to which such person joined later; it is bound to affect the seniority of persons who have already entered in the service. As such, any period of earlier service should be taken into account for determination of seniority in the latter service only for special or compelling reasons, which stand test of reasonableness and on examination, can be held to be free from arbitrariness. Therefore, the decision of the Government of India to give seniority to respondent No.4, who did not join the armed forces during emergency and thus stealing a march over 181 officers is not only contrary to the Rules but is discriminatory and arbitrary and violative of Articles 14 and 16 of the Constitution of India.

11. According to the appellants, the High Court in the impugned judgment did not appreciate the controversy involved in the case in proper perspective and dismissed the writ petition. The appellants aggrieved by the said judgment of the High Court filed these appeals before this court.

12. The appellants placed reliance on a number of judgments of this Court to strengthen their submissions.

13. In *Ex-Captain A.S. Parmar and Others v. State of Haryana and Others* 1986 (Supp) SCC 283 this court held that the seniority of the Military Service rendered by the Armed Forces Personnel who joined the Military Service during emergency would only be counted for the

purpose of seniority in the civil service and the Military Service rendered subsequent to the lifting of emergency cannot be taken into account for the purpose of reckoning the seniority in the civil post.

14. In *Union of India and Others etc. etc. v. Dr. S. Krishna Murthy and Others etc. etc.* (1989) 4 SCC 689 this court observed that the persons who had joined the armed forces after the declaration of the emergency at the time when the security of the nation was in peril due to external aggression had voluntarily offered their services for the defence of the country. They belong to a separate class and there is no question of discrimination in giving the benefits of seniority to them in the civil services by framing Rules.

15. This court in *Dhan Singh and others etc. etc. v. State of Haryana and others* 1991 Supp (2) SCC 190 specifically held that the young persons who had joined the military service during emergency and those who were already in the service and due to exigency of the service had been compelled to serve during the emergency form two distinct classes. Those who joined the Army before the proclamation of the emergency had chosen the career voluntarily and their services during emergency were a matter of course. The person who got enrolled or commissioned during the emergency, on the other hand, on account of the call of the nation joined the Army at that critical juncture of national emergency to save the motherland by taking a greater risk where danger to life of a member of the armed forces was higher. They include persons who could have pursued their studies, acquired higher qualifications and could join a higher post and those who could have joined the government service before attaining the maximum age prescribed and thereby gained seniority in the service. Foregoing all these benefits and avenues, they joined the Army keeping in view the needs of the country and assurances contained in conditions of service in executive instructions. The latter formed a class by themselves and they cannot be equated with those, who joined the Army before proclamation of the emergency.

16. In *Ram Janam Singh etc. v. State of U.P. and Another etc.* (1994) 2 SCC 622, this court while interpreting U.P. 1968 Rules, 1973 Rules and 1980 Rules, specifically held that the persons who had joined the Army after declaration of the emergency due to foreign aggression and those who joined after the war cannot stand on the same footing. Those who joined the Army after revocation of emergency, joined the Army as a career. This court specifically rejected the plea in para 14 to treat the persons who joined the Army service after cessation of foreign aggression and revocation of emergency to be treated alike the persons who had joined Army service during emergency due to foreign aggression. It was also held that any period of earlier service should be taken into account for determination of seniority for some very compelling reasons, which stand the test of reasonableness and on examination can be held free from arbitrariness.

17. In *Chittaranjan Singh Chima and Another v. State of Punjab and others* (1997) 11 SCC 447 this court while relying on the judgment in the case of *Ram Janam Singh* (supra) held that the preferential treatment could be given only to those who joined armed forces during emergency and grant of notional seniority in the civil services by taking into account service

rendered in the armed forces cannot be extended to those who joined armed forces during normal times.

18. This court in *State of Punjab and Others v. Harbhajan Singh and Another* (2007) 12 SCC 549, while relying on judgment in the case of *Ram Janam Singh* (supra) held that the military service can be counted only if the person has joined during the emergency and not otherwise.

19. In *State of U.P. and another etc. etc. v. Dinkar Sinha* (2007) 10 SCC 548, this court specifically placed reliance on the judgment in *Ram Janam Singh's* case (supra) and held that a person, who joined the Army after the cessation of emergency cannot be given benefit of seniority of the services rendered in the Army after selection in the civil services.

20. The appellants also submitted that a demobilized Short Service Commissioned officer who was commissioned in the Army during the normal period and whose selection in the civil post is against the vacancies reserved for demobilized officers under the 1973 Rules is not entitled to seniority under the 1980 Rules.

21. Under Rule 3 of 1973 Rules, 10% of the permanent vacancies in all Non-Technical (Class-II) services were reserved for Emergency Commissioned Officers who joined the armed forces during the first emergency i.e. 1.11.1962 to 10.1.1968 and during the second emergency i.e. 3.12.1971 to 27.3.1977. Under Rule 1(2), these rules were to remain in force only for a period of 5 years. Rule 6 provided for seniority and pay and specifically provided that seniority of the candidates appointed against the 10% vacancies reserved under Rule 3 should be determined on the assumption that they entered the service at their second opportunity of competing of recruitment and they should be assigned the same year of allotment as successful candidates of the relevant competitive examination. Therefore, the benefit of the 1973 Rules cannot be extended after these Rules ceased to exist on 5.8.1978 and to the persons whose appointment in the civil posts was not under the vacancies reserved under Rule 3 of the 1973 Rules.

22. When the 1973 Rules lapsed in 1978 some selections for the vacancies reserved under the 1973 Rules were concluded or the selection process was on but the appointments could not be made. To regularize the selection and appointment of these officers against the vacancies reserved under the 1973 Rules, a new set of Rules i.e. 1980 Rules were promulgated on 19.8.1980 by the State Government.

23. The appellants submitted that only Rules governing reservation is 1973 Rules, which ceased to exist after five years, i.e., on 5.8.1978. The appellants also submitted that no one could be given the benefit of 1973 Rules after 5.8.1978. The appellants further submitted that in *Dilbag Singh v. State of U.P. and others* (1995) 4 SCC 495 this court observed that 1973 Rules must be deemed to be in operation till 1980.

24. According to the appellants this is not the correct position of law, but in any event no one could derive any benefit after 1980. Respondent No.4 admittedly joined service much after 1980 and could not have been extended the benefit of the Rules.

25. According to the appellants, 1980 Rules do not deal with reservation. They are only Rules for appointment. The appellants also submitted that under 1980 Rules there is no provision with respect to reservation of vacancies to the demobilized officers of armed forces of the Union. These Rules are not replacement of 1973 Rules as generally misunderstood and these rules are a new set of rules for the purpose of regularising appointments of demobilized officers whose selection process had commenced or concluded under the 1973 Rules but appointments were not made before expiry of the 1973 Rules i.e. 6.8.1978. Nomenclature of the 1980 Rules is different from the 1973 Rules which explain the purpose of these rules. The 1973 Rules provide for reservation of vacancies for the demobilized officers, whereas 1980 Rules provide for appointment of demobilized officers whose process of selection as per the 1973 Rules either got completed or commenced but appointments were not made before the expiry of the said 1973 Rules. The 1980 Rules have been given retrospective effect with effect from 6.8.1978 to regularize the appointment of the demobilized officers whose selection process was concluded or commenced before 6.8.1978 otherwise appointment orders of those officers after 6.8.1978 to 19.8.1980 would have been invalid who were given benefit of 1973 Rules. Rule 4 of the 1980 Rules prescribes a cut-off date which provides that benefits of the Rules shall be available only against the vacancies reserved for demobilized officers under 1973 Rules whose process of recruitment commenced or was completed prior to the 6.8.1978 when the 1973 Rules had lapsed. Therefore, a demobilized officer, whose selection was not against the vacancies reserved under the 1973 Rules and his process of selection started after 6.8.1978, by no stretch of imagination, is entitled to the seniority under the 1980 Rules.

26. The appellants also submitted that it is not in dispute that respondent No. 4 was appointed in the year 1994 against the 8% vacancies reserved under the Government Order dated 20.8.1977, which provides reservation to other categories of persons as well. There is no provision in the Government Order for granting seniority to a Short Service Commissioned officer for his past military service, who was appointed against the 8% vacancies reserved for the armed forces personnel as mentioned in the Government Order. Since the appointment of respondent No.4 in the U.P. Police Service in the year 1994 was not against the vacancies reserved under the 1973 Rules, he could not have been granted seniority of eight years by the State Government.

27. In the case of Rana Randhir Singh and others etc. etc. v. State of U.P. and others 1989 Supp (1) SCC 615 this Court has specifically held that the seniority of the officers appointed in the U.P. Police Service after 1980 shall be determined in accordance with the provisions of Rule 21 of the U.P. Police Service Rules, 1942. Therefore, the respondent could not have been assigned seniority of eight years only because he happened to be a Short Service Commissioned Officer.

28. In reply to question No. 5 i.e. "when the order of appointment itself provides that the seniority of the selected Short Service Commissioned Officer shall be determined according to the Uttar Pradesh Police Service Rules, 1942, can the Government dehorn the terms of the

appointment order grant him seniority of 8 years because he happened to be a Short Service Commissioned Officer", the appellants submitted that it is trite law that the service conditions mentioned in the order of appointments are binding on the employee and employer alike if the same are not against the statutory rules governing the service conditions or public policy or the provisions of the Constitution of India. The appointment order of respondent No. 4 specifically mentions that the seniority of respondent No.4 and other officers selected shall be determined in accordance with the U.P. Police Service Rules, 1942. It is also submitted that having accepted this service condition as mentioned in the appointment order, the claim of respondent No.4 for grant of eight years seniority as he was Short Service Commissioned Officer could not have been allowed.

29. In Dinkar Sinha (supra) the controversy has been set at rest where this court has categorically held that a person whose appointment in the civil/police service is not against the vacancies reserved under the 1973 Rules cannot claim seniority under the 1980 Rules.

30. The appellants also submitted that the final seniority list of the officers of the U.P. Police Service was published on 1.2.2000 and respondent No. 4 was placed at Sl. No. 340. He was satisfied and felt contented with his placement in the seniority list. Once the seniority list was finalized and no representation was made by respondent No.4 for years, therefore, it ought not to have been disturbed. The final seniority list should not be disturbed or tinkered with unless it becomes imperative in the larger interest of justice.

31. It may be pertinent to mention that Dinkar Sinha, a Short Service Commissioned Officer, who was appointed as Deputy Superintendent of Police against the 8% vacancies reserved under the Government Order dated 20.8.1977 made a representation claiming seniority under 1980 Rules. The State Government rejected his representation on 14.9.2000 saying that he was not selected and appointed against the vacancies reserved under the 1973 Rules. However, the High Court vide its judgment dated 8.2.2002 allowed the prayer of Dinkar Sinha.

32. Respondent No.4, after the said judgment by the High Court and after four years from the date of publication of the final seniority list, filed a representation before the State Government that he was similarly placed as Dinkar Sinha and he should be assigned seniority of 1980 batch. The State Government rejected the representation of Dinkar Sinha but obliged respondent No. 4 and vide order dated 29.11.2004 granted him seniority of 1982 batch and thus, he was given a jump of 181 places. According to the appellants, the long drawn seniority should not have been disturbed after so many years.

33. It may also be pertinent mention here that Dilbag Singh's (supra) case was approved in Mahesh Chand and Others v. State of U.P. and Others (2000) 10 SCC 492.

34. The main submission of the learned counsel for the State of U.P. has been that individuals who were appointed under the 10% vacancies are not entitled for the benefit. He placed reliance on advertisement and the appointment letter of all the three respondents who got the benefit but their appointments were not made against 10% vacancies.

35. Dr. Rajiv Dhawan, learned senior counsel appearing in Civil Appeals No.4954-4956 of 2011 arising out of Special Leave Petition (Civil) Nos.26022-26024 of 2008 entitled 'Rajendra Singh v. Madhukar Dwivedi and Others', submitted that Dilbag Singh (supra) has been approved in Mahesh Chand (supra), which is a three Judges Bench judgment and binding on this court. He submitted that even the State of U.P. till 2007 has prepared all lists according to the judgment of Mahesh Chand's (supra) case. He further submitted that Dinkar Sinha's (supra) judgment is delivered by two judges and they were bound by the judgment of Mahesh Chand (supra) and they could not have taken a contrary view.

36. Dr. Dhawan also placed reliance on the judgment of this court in the case of Narendra Nath Pandey and Others v. State of U.P. and others (1988) 3 SCC 527. He submitted that despite Rules, the executive has the power to grant reservation by an executive order.

37. Mr. Dinesh Dwivedi, learned senior counsel appearing in Civil Appeals No.4951-4953 of 2011 arising out of Special Leave Petition (Civil) Nos. 25949-25951 of 2008 entitled 'Sudhir Kumar v. Sri Madhukar Dwivedi etc.' submitted that Sudhir Kumar had joined the Army on 17.5.1976. On 19.3.1977 appellant was commissioned as a Short Service Commissioned Officer. On 12.5.1982 he was released from the Army services. In the year 1984 he appeared in Provincial Civil Services (Executive) Examination in Uttar Pradesh and passed in the year 1984. On 7.7.1986 the appellant joined State Civil Services as Deputy Collector. He was confirmed in the batch of 1985 for the purpose of seniority. On 25.6.1994, Sudhir Kumar made a representation to the State Government to accord seniority to him at proper place and the batch in gradation list following the decisions of this court as accorded to other similarly situated demobilized officers by the State Government. Vide order dated 13.3.2003, the State Government decided the seniority of the appellant and fixed his name below the name of Santosh Kumar Dwivedi of 1976 batch and above Vinod Kumar Singh of 1977 batch.

38. The appellant being aggrieved by the judgment dated 30.9.2008 delivered by the High Court of judicature at Allahabad, Lucknow Bench in Writ Petition No.494 (S/B) of 2003 entitled Madhukar Dwivedi v. State of U.P., Writ Petition No. 504 (S/B) of 2003 entitled Arvind Narain Mishra and Another v. State of U.P. and others and Writ Petition No. 1083 (S/B) of 2004 entitled Har Charan Prakash v. State of U.P. filed Civil Appeals No.4951-4953 of 2011 arising out of Special Leave Petition (Civil) Nos. 25949-25951 of 2008 in this Court.

39. According to Mr. Dwivedi the appellant was commissioned as a Short Service Commissioned Officer on 19.3.1977 during the period when the emergency was invoked and he ought to have been given the benefit of 1973 Rules. He cannot be denied the benefit on the ground that he was not appointed under the 10% vacancy quota or 1973 Rules.

40. Mr. Dwivedi placed reliance on Ram Janam Singh (supra) and particularly laid stress on para 12 of the judgment which reads as under:

"... ..we fail to understand as to how persons who joined after the emergency was over i.e. after January 10, 1968 and before December 3, 1971 when another

emergency was imposed in view of the foreign aggression, can be treated on a par or on the same level. It need not be pointed out that such persons were on the lookout for a career and joined the Armed Forces of their own volition. It can be presumed that they were prepared for the normal risk in the service of the Armed Forces. Those who joined Armed Forces after November 1, 1962 or December 3, 1971, not only joined Armed Forces but joined a war which was being fought by the nation. If the benefits extended to such persons who were commissioned during national emergencies are extended even to the members of the Armed Forces who joined during normal times, members of the Civil Services can make legitimate grievance that their seniority is being affected by persons recruited to the service after they had entered in the said service without there being any rational basis for the same."

41. We have carefully gone through the pleadings of these appeals and perused relevant judgments delivered by this court.

42. The 1973 Rules ceased to exist after five years i.e. on 5.8.1978. The life of the Rules, according to the judgment delivered in Dilbag Singh (Supra) was extended upto 1980. In any event, no one could be given benefit of 1973 Rules after 1980. Admittedly, respondent No. 4 was appointed in 1994 and the benefit could not have been extended to respondent No.4.

43. Same Rules came up for consideration in Dinkar Sinha's case (supra) wherein the Court observed as under:

"31. The 1973 Rules was a temporary statute. It died its natural death on expiry thereof. The 1980 Rules does not contain any repeal and saving clause. The provisions of the relevant provisions of the General Clauses Act will, thus, have no application. Once a statute expires by efflux of time, the question of giving effect to a right arising thereunder may not arise. In any event, in this case, no such right accrued to the respondent. Reservation to the extent of 2% might have been fixed by reason of a government order issued in the year 1977 but the same had nothing to do with the 1973 Rules or with the 1980 Rules. Provision for reservation made in general by the State in exercise of its executive power could not have conferred a benefit in terms of the provisions of a rule which seeks to apply to a particular category of employees in the service.

32. The 1980 Rules neither repealed nor replaced the 1973 Rules. The question of continuation of the 1973 Rules by the 1980 Rules, thus, did not and could not arise. The 1980 Rules provided for a new set of rules. They were to have a limited application viz. regularisation of appointment of Demobilised Officers."

44. Consequently, persons who joined the Army after the emergency was over cannot also be given the benefit which was extended to those persons who joined the Army during emergency. Those who joined the Army during the period of emergency virtually joined the war which was being fought by the nation. The benefit extended to such persons cannot be

extended to the members of the armed forces who had joined the Army during normal periods.

45. Persons who have joined the Army during the foreign aggression could have opted for other career or softer career or service but the nation itself being under peril, impelled by the spirit to serve the nation, they opted for joining the Army where the risk was much more. Such persons formed a class by themselves and the benefit extended to them cannot be extended to the persons who joined the Army during the normal times. The differential treatment given to those who joined the Army during emergency cannot be termed as discriminatory and arbitrary.

46. Respondent No.4, after the judgment of the High Court and after four years from the date of publication of the final list, filed a representation before the State Government that he be similarly placed as Dinkar Sinha as he being assigned seniority of 1980 batch. The State Government granted seniority to respondent No. 4 and he was given a jump of 181 places and the final seniority list was disturbed by the State.

47. The appointment of respondent no.4 was not against the vacancies reserved under the 1973 Rules, therefore, he cannot get benefit of 1973 Rules.

48. In Rana Randhir Singh's case (supra), this Court clearly held that the seniority of the officers appointed in the U.P. Police Service after 1980 shall be determined in accordance with the provisions of Rule 21 of the U.P. Police Service Rules, 1942. Respondent no.4 was appointed in 1994, therefore, the 1942 Rules would be applicable to him as the said Rules are still in force.

49. Respondent no.4 did not join the armed forces during emergency and thus stealing a march over 181 officers is not only contrary to the Rules but is discretionary and arbitrary and violative of Articles 14 and 16 of the Constitution.

50. We are clearly of the view that respondent No.4 and similarly placed employees could not have been given the benefit of the 1973 Rules. These Rules were not in existence when they were appointed. Therefore, they could not have derived any benefit from the 1973 Rules.

51. Consequently, we are constrained to set aside the impugned judgment of the High Court. We have no hesitation in holding that respondent No.4 - Rakesh Kumar Jolly, Rajendra Singh and Sudhir Kumar were wrongly given the benefit of the 1973 Rules.

52. We deem it appropriate to reiterate that in service jurisprudence there is immense sanctity of a final seniority list. The seniority list once published cannot be disturbed at the behest of person who chose not to challenge it for four years. The sanctity of the seniority list must be maintained unless there are very compelling reasons to do so in order to do substantial justice. This is imperative to avoid avoidable litigation and unrest and chaos in the services.

53. We, therefore, direct the respondent-State of U.P. to prepare a fresh seniority list and place all three of them on their respective positions as they had not received the benefit of 1973 seniority.

54. There has been a considerable delay in this matter, therefore, we direct the State of U.P. to publish a fresh seniority list as expeditiously as possible, in any event within two months from the date of this judgment.

55. In the facts and circumstances of this case we make it clear that the financial benefits which have already been extended to respondent No. 4 - Rakesh Kumar Jolly, Rajendra Singh and Sudhir Kumar may not be recovered from them.

56. These appeals are accordingly disposed of in terms of the aforesaid directions. In the facts and circumstances of the case, the parties are left to bear their own costs.