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UNION OF INDIA

v.

B. JAYARAMAN AND ORS.

MAY 13, 1993

B

[KULDIP SINGH AND YOGESHWAR DAYAL, JJ.]

C *Government of Pondicherry (Group 'C'—Non Gazetted Ministerial Posts) Recruitment Rules, 1981 : Schedule VII Column II— Recruitment to the post of Superintendent Grade I by promotion from among the Superintendent Grade II who have completed five years of service in that post—Note and Proviso thereunder—Purpose and scope—Whether only for the purpose of giving eligibility to the erstwhile secretarial Assistants working as Superintendents Grade II for consideration for promotion from the cadre of Superintendent Grade II to the cadre of Superintendent Grade I.*

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Service Jurisprudence—Normal Rule of length of service—Applicability of.

E The petitioners before the Central Administrative Tribunal had been working as Superintendents Grade II in the Secretariat of the Government of Pondicherry prior to the promotion of respondents Nos. 2. to 13 (before the Tribunal), the erstwhile Secretariat Assistants as Superintendents Grade II. Respondent Nos 2 to 13 were further promoted as Superintendents Grade I before the petitioners on the basis of tentative Seniority list wherein the feeder service rendered by the Assistants between 1.1. 1973 and 31.7. 1981 had been included for computing the seniority in the Grade of Superintendent Grade II.

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The petitioners before the Tribunal aggrieved by the grant of benefit of service rendered during the period 1.1. 1973 to 31.7.1981 by those who were working in the grade of Assistants towards their seniority in the grade of Superintendent Grade II challenged the promotion of respondent Nos 2 to 13 there in who were promoted from Secretarial Assistants to Superintendents Grade II and further promoted as Superintendents Grade I before them

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inspite of the fact that the petitioners had already been working as Superintendents Grade II prior to the promotion of the erstwhile Assistant as Superintendents Grade II.

It was contended by the petitioners before the Tribunal that from 1.8.1981 respondents Nos. 2 to 13 who were Assistants and were in a distinctly

lower scale of pay as compared to them could not be promoted to the post of Superintendents Grade I before the petitioners. The Tribunal allowed the applications and set aside the promotions of respondents No. 2 to 13 before it. A

Aggrieved by the order of the Tribunal the Union of India had preferred the present appeals. B

Agreeing with the reasonings and conclusions of the Tribunal & dismissing the appeals, this Court,

HELD : The note in Column II is only for purposes of giving eligibility to the erstwhile Assistants working as Superintendents Grade II for purposes of being considered for promotion to the post of Superintendent Grade I and not for the purpose of seniority at all. The note merely allows the erstwhile Assistants, who were promoted to the post of Superintendent Grade II to include their service rendered as Assistants after 1.1. 1973 to 31.7. 1981 for purposes of counting the period of five years service as Superintendent Grade II. This note is for no purpose other than for giving them eligibility for consideration for promotion from the cadre of superintendent Grade II to the cadre of Superintendent Grade I. (718- A) C D

2. On general principles of service Jurisprudentee the Assistants having been promoted to the Grade of Superintendents Grade II after those already working as Superintendents Grade II would naturally rank junior to them. There is no rule of seniority *vis-a-vis* for promotes to Superintendent Grade II with effect from 1st August, 1981 for calculating seniority and normal rule of service Jurisprudence of length of service will apply. (718-D) E

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4604 to 4609 Of 1992. F

From the Judgment and Order dated 22.8. 1989 of the Central Administrative Tribunal, Madras in O.A. No. 145 to 150/87.

A.S. Nambiar, P.K. Manohar and Shanti Vasudevan for the Appellant. G

R. Venkataramni, V.G. Pragasani and S.M. Garg for the Respondents.

The Judgment of the Court was delivered by H

A **YOGESHWAR DAYAL, J.** These six appeals have been filed against the decision of the Central Administrative Tribunal, Madras Bench, dated 22nd August, 1989 while disposing of Original Application Nos. 145 to 150 of 1987. Those were filed in seriatem by B. Jayaraman; A. Kanakasena Rao; M. Venkatachalam; A. Sherfudeen; K. Viswanathan and P. Madhavan Adiyodi. The respondents in all these six matters before the Tribunal were the same—namely, respondent No. 1 was Union of India whereas respondent Nos. 2 to 13 were the erstwhile Secretarial Assistants promoted as Superintendents Grade II and further promoted as Superintendents Grade I in the Secretariat of the Government of Pondicherry and governed by the Government of Pondicherry (Group 'C' - Non-Gazetted Ministerial Posts) Recruitment Rules, 1981 (hereinafter referred to as 'the Rules').

C The petitioners before the Tribunal had challenged the promotion of respondents 2 to 13 therein who were promoted from Secretarial Assistants to Superintendents Grade II and further promoted as Superintendents Grade I before them in spite of the fact that the petitioners had already been working as Superintendents Grade II prior to the promotion of the erstwhile Assistants as Superintendents Grade II. The promotion of respondents before the Tribunal was alleged to be based on tentative seniority list wherein respondent No. 1 had included the feeder service rendered by the Assistants between 1.1.1973 and 31.7.1981 for computing the seniority in the grade of Superintendent Grade II. The plea of the petitioners before the Tribunal was that from 1.8.1981 respondents 2 to 13 who were Assistants and were in a distinctly lower scale of pay as compared to the applicants, they could not be promoted to the post of Superintendent Grade I before the petitioners. The Tribunal allowed the applications, O.A. Nos. 145 to 150 of 1987 and held :-

F "It appears to us that there has been some confusion between a liberal provision which has been deliberately made for conferring eligibility for consideration for promotion to the next higher post with reckoning of the period of service rendered in the post of Assistant for the purpose of counting seniority in the post of Superintendent, Grade II. The tentative seniority lists based on which promotions of respondents 2 to 13 have been made as Superintendents Grade I are based on the application of an erroneous principle of determining seniority which is not backed up any statutory provision. That has led to a situation where persons promoted to a higher grade of Superintendent Grade II before the Assistants and in which posts they were also confirmed, being

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placed below respondents 2 onwards."

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The Tribunal accordingly set aside the promotions of respondents 2 to 13 before it contained in various orders of the Government of Pondichery dated 7.8.1986; 20.8.1986; 1.9. 1986 and 17.11.1986. Respondent No.1 was further directed to prepare the seniority list in the grade of Superintendent Grade II on the basis of the length of service rendered in that grade and thereafter, all the eligible persons may be considered for promotion to the post of Superintendent Grade I and that should include persons like respondents 2 to 13 before it who would get the benefit of service rendered by them as Assistant between 1.1.1973 to 31.11.1981 for determining the period of eligibility and not for the purpose of seniority in the cadre of Superintendent Grade II.

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Aggrieved by the order of the Tribunal the Union of India had preferred the present appeals.

It appears the petitioners before the Tribunal were aggrieved by the grant of benefit of service rendered during the period 1.1. 1973 to 31.7. 1981 by those who were working in the grade of Assistants towards their seniority in the grade of Superintendent Grade II.

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For appreciating the submissions of the learned counsel for the respective parties were may give a statement showing the dates of appointments in various grades and ranking assigned in respect of the petitioners and respondents 2 to 13 in O.A. Nos. 145 to 150 of 1987 before the Tribunal :-

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Name of the official	Date of Appointment				Seniority in	
	Asstt.	Supdt.(NS)	Supdt. Gr.II	Supdt. Gr.I	Supdt. GR.II	Supdt. Gr. I

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PETITIONERS

B. Jayaraman (Applicant in O.A. 145/87)	—	2.8.73	1.8.81	13.10.86	104	189
A. Kanakasena Rao (Applicant in O.A.146/87)	—	10.12.73	1.8.81	17.11.86	113	197
M. Venkatachal	—	2.8. 73	1.8.81	13.10.86	103	188

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A	am (Applicant in O.A. 147/87)						
	A. Sherfudeen	—	30.8.78	1.8.81	7.9.87	140	Not Assigned
B	(Applicant in O.A. 148/87)						
	K. Vishwanathan	—	7.4.77	1.8.81	20.3.87	126	207
C	(Applicant in O.A. 149/87)						
	P.Madhavan	—	10.2.76	1.8.81	17.12.86	119	201
D	Adiyodi (Applicant in O.A. 150/87)						
	RESPONDENTS						
E	V. Dhandapani (R.2)	6.11.64	Not appointed	26.5.82	7.8.86	182	174
	K.C. Kumaran (R.3)	8.11.64	-do-	14.5.82	7.8.86	184	176
F	G.Ranganathan (R.4)	11.3.65	-do-	13.1.82	7.8.86	186	177
	S.Pushparaj (R.5)	25.5.65	-do-	13.1.82	7.8.86	187	178
G	K.meenakshi (R.6)	9.5.67	-do-	9.7.83	7.8.86	208	179
	G.Radha Krishnan (R.7)	19.5.67	-do-	12.1.82	7.8.86	188	180
H	S.Sethuraman (R.8)	23.11.68	-do-	12.1.82	20.8.86	190	183
	S. Felixraj (R.9)	7.4.69	-do-	12.1.82	22.8.86	191	184
I	S.Kuppusamy (R.10)	14.4.69	-do-	12.1.82	1.9.86	193	185
	R.Chandra-sekaran (R.11)	29.1.70	-do-	22.8.83	1.9.86	212	186
J	J.Pandurangan (R.12)	9.3.74	Not appointed	21.6.82	17.11.86	195	198
	S.Sundarasan	Nov. 1964	-do-	30.9.86	17.11.86	183	175

The scales of pay for various period for the posts of Assistant, Superintendent Grade II and Superintendent Grade I may also be noticed :-

NAME OF THE POSTS

SCALE OF PAY

Pre-revised

Revised

On & from

	(prior to 1973)	(w.e.f. . 1.1.73)	1.8.1981	A
Assistant	210-425	425-700	425-700	
Superintendent	325-475	550-750		
Grade II	(who have		550-750	
(Supdt. (N.S.))	passed Hr. Accounts Test).			B
	270-435	425-700		
	(for others)	(for others)		
Superintendent	350-550	550-900	550-900	C
Grade I				

It may be noticed that most of the respondents before the Tribunal were working in the grade of 425-700 when they were promoted to the post of Superintendent Grade II in the pay scale of 550-750. It is thus clear that on general principles of service jurisprudence the Assistants having been promoted to the grade of Superintendent Grade II after those already working Superintendent Grade II would naturally rank junior to them. The confusion in the Government appears to have been created in view of note and the provision occurring in Schedule VII of the Rules relating to the recruitment to the post of Superintendent Grade I. In column 11 thereof the recruitment is provided by 'Promotion' from among the Superintendent Grade II who have completed five years of service in the said post. There is a note and the proviso to the following effect in column II

"Note- For computing the five years service, the service rendered in the post of Superintendent (Non-Secretariat) and the service rendered after 1st January 1973 and upto 31st July 1981 in the post of Assistant shall be taken into account :

Provided that the Superintendents (Non-Secretariat) in service as on 31st December 1972 Shall enbloc be Seniors to Assistants in service on that date and the Superintendents (Non-Secretariat) and Assistants appointed on or after 1st January 1973 and upto 31st July 1981 shall rank *inter se* with reference to their dates of appointment in the respective posts."

It is clear that the note merely allows the erstwhile Assistants, who were

- A promoted to the post of Superintendent Grade II, for purposes of counting the period of five years service as Superintendent Grade II, to include their service rendered as Assistants after 1.1. 1973 to 31.7.1981. This note is for no purpose other than for giving them eligibility for consideration for promotion from the cadre of Superintendent Grade II to the cadre of Superintendent Grade I. The proviso again is very clear when it says that Superintendents (Non-Secretariat) in service as on 31st December, 1972 shall enbloc be seniors to Assistants in service on that date and the Superintendents (Non-Secretariat) and Assistants appointed on or after 1st January, 1973 and upto 31st July, 1981 shall rank *inter se* with reference to the dates of appointment in their respective posts. All the Superintendents in Grade II who were appointed after 31st July, 1981 would naturally rank in the seniority on the basis of respective dates of appointment as Superintendent Grade II.
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We are thus in complete agreement with the reasonings and conclusion of the Tribunal and it is declared that the note in column 11 is only for purposes of giving eligibility to the erstwhile Assistants working as Superintendents Grade II for purposes of being considered for promotion to the post of Superintendent Grade I and not for the purpose of seniority at all. There is no rule of seniority viz-a-viz for promotes to Superintendent Grade II with effect from 1st August, 1981 for calculating seniority and normal rule of service jurisprudence of length of service will apply.

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- E With these observations the appeals fail and are dismissed with no order as to costs.

G.S.

Appeal dismissed.