

PETITIONER:

P. C. SETHI & ORS.

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT 17/01/1975

BENCH:

GOSWAMI, P.K.

BENCH:

GOSWAMI, P.K.

BEG, M. HAMEEDULLAH

KRISHNAIYER, V.R.

CITATION:

1975 AIR 2164

1975 SCR (3) 201

1975 SCC (4) 67

ACT:

Constitution of India, Art. 16-Civil Service--Central Secretariat Service (Reorganisation and Reinforcement) Scheme--Home Ministry circular dated 22nd June, 1949--Whether subsequent direct recruits can supersede those who are absorbed in service earlier--Delay and lapses.

HEADNOTE:

Petitioners are Assistants in Grade IV Class 11 of the Central Secretariat Service. Petitioners were appointed as Assistants during the period 1944-54. The respondent Union of India appointed a large number of persons as Assistants by direct recruitment and many of those appointed after the petitioners have been confirmed in the grade and have since been promoted to the next higher grade of Section Officer. In 1948, the Government framed a Scheme known as the Central Secretariat Service (Reorganisation & Reinforcement) Scheme. Thereafter instructions for the initial constitution of the Assistants Grade were issued in March, 1949. Thereafter, the Ministry of Home Affairs issued Office Memorandum dated June 22, 1949, dealing with the question of seniority. Para 2 of the office memorandum provided that the rule of seniority on the basis of length of service should be taken as a model in framing the rules of seniority for other Services. The main question to be determined in the present petition is whether the office memorandum of June, 1949 is applicable in determining seniority of the petitioners.

HELD'. Office Memorandum of June 22, 1949 is no bar to the Government making separate provision for the mode of constitution and future maintenance of the service of Assistants. The classification made in the instructions cannot be characterised as unreasonable. There is no discrimination amongst equals nor any arbitrary exercise of powers by the Government. In the absence of any statutory rules prior to the Central Secretariat Service Rules 1962 it was open to Government in exercise of its executive power to issue administrative instructions with regard to constitution and reorganisation of the Service as long as there is no violation of Arts. 14 and 16 of the Constitution. The instructions of the Government issued from time to time do not violate any fundamental rights of

the petitioners. In the present petition, the Civil List of 1962 has not been challenged as invalid. Only office Memorandum of 1971 is challenged. The said Memorandum of 1971 is based on the civil list of 1962. The validity of which is not specifically challenged in the petition. There is no infirmity in the Memorandum of 1971 simply because it is not in conformity with the Memorandum of 22-6-1949. [207H; 208B-E]

HELD FURTHER : Once the temporary Assistants have been absorbed in the Service after they are found to be eligible in accordance with the instructions their claim for seniority cannot be superseded by the direct recruitment if appointed after the former's absorption in the service. It appears that the quota of direct recruitment was not enforced and perhaps for good reasons. Administrative instructions if not carried into effect for obvious and good reasons cannot confer a right upon entrants on later recruitment to supersede the claims of others already absorbed in the service in accordance with the appropriate and valid instructions. Nothing has been brought to our notice which could justify such a wholesale or en bloc discrimination in favour of those who suddenly enter the same grade of service by direct recruitment. It could if permitted be violative of Art. 16 of the Constitution. The direct recruits who are appointed after the absorption of the Assistants in conformity with the instructions on the initial constitution or in the regular temporary establishment shall rank junior to the latter. [209B; 0]

HELD FURTHER : In view of the entire circumstances of the case and the hopes held out by the Government from time to time we are not prepared to dismiss the petition on account of delay and laches. [210B]

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JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition No. 163 of 1972.
Petition under Art. 32 of the Constitution of India.

S. S. Javali and B. P. Singh, for the petitioners.

M. N. Phadke and R. N. Sachthey, for respondent No. 1.

P. P. Rao and A. K. Ganguli, for respondent No. 2 & the interveners.

T. V. S. Narasimhachari, for respondent Nos. 27-32.

The Judgment of the Court was delivered by

Goswami, J.-The petitioners are Assistants in Grade IV (Class II Non-gazetted) of the Central Secretariat Service (briefly the Service) and have been working in the various Ministries of the Government of India. They were appointed as Assistants during the period between 1944 and 1954. Their next promotional post is now that of Section Officer (Class 11, Gazetted). They have raised in this Writ Petition the question of their seniority and challenged the validity of the Office Memorandum of 7th September, 1971, issued by the first Respondent fixing zones for promotion to the grade of Section Officer on the basis of ranks assigned in the Civil List of 1962 for the grade of Assistant on the ground of being in contravention of the Office Memorandum of June 22, 1949, of the Ministry of Home Affairs. They also challenge the validity of rule 18(1) of the Central Secretariat Service Rules, 1962 (briefly the Rules) in so far as it is construed to protect the seniority determined prior to the commencement of the said Rule in violation of the Office Memorandum of June 22, 1949. The petitioners allege that the Government have not followed any consistent principle or

rule in regulating the seniority of the Assistants. It is said the first Respondent prepared lists of officers in the Assistant's Grade by different combination of classifications, such as initial constitution, regular temporary establishments, non-test category, first test category, second test category, hard cases category, displaced persons, direct recruits, etc. and effected promotions in utter disregard of the dates of confirmation. The first Respondent appointed a large number of persons as Assistants by direct recruitment and many of those appointed after the petitioners have been confirmed in the grade and have since been promoted to the next higher grade of Section Officer. According to the petitioners glaring instance of arbitrary action is the assignment of en bloc seniority to persons appointed by direct recruitment in 1956 exceeding 800 in number who have been assigned seniority over all the petitioners appointed as Assistants long prior thereto. Such instances were there also in 1958 and 1959.

In retrospect, on July 19, 1948, the Government framed a scheme known as the Central Secretariat Service (Re-organisation and Reinforcement) Scheme (briefly the Scheme). It constituted four grades in the Service, namely, Under Secretary (Grade 1), Superintendent (Grade II), Assistant Superintendent (Grade III) and Assistant (Grade IV). The Scheme was, however, not implemented until November 1951. Under para 15 of the Scheme, the authorised permanent strength of the Service will be fixed by the Ministry of Home Affairs with the concurrence of the Ministry of Finance. It was recog-

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nised therein that "it is essential from the point of view alike of economy and efficiency that as large a proportion as possible members of the Service should be recruited on a permanent basis. A flexible system of fixation of Authorised Permanent Strength will therefore be followed should be revised once in every three years". It is also mentioned in the same paragraph that "if as a result of any such triennial re-fixation, the Authorised Permanent Strength is reduced, effect should be given to such reduction by equivalent reduction in the following triennium of the rate of direct recruitment to the Service and Promotions from grade to grade." It is also particularly mentioned in the said paragraph that "the rights of members appointed to the Service on a permanent basis will not be prejudiced by any revision of permanent strength, effected subsequent to such appointment".

Under Paragraph 19 of the Scheme, after the Authorised Permanent Strength of the Service is determined, the initial constitution of the Service will be undertaken, and, inter alia, appointments to Grade IV will be completed within thirty months. Under para 25 of the Scheme, the mode of constitution of Grade IV is as follows:-

"Assistants who have already been appointed on a permanent basis and are not appointed to a higher grade in the Service as reorganised will be appointed permanently to Grade IV first. The remaining vacancies in Grade IV will be filled by persons who are 'qualified' in terms of the Ministry of Home Affairs Office Memorandum No. 23/20/48-NGS, dated the 25th May, 1948. As contemplated in that Memorandum two tests will be held by the Federal Public Service Commission in which the temporary 'qualifiables' as defined therein will be enabled to qualify for permanent

absorption in Grade IV. In the first of two tests only qualifiable temporary Assistants will be allowed to appear. It would then be considered with reference to the number of vacancies to be filled as well as the number of qualifiable candidates remaining whether, and if so to what extent, the seco

nd test

should be thrown open partially to the outsiders also".

Paragraph 26 in Part V of the Scheme dealing with future maintenance of the Service, provides, inter alia, for the recruitment as follows :-

Permanent vacancies in the Authorised Permanent Strength of this Grade will be filled in two ways. One out of every 4 vacancies will be filled, Ministry-wise, by promotion from the Ministerial Grades below the rank of Assistant. The remaining 3 vacancies will be pooled for the Central Secretariat as a whole and filled from among the successful candidates at the competitive Ministerial Services Examination held by the Federal Public Service Commission. The, qualifications for admission to this examination will continue to be graduates in the age-groups 20-22 with relaxation of age limit for the Scheduled Castes".

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With regard to promotion it is stated in the said paragraph as follows :-

„Assistants who have completed 5 years' but not more than 10 years' service in their grade will be eligible for promotion by selection based strictly on the result of a limited competitive test held among Assistants of that Service group to the rank of Assistant Superintendent, provided that no Assistant will be allowed more than three consecutive chances to compete in this test. Those Assistants who are not so promoted will also be eligible in due course for promotion based on seniority, subject to the rejection of the unfit, to vacancies in the Grade of Assistant Superintendent which would be reserved for being filled by such promotion".

Under para 31 of the Scheme, leave, pension and other conditions of service will be as applicable at present to all officers of Central Services, Class I or II, as the case may be.

After the publication of the Scheme, the Ministry of Home Affairs on October 25, 1948, circulated an explanatory memorandum explaining the nature and purpose of the Service. The Central Secretariat is pithily described therein as "the workshop of policy" which helps the Government to make and revise policies and to create, maintain and direct the organs which execute the policies. The Assistants, we are concerned with, are the fifth layer at the lowest rung of the Secretariat Department and are engaged on case work as distinguished from clerks and typists employed on routine work in a separate lower service.

It was pointed out that there was a phenomenal expansion in the Service as would be reflected from the figures, for example, of Assistants in 1939 at 493 which rose upto 2306 in 1948. This is said to have affected the quality of the

Service which includes a large number of staff employed on a temporary basis. In 1948 itself the entire number of 2306 Assistants, except 95, were temporary employees. It was further mentioned in the explanatory note that "reinforcement is not required at the lowest level, viz., the Assistants, Grade. Here what is necessary is the weeding out of the poor quality material and the improvement of efficiency of the rest through a permanent tenure and better training and guidance?.

Then in sequence came the instructions for the initial constitution of the Assistants' Grade of the Service on March 1, 1949. These instructions governed the manner in which the sanctioned permanent strength of the grade of Assistants would be filled by existing permanent Assistants and from various categories of existing temporary employees. The scheme of the Instructions contains these broad features

(1) All existing permanent Assistants who are not appointed to higher grades in the Service will form part of the permanent strength of the Service.

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(2) The remaining number of permanent vacancies in the Grade will be divided among three categories, namely, (i) The Non Test Category, (ii) The First Test Category and (iii) The Second Test Category.

A particular specified number of vacancies will be allotted to the Non Test Category and the remaining vacancies will be divided among the First Test Category and the Second Test Category in the ratio 2 : 1. There is also reservation of a specific number of vacancies for allotment to Displaced Government servants. There are five categories of employees which are included in the Non Test Category and for them there will be two separate lists, namely, (a) for Displaced Government servants and (b) for others. Both the lists will be drawn up ranking the employees in order of seniority according to their length of service. The employees who are included in these lists will be eligible for permanent appointments in accordance with their position in the lists upto the respective quotas prescribed for them. It will, therefore, appear that although there may be a large number of employees included in the lists of Non Test Category, all may not be absorbed in the permanent vacancies but only these in order of seniority in the lists upto the sanctioned strength of the vacancies in the Non Test Category.

,Next comes those Assistants who are eligible to be considered for permanent appointment to the vacancies reserved for the First Test Category by qualifying at the first test to be held by the Federal Public Service Commission. Here again on the results of the first test candidates in order of merit upto the number of vacancies allotted to this category will be confirmed in the grade. That is to say, although there may be a large number of temporary Assistants who may have qualified at the first test, only the candidates in order- of merit upto their quota in this category will be confirmed. Similarly there will also be a Second Test Category which will include candidates who have qualified in the test but only these candidates in the order of merit upto the number of vacancies allotted to this Category will be confirmed. The inter se seniority of the confirmed employees in the Non Test Category, The First Test Category and The Second Test Category will be according to their length of service.

Paragraph 8 of the instructions which deals with seniority of

Assistants in Grade IV as newly constituted, which is even quoted in the Office Memorandum of June 22, 1949, provides in substances, follows :-

All existing permanent Assistants who were confirmed in their posts prior to October 22, 1948, will be arranged in the first instance Ministry-wise in accordance with the rules in force then. They will be senior to all others confirmed thereafter in vacancies arising upto October 22, 1950. Those who are confirmed after 1943 in vacancies arising upto October 22, 1950, will be arranged in a single list for all Ministries and their seniority inter se will be determined on

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the basis of their length of continuous service temporary or permanent in the grade of Assistant or in an equivalent grade.

After the sanctioned strength of the permanent establishment has been filled up as set out earlier, the remaining persons in the Non Test, First Test and Second Test Categories, because of lack of sanctioned strength in the various categories, could not be absorbed will form a regular temporary establishment (R.T.E.). There will be a single seniority list for such R.T.E. and seniority will be determined on the basis of the length of continuous service. The sanctioned strength of the service upto October 22, 1950, will be filled as above. Thereafter a proportion of future permanent vacancies will be, filled by appointments, based upon seniority from the list of members of the R.T.E. The next stage is reached when instructions for the constitution and maintenance of the regular temporary establishment of Assistants were issued on August 26, 1952. The R.T.E. as initially constituted is as follows :-

A list (List A) arranged in order of seniority as Assistants shall be prepared of all existing Assistants that is those holding Posts of Assistant as on July 1, 1952 and not confirmed in Grade IV and of others specifically mentioned in sub-para (2) (i) of para 3 of the instructions. These left over from the two Non Test lists mentioned earlier are entered in one list (List B) in accordance with seniority with some weightage for Displaced Government servants. The lists of persons who have qualified in the First and the Second Test Categories but not confirmed in the service are referred to as Lists C and D respectively. For the first time a rotation system is introduced as per sub-para (5) of these instructions in so far as appointments to the R.T.E. shall now be made one from each list in serial order from the top of each list until 1200 persons are chosen. There is, however, an overall reservation of 121/2% for Scheduled Castes and 5% for Schedule Tribes. Persons who are neither permanent members of Grade IV nor members of the R.T.E. of Assistants are referred to as "Ex-cadre" Assistants. Under para 4 of these instructions the list of R.T.E. prepared in accordance with para 3(5) shall be the Gradation List of the R.T.E. at its initial constitution. Para 6 provides that the persons appointed to the R.T.E. at its initial constitution shall be senior to those appointed later. The latter shall rank inter se in the order of their appointment to the R.T.E. in accordance with para 5(4) of the instructions. Para 9 provides that all permanent vacancies in Grade IV not filled by direct recruitment on the results of competitive examination held by the Union Public Service Commission shall be filled from the R.T.E. in the order of the Gradation List subject to certain proviso, the first one

being that not less than one-fourth of the vacancies shall be reserved for permanent Clerks.

Then in the wake of these instructions came the Ministry of Home Affairs' Office Memorandum of June 22, 1949, dealing with the subject of "seniority of the displaced Government servants who have been absorbed temporarily in service under the Central Government". Paragraph 2 of the said Office Memorandum may be set out

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The question of seniority of Assistants in the Secretariat was recently examined very carefully in consultation with all the Ministries and the Federal Public Service Commission and the decisions reached are incorporated in para 2 of the Instructions for the initial constitution of the grade of Assistants.

This paragraph 8 which is mentioned is the, one which is quoted earlier from the Instructions of March 1, 1949, which was expressly intended for the initial constitution of the Assistant's Grade of the Central Secretariat Services. The principle which was adumbrated in the Office Memorandum of June 22, 1949, is the same as has been earlier mentioned in paragraph 8 of the Instructions of March 1949.

In paragraph 11 of the counter-affidavit of the Deputy Secretary to the Government of India, Department of Personnel, Cabinet Secretariat, it is stated as follows :-

"I say that the statement; that persons who were appointed long after the petitioners' appointment as Assistants have been further promoted in supersession of the claims of the petitioners is a statement made shorn of its context. That criticism would have been valid if with regard to the Assistants of the Central Secretariat Service the Office Memorandum of 1949 was applicable under which length of service was the criterion in the matter of determining seniority. " with reference to Annexure 'B' to the writ petition I am advised to submit that if the 1949 or 1959 Office Memorandum were applicable to the petitioners' case, then Annexure 'B' w

ould be

valid and this respondent would have no reply thereto but, unfortunately, for the petitioner, they being governed by different principles as regards seniority and art any rate they being not governed by 1948 or 1959 Office Memorandum, it is only a futile exercise to find out what would have been their seniority in the Civil List of 1962 and 1949 Office Memorandum applied to them".

It may be noted that Annexure 'B' to the Petition is a statement showing the order of seniority had it been based on length of service as Assistant.

The principal question that arises for consideration in this case is whether the Office Memorandum of June 22, 1949, is applicable in determining seniority of the petitioners. Para 2 of the Office Memorandum as quoted above clearly shows that paragraph 8 which contains the rule of seniority being length of continuous service was in terms applicable to the initial constitution of the grade of Assistants. The said rule of seniority should be taken as "the medal in framing the rules of seniority for other services". This would go to demonstrate that the Office Memorandum of June

22, 1949, is no bar to the Government in making separate provisions for the mode of constitution. and future maintenance of the service of Assistants. There is, therefore, no obligation under the aforesaid Office Memorandum on the part of the Government to enforce a rule of bald length of continuous

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service irrespective of other considerations then the service was sought to be reorganised and reinforced. As noticed earlier the service had to be reconstituted and the temporary Assistants properly observed keeping in view the question of quality and efficiency as well as at the same where regard being had to accommodate as large number as possible for gradual absorption. In doing so we are unable to hold that the Government has violated the provisions of articles 14 or 16 of the Constitution. The classification under the instructions for the constitution of regular temporary establishment in the manner done cannot be characterised as unreasonable in view of the object for which these had to be introduced in reconstituting the service to ensure security of temporary employees assistant with efficiency in the Service. There is no discrimination whatsoever amongst the equals as such nor any arbitrary exercise of power by the Government. In absence of any statutory rules prior to the Central Secretariat Rules 1962 it was open to the Government in exercise of its executive power to issue administrative instructions with regard to constitution and reorganisation of the Service as long as there is no violation of article 14 or article 16 of the Constitution. Subject to what is observed hereafter, as held above we do not find that the instructions of the Government made from time to time violated any fundamental rights of the petitioners. We should also observe that the various Office Memorandum and instructions including the Civil list of 1962 have not been challenged as invalid with the solitary exception of the Office Memorandum of 1971 (Annexure 1). This Office Memorandum again is based on the Civil List of 1962 the validity of which is not specifically challenged in this Petition. We, therefore, do not find any infirmity in the Office Memorandum of 1971 (Annexure 1), simply because it is not in conformity with the Office Memorandum of June 22, 1949. Besides, it is stated in the counter-affidavit of the Deputy Secretary (page 176 of the record) that "the Office Memorandum of 1971 is no longer operative. " We have seen that the rule of length of continuous service has been adopted in the case of different categories reconstituted in the Service in accordance with the administrative instructions of the Home Ministry issued after consultation with the Union Public Service Commission. The grievance that the said Office Memorandum should have been applied to all the temporary employees without the requirement of their being eligible in accordance with other instructions is without any foundation and cannot be upheld. A regular set of separate instructions governed the Service the existence of which cannot be explained if the Office Memorandum of June 22, 1949, alone were applicable, de hors these other instructions.

It is further contended that rule 18 of the Rules is invalid in so far as it protects the seniority of the Assistants already observed violating the rule of continuous length of service amongst the entire group as a whole. This argument is untenable as the rule of continuous length of service cannot be invoked unless the temporary Assistants are absorbed in the Service in accordance, with the instructions which are valid. The entire group of temporary Assistants

cannot claim seniority by the rule of length of continuous service without prior compliance with the conditions laid down under the instructions. Rule 18 is, there-

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lore, not violative of article 14 or article 16 of the Constitution on the score of giving effect to the earlier or other instructions which are not found to be otherwise objectionable.

That leaves one more question to be resolved, that is, with reference to the direct recruits. Once the temporary Assistants have been absorbed in the service after they are found to be eligible in accordance with the instructions their claim for seniority cannot be superseded by the direct recruits if appointed after the former's absorption in the Service. This conclusion is based on the following factors :-

Although the Scheme was made in July 1948 it was not enforced until November 1951. Even then there was no direct recruitment until 1956. The reasons for delaying direct recruitment can be found from a perusal of paragraph 15 of the 1948 Scheme itself, that "it is essential from the point of view alike of economy and efficiency that as large a proportion is possible of the members of the service should be recruited on a permanent basis. If the Authorised permanent strength is reduced, effect should be given to such reduction by equivalent reduction in the following triennium of the rate of direct recruitment to the Service. It was, therefore, not the intention of the scheme to prejudice the seniority of the Assistants after their absorption in the Service nor such an intention was evident in the explanatory memorandum annexed to the Office Memorandum of October 25, 1948. In para 11 of the latter Memorandum it is unambiguously stated the "reinforcement is not required at the lowest level, namely., the Assistants' Grade. Here what is necessary is the: weeding out of the poor quality material and the improvement of efficiency- of the rest. through permanent tenure and better training d guidances. This is also clear from the instructions for the constitution and maintenance of the regular temporary establishment of Assistants dated August 26, 1968. Para 9 thereof provides that "all permanent vacancies in Grade IV not filled by direct recruitment on the results of Competitive Examination, held by the Union Public Service Commission shall be filled from the Regular Temporary Establishment in the order of Gazetted List" subject to certain provisions with which we are not concerned.

It appears the quota, if any, of direct recruitment was not enforced and perhaps for good reasons as noted above, the policy of the Government being different. Administrative instructions, if not carried into effect for obvious and good reasons, cannot confer a right upon entrants on later recruitment to enforce the same to supersede the claims of others already absorbed in the Service in accordance with the appropriate and valid instructions. Nothing was brought to our notice which could justify such a wholesale or en bloc discrimination in favour of those who suddenly enter the same grade of service by direct recruitment. It would, if permitted, be violative of article 16 of the Constitution which should never be overlooked in such cases.

We are, therefore, clearly of opinion that the direct recruits who were appointed after the absorption of the Assistants, in conformity with the instructions of the initial constitution or in regular temporary

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establishment shall rank junior to the latter. We, therefore, direct that the seniority of such Assistants shall be adjusted and the seniority list corrected accordingly. This will, however, not affect the cases of these Assistants who are already promoted and confirmed in a higher rank prior to the date of this petition.

The learned counsel for the respondents strenuously contended that the petition may be dismissed on account of delay and laches. In view of the entire circumstances of the case and the hopes held out by the Government from time to time we are not prepared to accede to this submission.

The petitioners also sought to take advantage of what they described as admission in Government's affidavits filed in connection with certain earlier proceedings of similar nature and other admissions in Parliament on behalf of the Government. We, are, however, unable to hold that such admissions, if any, which are mere expression of opinion limited to the context and also being rather vague hopes, not specific assurances, are binding on the Government to create an estoppel.

In the view we have taken the case is distinguishable from Union of India and Ors. v. M. Ravi Yarma and Ors. etc.(1) principally relied upon by the petitioners.

In the result the petition is partly allowed only to the extent that the Assistants who have been absorbed in the Service in conformity with the instructions will rank senior to the direct recruits appointed after such absorption. The seniority list shall be adjusted and corrected accordingly. This direction will, however, not affect those Assistants who have already been promoted and confirmed in a higher rank prior to the date of this petition. In the circumstances of the case we leave the parties to bear their own costs.

P.H.P.

Petition allowed in part.

1. [1972] 2 S.C.R. 992;
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