

PETITIONER:
WING COMMANDER J. KUMAR

Vs.

RESPONDENT:
UNION OF INDIA AND OTHERS

DATE OF JUDGMENT 05/03/1982

BENCH:
ERADI, V. BALAKRISHNA (J)
BENCH:
ERADI, V. BALAKRISHNA (J)
KOSHAL, A.D.
MISRA, R.B. (J)

CITATION:
1982 AIR 1064 1982 SCR (3) 453
1982 SCC (2) 116 1982 SCALE (1)227
CITATOR INFO :
R 1987 SC1858 (20)
R 1987 SC2291 (21)

ACT:
Defence Research and Development Organisation and Government of India O.M. dated November 23, 1979, Rule 16- "Seniority after permanent secondment"-R & D Cadre-Intake of service officers-Seniority after 'permanent secondment'-Based upon seniority of substantive rank held by the officer in the grade of major or equivalent rank-Such principle for determination whether valid.

"Secondment" of an officer-Whether constitutes a transfer.

Constitution of India 1950, Art, 309 proviso-Statutory rule covering seniority-Rule to take effect from date of promulgation-Whether element of retroactivity involved in operation of rule.

Administrative Law-Principle of natural justice-Applicability of-In promulgation of statutory rule governing seniority.

HEADNOTE:

The Defence Research and Development Organisation (R & D) was set up under the Ministry of Defence for carrying out scientific and technological research and development work on projects of vital importance to the defence forces. Its personnel consist of large number of civilian scientists as well as a smaller number of service officers drawn from the three wings of the Armed Forces who have operational experience of weapon systems.

The policy followed in regard to the intake of service officers was that they were initially taken on a tenure basis and subsequently absorbed in the organisation on a permanent basis in the event of being found suitable and willing. Since the Officers from the three services came to the R & D cadre with different lengths of service and at different levels, it became imperative to evolve a reasonable principle for the determination of their inter-se seniority after their secondment to the organisation.

In November 1979 in supersession of all previous Rules and Orders on the subject, rules were made under the proviso

to Art. 309 laying down the procedure for the intake of service officers in the R & D organisation and the terms and conditions of service of those permanently retained therein. Rule 16 dealt with "Seniority after permanent secondment" and provided that "seniority of all service Officers permanently seconded to DRDO will continue to be based upon their seniority of substantive rank of Major/Sqn. Ldr./Lt. Cdr.....and the

454

seniority of officers with substantive ranks higher than Major/Sqn. Ldr./Lt. Cdr. will after their permanent secondment also reckon vis-a-vis other officers in the R & D Cadre, for future promotion/confirmation, from the date of their substantive rank of Major/Sqn. Ldr./Lt. Cdr.....".

The appellant who was commissioned in the Air Force was seconded to the service. In his writ petition he contended that the principle for determination of seniority laid down in Rule 16 was arbitrary and violative of Articles 14 and 16 of the Constitution, and as he had been permanently seconded to the R & D Organisation in 1971 long prior to the proclamation of the rule his rights regarding seniority and promotion could not be affected by the provisions of this rule. By taking the date of substantive appointment to the rank of Major/ equivalent as the basis for reckoning seniority, officers who had obtained substantive promotions to higher ranks in the parent service earlier than some of their seniors who were only subsequently promoted to such higher ranks, suffer serious prejudice because the latter gain over the earlier promotees and supersede them in the matter of seniority in the R & D Organisation, and that subsequent inductees in the R & D Organisation cannot be legally assigned seniority above those already borne on the cadre, irrespective of the substantive rank held by them at the time of their intake into the R & D.

The Single Judge rejected all the contentions and declined to grant relief. The R & D Organisation was however directed to issue the tentative seniority list drawn up in accordance with Rule 16. The Letters Patent Appeal filed by the appellant was dismissed in limine.

Dismissing the appeal to this Court,

^

HELD: 1. Since officers from different sources are taken into the R & D Organisation for meeting the discipline-wise requirements arising therein from time to time and they are brought into a common pool on such permanent secondment, a reasonable principle had to be evolved for fixation of inter se seniority within the R & D cadre. The principle adopted under Rule 4 of reckoning seniority with reference to the date of attainment of the rank of substantive Major/equivalent strikes a reasonable mean as it ensures to all the service officers in the R & D the fixation of seniority in the integrated cadre giving full credit to the length of service put in by them in their respective parent services. [466 C; 466 H; 467 A]

2. It is settled law that the service conditions pertaining to seniority are liable to alteration by subsequent changes that may be introduced in the rules and except to the extent of protecting promotions that have already been earned under the previous rules, the revised rules will operate to govern seniority and future promotion prospects. There is, therefore, no substance in the argument advanced by the appellant that it was not open to the Government of India to introduce a new principle of seniority by promulgation of Rule 16 so as to affect his

rights for future promotion. [463 D-E]

3. A statement contained in the statute or statutory rule of the factual background leading up to the enactment has ordinarily to be accepted and acted upon by the court as wholly correct. [463 A]

455

4. Rule 16 contains a categorical declaration that in the past also the seniority of service officers permanently seconded to the R & D Organisation was being reckoned on the basis of their dates of attainment of substantive rank of Major/Sqn. Ldr./Lt. Cdr. subject to any penalty/loss of seniority that an officer might suffer subsequently. It is therefore not possible to accept the contention of the appellant that prior to the coming into force of the rule he had acquired a vested right to have his seniority in the R & D reckoned with reference to the date of his permanent secondment and to have all Officers joining the organisation on subsequent dates ranked only below him. [462 G-H; 463 B-C]

5. The structure and composition of the Organisation have necessarily to undergo rapid, qualitative and quantitative changes in the light of the fast developments that take place in science technology and international relations. The intake of service Officers is not on the basis of any general selection from service cadres. As and when the Organisation finds it necessary to obtain the service of officers with operational experience in any particular weapon system or other scientific discipline the parent service is requested to spare for deputation suitable hands in the particular branch or speciality and initially they are taken on a tenure basis. There is a selection only in a very limited sense that the suitability of the concerned officer is adjudged before he is taken but the claims or merits of others are not considered. The secondment of such officers to the R & D Organisation is not therefore, effected on the basis of a general selection. Officers who are senior in the parent service in relation to the person who is seconded and who may possess greater experience and superior attainment might not have been considered for secondment when their juniors in the service were seconded to the R & D Organisation, because the parent service might not have been in the position at the relevant point of time to spare the services of the former. [463 G-H; 464 A-E]

6. Where persons from different sources are drafted to serve in a new service a just and wholesome principle commonly applied is that the pre existing length of service in the parent department should be respected and preserved by taking the same into account in determining their ranking in the new service cadre. Such a provision does not involve any discrimination violative of Article 16 of the Constitution. [470 E]

R.S. Makashi & Ors. v. I.M. Menon & Ors., [1982] 1 S.C.C. 379, referred to.

7. The secondment of an officer from his parent service to the R & D is not a transfer to Central Service from a subordinate service or from another department. [469 G]

8. Rule 16 being statutory in origin, its validity cannot be affected by reason of any inconsistency with the provision of a prior executive order issued by the Central Government i.e. Office Memorandum dated July 22, 1972. [469 H]

9. When a statutory rule governing seniority is issued in respect of a service, the said rule would govern the personnel in the service with effect from the date of its

promulgation and in so giving effect to the rule in future, no element of retroactivity is involved. [470 G-H]

456

10. The promulgation of a statutory rule governing seniority is not a quasi-judicial function. It is the exercise of a legislative power and in respect thereof the principles of natural justice have no application at all. [472 B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1742 of 1980.

Appeal by special leave from the judgment and order dated the 11th day of April, 1980 of the Delhi High Court in L.P.A. No. 53 of 1980.

WITH

Civil Misc. Petitions Nos. 69 and 5698 of 1981.

Wing Commander J. Kumar Appellant in Person.

P.A. Francis, Narayan Nettar and Miss A. Subhashini, for the Respondent.

The Judgment of the Court was delivered by

BALAKRISHNA ERADI, J. This appeal by special leave is directed against the judgment of a Division Bench of the Delhi High Court dismissing in limine a Letters Patent Appeal filed by the present appellant against the judgment of a learned Single Judge of that Court whereby the contentions raised by the appellant in Civil Writ Petition No. 1423 of 1979 were rejected and the said writ petition was dismissed.

The appellant-Wing Commander J. Kumar-was commissioned in the Indian Air Force on September 3, 1956 with antedated seniority from December 10, 1955. He was permanently seconded to the Defence Research Development and Inspection Organisation (for short, the L R D & I Organisation) of the Ministry of Defence on October 14, 1971. On the bifurcation of the LRL & I Organisation effected in July 1976 by the separation of the Inspection Wing, the appellant was retained in the Defence Research and Development Organisation, which will hereinafter be referred to as the R & D Organisation. The Director-General of Defence Research and Development, who is also the Secretary to Government of India, Defence Research, is the controlling authority of the R & D cadre. The said cadre has service officers drawn from all the three Wings of the Armed Forces, namely, the Army, the Navy and the Air

457

Force, and in addition thereto a large number of civilian employees are also borne on it.

In November 1979, in supersession of all previous Rules and Orders on the subject, the President of India promulgated under the proviso to Article 309 of the Constitution rules laying down the procedure for the intake of service officers in the R & D Organisation and the terms and conditions of service of those permanently retained therein. Those rules were issued by the Ministry of Defence of the Government of India in Office Memorandum No. Pers/18601/RD. Sel. Bd/7971/D (R&D) dated November 23, 1979. The provisions of the said Memorandum will hereinafter be referred to as the rules. Rule 16 deals with the subject of "Seniority after permanent secondment". That rule is in the following terms:

"As hithertofore seniority of all service officers permanently seconded to DRDO will continue to be based

upon their seniority of substantive rank of Major/Sqn. Ldr./Lt. Cdr., subject to any penalty/loss of seniority that an officer might suffer subsequently and the seniority of officers with substantive ranks higher than Major/Sqn. Ldr./Lt. Cdr. will after their permanent secondment, also reckon vis-a-vis other officers in the R&D Cadre, for future promotion/confirmation, from the date of their substantive rank of Major/Sqn. Ldr./Lt. Cdr., subject to any penalty/loss of seniority that an officer might have suffered in his parent Arm/Service."

The principal contention advanced by the appellant before us is that the principle for determination of seniority laid down in the above rule is arbitrary and violative of Articles 14 and 16 of the Constitution. Alternatively, it is contended by the appellant that since he had been permanently seconded to the R&D Organisation in 1971, long prior to the promulgation of the impugned rules, his rights regarding seniority and promotions cannot, in any way, be effected by the provisions of the new rule. According to the appellant, he continues to be governed by the principles that had been originally laid down in Government of India (Ministry of Defence) Memorandum dated March 18, 1967, which were the rules in force at the time of his secondment to the R&D Organisation. It is the further case of the appellant that the R&D being an independent Organisation, the seniority of the personnel absorbed therein has to be reckoned only with reference to the dates on which they were

458

selected and appointed in the said Organisation and subsequent entrants into the R&D in any particular category or rank should, therefore, be placed only below all those who had already joined the Organisation by virtue of permanent secondment. The appellant also contends that by taking the date of substantive appointment to the rank of Major/equivalent as the basis for reckoning seniority, officers who had obtained substantive promotions to higher ranks in the parent service earlier than some of their seniors who were only subsequently promoted to such higher ranks, will suffer very serious prejudice because the latter will gain a march over the earlier promotees and supersede them in the matter of seniority in the R&D Organisation. Elaborating this plea, it was urged on behalf of the appellant that the result of the impugned rule would be to bring about the anomalous situation where a person permanently seconded to the R&D and holding substantively the rank of Lt.Col./equivalent can be superseded in seniority in the said Organisation by a Major/equivalent of old vintage who had been overlooked for promotion in his parent service and may have thereupon come over to the R&D Organisation. Another objection strongly put forward by the appellant was against the lateral induction of officers at levels higher than that of substantive Major/equivalent. It was urged by the appellant that such subsequent inductees into the R&D Organisation cannot be legally assigned seniority above those already borne on the cadre, irrespective of the substantive rank held by them at the time of their intake into the R&D. The appellant has rested this contention on the premise that the intake of officers into the R&D is by a selection based on merit and hence those selected earlier must necessarily rank higher in the seniority list of the Organisation in relation to those who are selected and appointed in the Organisation only on later dates. The appellant has urged a further point before us

that the seniority of officers of the Navy, Army and Air Force holding equivalent ranks who served in the Organisation is governed by the principle laid down in Regulation No. 251 of the "Naval Ceremonials, Conditions of Service and Miscellaneous Regulations, 1964", and the impugned rule in so far as it is contrary to the principle laid down in the said Regulation has to be declared as invalid and inoperative. Some other incidental pleas and grievances were also put forward by the appellant before the High Court as well as before us and we shall be dealing with them later on at the appropriate stage.

The learned Single Judge of the High Court rejected all the aforesaid contentions advanced by the appellant and declined to

459

grant any relief to him, except to the extent of directing the R&D Organisation to issue the tentative seniority list drawn up in accordance with the impugned rule within three months from the date of the judgment and to record the Annual Confidential Reports on the appellant from April 1, 1976 to March 31, 1979 within the same period. The Letters Patent Appeal filed by the appellant against the said judgment having been dismissed in limine by a Division Bench of the High Court, the appellant has preferred this appeal after obtaining special leave from this Court.

The Defence Research and Development Organisation (R&D) has been set up under the Ministry of Defence for carrying on scientific and technological research and development work on projects of vital importance to the defence forces of this country. The head of the said Organisation is a civilian, namely, the Scientific Adviser to the Defence Ministry and its personnel consist of a large number of civilian scientists and a much smaller number of service officers drawn from the three defence services. The service officers are initially taken on short tenure and are later permanently seconded to the R&D Organisation if found suitable and willing. Those service officers who were permanently seconded and absorbed in the R&D cadre are thereafter governed by the terms and conditions of service applicable to the officers of the said cadre.

Originally, the Defence Research and Development Organisation (R&D) and the Director-General of Inspection (DGI) had a combined cadre-Research Development and Inspection-and the terms and conditions of service of the personnel borne on the said cadre were governed by the provisions contained in Government of India (Ministry of Defence) Memorandum No. 11/(5)/58/D-(R&D) dated March 18, 1967. But, those rules which had also been issued by the President of India under the proviso to Article 309 of the Constitution did not contain any provision laying down the principles for determination of the seniority of the officers functioning in the DRD&I Organisation. Those rules were in force at the time when the appellant was permanently seconded to the DRD&I Organisation in 1971.

In the writ petition filed in the High Court, the appellant had impleaded 8 officers of the R&D Organisation, namely, respondents nos. 7 and 11 to 17 contending that they have been assigned seniority and granted promotions in supersession of the appellants's legitimate claims and in violation of the rules. In the appeal before

460

this Court, the appellant had added several more service officers of the R&D as additional respondents. The appellant argued his case in person and so did some of the respondents whose promotions and seniority etc., have been challenged by

the appellant.

Arguments advanced by the parties appearing in person were heard by us at considerable length and Shri P.A Francis, Senior Advocate, appearing on behalf of Respondents Nos. 1 and 2, namely, the Union of India and the Director-General, R&D Organisation, also addressed arguments before us covering all the aspects.

As already noticed, the main contentions put forward by the appellant are two-fold, namely, that the principles laid down in rule 16 of the rules for determination of the seniority of officers permanently seconded to the R&D are arbitrary and illegal, and that lateral induction of officers holding ranks above substantive Major/equivalent and assigning of seniority to such subsequent inductees by applying the provisions of rule 16 amounts to deprivation of the vested rights of persons-like the appellant-who had joined the Organisation earlier and it is, therefore, illegal and unwarranted.

After giving our best consideration to the arguments advanced on both sides, we do not see any substance in either of the aforesaid contentions advanced by the appellant,

The Defence Research Development and Inspection Organisation is a Specialised Technological Organisation set up under the Ministry of Defence for carrying out research and development work in weapons like guns, electronics, missiles, tanks etc. Its personnel consist of a large number of civilian scientists (about 3,600) and about 430 service officers drawn from all the three Wings of the Armed Forces with operational experience of such weapon system to work with the scientists in the research and development programme. The policy followed in regard to the intake of service officers appears to have been to take them initially on a tenure basis and subsequently to absorb them in the Organisation on a permanent basis in the event of their being found suitable and willing. It is seen from the affidavits and documents filed on behalf of the respondents that the secondment of service officers depended upon the exigencies and the special type of need of the Organisation at each relevant point of time so much so that officers who could fill the bill by virtue of their qualification, experience, aptitude and suitability in that particular branch of defence science for which the need

461

for personnel had arisen and whose services could be spared by their parent service were taken into the R&D Organisation from time to time. Since the officers from the three services came to the R&D cadre with different lengths of service and at different levels, it became imperative to evolve a reasonable principle for determination of their inter se seniority after their secondment to the R&D Organisation.

The case of the respondents is that right from the beginning, the policy and practice followed by DRD&I Organisation as well as by the bifurcated R&D Organisation was to assign seniority with reference to the date on which the officers attained their rank of substantive Major/equivalent. This was, however, strongly refuted by the appellant who asserts that no such principle had been formulated or followed by the Organisation prior to the promulgation of the impugned rules. The respondents produced for our perusal various files pertaining to the determination of seniority and grant of promotions in the Organisation during the period prior to the issuance of the impugned rules. The appellant pointed out with reference to

those very files that there were quite a few instances where promotions had been effected on a basis totally at variance with the principle propounded by the respondents.

From a scrutiny of the files of the Ministry of Defence-R&D Organisation-produced before us by the learned counsel appearing on behalf of the Government of India, it has clearly emerged that, excepting for a few stray instances, the practice followed in the R&D Organisation was to reckon the seniority of the permanently seconded officers with reference to the date of their attaining substantive rank of Major/equivalent. The principle underlying the said practice was later formally incorporated in the Minutes of the DRD&I Selection Board as a decision taken by the Board at its meeting held in February 1974. The relevant paragraph of the Minutes runs thus:

"Officers with substantive ranks higher than Maj/Sqn Ldr/Lt Cdr who are offered permanent secondment will reckon their substantive seniority in the R&D/Inspection Organisation for future promotion/confirmation from the date they got their substantive ranks as Maj/Sqn Ldr and subject to any penalties as regards loss of seniority that they might have suffered in their Arm/Service thereafter. The

462

position as above should be clarified to the officers concerned and their acceptance obtained before issuing the orders of permanent secondment in such cases. These decisions will apply to cases of permanent secondment approved by the RD&I Selection Board from 2(74) meeting onwards."

It is also seen from the files pertaining to the period subsequent to February 1974 that the aforesaid principle was thereafter consistently followed as a binding rule and when it was found that a departure from the said principle had been erroneously made by placing three Air Force officers in their substantive rank of Wing Commander, the authorities concerned rectified the said mistake after clearly noting in the file that the aforesaid principle went unnoticed by oversight during the processing of those cases by HQ, R&D and the ranking of those officers was revised so as to bring it into conformity with the aforesaid rule.

The relevant file leading up to the issuance of the impugned rules was also carefully perused by us. This file contains the Minutes of the Chief of Staff Committee recommending to the Government of India that the draft rules may be finally accepted and issued expeditiously and the noting therein also contains a clear statement that the principle incorporated in the decision taken at the combined meeting of the DRD&I Selection Board held in February 1974 was merely to incorporate "a rule which was unwritten earlier but actually applied in practice". Thus, there is sufficient material available on record to substantiate the plea put forward by the respondents that the policy and practice followed in the DR&DI Organisation and later in the R&D Organisation was to fix the seniority of permanently seconded officers with reference to the date of attainment of the rank of substantive Major/ equivalent.

Further, the impugned rules are statutory in origin as they have been promulgated by the President of India under the proviso to Article 309 of the Constitution. Rule 16 contains a categorical declaration that in the past also the seniority of service officers permanently seconded to the R&D Organisation was being reckoned on the basis of their dates of attainment of substantive rank of Major/Sqn Ldr/Lt Cdr. subject to any penalty/loss of seniority that an

officer might suffer subsequently. The said declaration is clearly implied in the opening words "As hitherto" occurring in rule 16

463

of the impugned rules. A statement contained in a statute or statutory rule of the factual background leading up to the enactment has ordinarily to be accepted and acted upon by the court as wholly correct; nothing clinching has been brought to our notice by the appellant to justify any departure from the said principle. We do not, therefore, find it possible to accept the contention of the appellant that prior to the coming into force of the impugned rule, he had acquired a vested right to have his seniority in the R&D reckoned with reference to the date of his permanent secondment and to have all officers joining the Organisation on subsequent dates ranked only below him. The plea advanced by the appellant that the impugned rules have illegally purported to divest him of his vested rights of seniority and promotion in the R&D must, therefore, be rejected as devoid of merit.

Apart from what is stated above, it is settled law that the service conditions pertaining to seniority are liable to alteration by subsequent changes that may be introduced in the rules and except to the extent of protecting promotions that have already been earned under the previous rules, the revised rules will operate to govern the seniority and future promotion prospects of all the persons in the concerned service. There is, therefore, no substance in the argument advanced by the appellant that it was not open to the Government of India to introduce a new principle of seniority by promulgation of the impugned rules so as to affect his rights for future promotion.

The next question to be considered is whether the principle enunciated in rule 16 can be said to be unreasonable or arbitrary, as contended by the appellant. It is in this context that the specialised character of the R&D Organisation assumes importance. Its personnel consist of civilian scientists and service officers of high technological attainments in different disciplines who have been drawn to the Organisation from time to time according to its exigencies and needs.

The structure and composition of the Organisation have necessarily to undergo rapid qualitative and quantitative changes in the light of the fast developments that take place in the field of science and technology as well as in international relations. The research and development work is carried on by the R&D in different systems of weapons and equipments and a variety of disciplines like electronics, missiles, tanks, telecommunication, rocketry, radars

464

etc. In addition to about 3,600 civilian scientists, the Organisation has about 160 permanently seconded service officers and about 430 service officers taken on a tenure basis. The intake of service officers is not on the basis of any general selection from service cadres. As and when the Organisation finds it necessary to obtain the services of officers with operational experience in any particular weapon system or other scientific discipline, suitable hands with aptitude skill and experience in that particular branch or speciality whom their parent service is willing to spare for deputation are initially taken on a tenure basis. Thus, there is a selection only in a very limited sense that the suitability of the concerned officer is adjudged before he is taken. But what is important to note is that in the intake of officers into R&D Organisation there is no

comparative evaluation of the merits of the other personnel occupying the same rank or possessing like experience in the Defence Services. There is no process of selection in which their claims or merits are considered. Thus, it is clear that the secondment of officers to the R&D Organisation is not effected on the basis of a general selection. There is, therefore, no substance in the contention advanced by the appellant that the service officers who are seconded to the R & on a later date must take rank only below all those who had joined the Organisation earlier by virtue of their prior "selection". Officers who are senior in the parent service in relation to the person who is seconded and who may possess greater experience and superior attainments might not have been considered for secondment when their juniors in the service were seconded to the R & D Organisation, because the parent service might not have been in the position at the relevant point of time to spare the services of the former. Further, the discipline-wise requirement in the R & D at any particular time will depend upon the nature of the project then taken on hand and posting of a service officer to the R & D Organisation will be on the consideration of his experience and aptitude for that particular type of specialised work and not seniority in the parent service. It may well happen that a junior officer who has experience and expertise in that special discipline alone may be considered for secondment at that particular time. Thus, the entry of a service officer into the R & D is to a large extent dependant on fortuitous circumstances related to the exigencies and needs that arise in the Organisation from time to time. It is certainly not based on the result of any comparative evaluation of his merit, ability or suitability as against those of his compeers in the concerned parent service. Such being the factual situation, we are of the view that

465

it will not be reasonable, just or fair to determine the seniority of the permanently seconded service personnel merely on the basis of the date of their secondment to the Organisation.

The next question to be considered is whether the principle for determination of seniority laid down in the impugned rule 16 is just, fair and reasonable or whether it is arbitrary and violative of Articles 14 and 16 of the Constitution, as contended by the appellant.

The R & D Organisation has in its cadre service officers who were taken initially on tenure basis from the Army, the Air Force and the Navy and were later on permanently seconded into the DRD & I/ R & D cadre on their being found suitable and willing. The contention of the appellant is that on such permanent secondment into the R & D, the inter se seniority of the officers should be reckoned only with reference to the dates of their selection for such permanent secondment. It is the further plea of the appellant that since at the time of permanent secondment the officer concerned has to certify in writing that he is relinquishing all his claims of seniority etc., in his parent service, no weightage can thereafter be given to the rank or seniority which the person inducted had earned in his parent service prior to the date of his permanent secondment. We do not find it possible to accept this contention. Officers from the three Services holding different ranks are inducted into R & D Organisation from time to time depending upon the needs of the Organisation, and if the appellant's contention is to be accepted, it would lead to serious anomalies and manifest injustice by

upsetting the norms of seniority and rank structure which is the basic fabric on which the Armed Forces of the country are built. The unreasonable consequences that will flow from the acceptance of the appellant's arguments will be clearly seen from the following simple illustration:

Suppose, in the year 1974, on a particular date, when two officers are working in the Air Force-one as a Wing Commander and the other in the higher rank of Group Captain-the Wing Commander is permanently seconded to the R & D Organisation and, later, the Group Captain is also permanently seconded to the R & D in 1975. If the principle advocated by the appellant is to be accepted, the Group Captain will become junior to the Wing Commander by virtue of the latter's earlier induction into the R & D despite the fact that he had not been even considered for secondment to the R & D at the time when the Wing Commander was taken.

466

In view of our having already found that the appellant's contention that the secondment to the R & D is based on a "selection" is incorrect, the basic premise on which the appellant has founded his plea that the date of secondment should be the determinative factor for reckoning seniority in the R & D cadre, falls to the ground.

Since officers from different sources are taken into the R & D for meeting the discipline-wise requirements arising in the Organisation from time to time and they are brought into a common pool on such permanent secondment, it is inevitable that a reasonable principle has to be evolved for fixation of the their inter se seniority within the R & D cadre. The fixation of the seniority on the basis of the ranks held by them in the different branches of the Armed Forces would not be reasonable or fair, because substantive ranks above Major/equivalent in the three Wings of the Armed Forces are conferred by different Selection Boards at different times and under varying circumstances and conditions depending upon the vacancies arising at the different levels in the distinct services from time to time. It is pointed out in the counter-affidavit filed on behalf on the Union of India (Respondent No. 1) that the promotional chances of officers belonging to the three distinct Wings of the Armed Forces to posts above the rank of Major/equivalent vary widely and dependant upon fortuitous circumstances which may obtain in relation to the distinct services at any relevant point of time. We find there is force in this submission. In all the three Services, the promotions up to and inclusive of the rank of Major/equivalent are time-scale promotions based only on fixed length of service. In the Air Force and the Army, the ranks of Major and Sqn. Leader, respectively, are attained on an officer putting in 13 years' service. In the Navy, the time-scale period for promotion to the equivalent rank of Lt. Commander is said to vary between about 10 and 13 years. But, what is important to notice is that the promotion to the rank of Major/equivalent is based only on length of service and not on any "selection". For posts higher than that of Major/equivalent, promotions in all the three Services would depend upon the occurrence of vacancies in the particular branch or group in the concerned Service, the schemes of expansion that may be taken up from time to time in the particular Service or branch and also the extent of stagnation that may be caused to officers at lower levels by reason of the officers who are young in age occupying posts in the immediate higher levels, etc. When due regard is had to all the aspects and circumstances, narrated above, it will be seen that the

467

principle adopted under the impugned rule of reckoning seniority with reference to a date of attainment of the rank of substantive Major/equivalent strikes a reasonable mean as it ensures to all the service officers in the R & D the fixation of seniority in the integrated cadre giving full credit to the length of service put in by them in their respective parent services.

A similar seniority rule formulated by the State of Maharashtra in a somewhat like situation, when an integrated cadre consisting of personnel drawn from different sources was formed in the State of Maharashtra for administering the Rationing Scheme, was recently upheld by this Court in R.S. Makashi & Ors. v. I.M. Menon & Ors.(1)

The following observations contained in that judgment are apposite in the present context:

"When personnel drawn from different sources are being absorbed and integrated in a new department, it is primarily for the Government or the executive authority concerned to decide as a matter of policy how the equation of posts should be effected. The courts will not interfere with such a decision unless it is shown to be arbitrary, unreasonable or unfair, and if no manifest unfairness or unreasonableness is made out, the court will not sit in appeal and examine the propriety or wisdom of the principle of equation of posts adopted by the Governments."

In enunciating the principle incorporated in the impugned rule, the rule-making authority has adopted as the base for reckoning seniority the highest common factor applicable in respect of time scale promotions in the three services, namely the rank of Major/equivalent and thereby ensured to the service officers seconded to the R & D Organisation a just and equitable treatment. The rule provides for the reckoning of the seniority of the seconded officers by taking into account the length of their service in the parent service, for which the date of attainment of the rank of substantive Major/equivalent would furnish a safe index. In our opinion, the said principle cannot be said to be arbitrary, unjust or unreasonable and the contention to contrary put forward by the appellant will, therefore, stand rejected.

468

It is no doubt true that in the Navy, promotions to the rank of Lt. Commander which is equivalent to that of Major in the Army may be attained by an officer within a slightly shorter period of service, namely, between 10 and 13 years whereas, in the Army and the Air Force, the promotion to the rank of Major/equivalent is given only on completion of 13 years of service. The slight disparity in the promotion prospects between the Navy and the other two Services will not, however, affect the reasonableness of the impugned rule because it is impossible to achieve perfect arithmetical precision in such matters where officers drawn from different sources are to be integrated into one common cadre and a rule for fixing their inter se seniority is formulated. Further, it is seen from the counter-affidavits of Respondents 1 to 3 that out of about 160 permanently seconded officers of the R & D Organisation, the large majority are from the Army, a considerable section of the balance is from the Air Force and only less than 10 officers have come from the Navy.

It is also relevant to notice in this context that it is specifically provided in rule 4 of the impugned rule that the intake of service officers to fill appointments in the R

& D Organisation will ordinarily be at Major/equivalent level. Under rule 5, officers in higher ranks should be considered for permanent secondment only in exceptional cases and when such a course is adopted, it will be subject to the condition that their seniority in the R & D cadre will be fixed as stipulated in rule 16. The incorporation of the aforesaid provisions which operate as a safeguard against large scale induction of officers above the substantive rank of Major/equivalent further fortifies the conclusion arrived at by us that the adoption of the date of substantive Major/equivalent as the criterion for fixing inter se seniority in the R & D cadre was logically fair, just and reasonable.

The appellant sought to rely strongly on Regulation 251 of the Naval Ceremonials, Conditions of Service and Miscellaneous Regulations, 1954 and on the provisions contained in the Order A0102/73. Regulation 251 provides that "the relative seniority of officers of the Army, Navy and Air Force, holding equivalent ranks, who serve together in an Inter-service Organisation will be regulated as follows." The latter Order is in the following terms:

- 469
- "(a) Officers holding equivalent substantive rank (no acting rank) will rank according to their seniority in the substantive rank; and
 - (b) Officers holding acting rank will rank after officers holding corresponding substantive rank and in relation to each other, they will rank according to their seniority in the substantive rank."

In our opinion, neither the Regulation aforementioned nor the Order, extracted above, has any application to the present situation. The R & D Organisation is not an Inter-service Organisation within the meaning of the expression as used in the aforementioned Regulation and Order. It is predominantly a civil organisation headed by a civilian Director-General and having a total strength of about 24,000 employees. The large majority of the personnel working in the R & D Organisation are civilian scientists who are more than 3,000 in number, there are also about 160 service officers permanently seconded to the R & D cadre and about 240 service officers taken on tenure basis. But, merely because the R & D Organisation has on its staff serving officers from the Army, Air Force and Navy, it cannot be said to be an "Inter-service Organisation" governed by the provisions of the aforesaid Regulation and Order. The topic dealt with in the aforesaid Regulation and Order is only "seniority" for purposes of command, precedence, discipline etc., for working purposes to be allied in situations where officers from more than one service operate together in one group as in times of war for carrying out any particular mission or task.

Another argument advanced by the appellant was that the impugned rule cannot be upheld as valid inasmuch as it is in conflict with paragraph 7 of the Government of India Office Memorandum No. 9372 Estt(D), Cabinet Secretariat, Department of Personnel, dated July 22, 1972, which is in the following terms:

"7. Transferees:-(i) The relative seniority of persons appointed by transfer to Central Services from the subordinate offices of the Central Government or other department shall be determined in accordance with the order of their selection for such transfer."

We see no substance in this contention. The secondment of an officer from his parent service to the R&D is not a transfer

to Central Service from a subordinate service or from another department. Further, the impugned rule being statutory in origin, its validity cannot be affected by reason of any inconsistency with the provisions of a prior executive order issued by the Central Government.

470

An allegation has been put forward by the appellant that "the letter dated November 23, 1979 was a fraud on rules and the Constitution, played by respondent no. 5 who got the same issued to obtain personal gain by misusing his official position, leading to colourable exercise of power by the authority who actually issued that letter". To put it mildly, we find that this is a reckless allegation devoid of any factual basis. We have gone through the files leading up to the issuance of the impugned rules and it is seen therefrom that the matter has been processed by different authorities at different stages and before the draft rules were ultimately submitted to the Government of India for approval, they had been considered and approved at a joint meeting of the Chiefs of Staff also.

Equally untenable is the further plea advanced by the appellant that since the R&D is an integrated cadre, there cannot be any further classification of the officers comprised therein on the basis of the length of service put in by them in their respective parent services prior to their permanent secondment in the R&D. As pointed out by this Court in the decision in *R. S. Makashi v I. M. Menon* (supra), it is a just and wholesome principle commonly applied in such situations where persons from different sources are drafted to serve in a new service that their pre-existing length of service in the parent department should be respected and preserved by taking the same into account in determining their ranking in the new service cadre. Such a provision does not involve any discrimination violative of Article 16 of the Constitution.

Yet, another argument advanced by the appellant is that the impugned rule not having been specifically declared to be retrospective in operation; its provisions cannot be applied to the appellant inasmuch as he had been inducted into the R&D cadre on October 14, 1971 long prior to the promulgation of the new rules. We have already found that, as a matter of fact, the practice generally followed in the R&D Organisation, even prior to the promulgation of the impugned rules, was to reckon seniority with reference to the date of attainment of the rank of substantive Major/equivalent. Even otherwise, when a statutory rule governing seniority is issued in respect of a service, the said rule would govern the personnel in the service with effect from the date of its promulgation and in so giving effect to the rule in future, there is no element of retroactivity involved. Of course, the rules will not operate to deprive any person of promotions already earned in the past, but, for purposes

471

of future promotions and seniority in the department, the principles laid down in the impugned rule will necessarily govern all the personnel alike. This contention of the appellant has also to fail.

It was very strongly contended by the appellant that the lateral induction of senior service officers holding ranks above the substantive Major/equivalent level operates to deprive the existing R&D personnel of their vested rights to promotions within the cadre and hence, such inductions must be held to be illegal and void. This contention ignores the fact that rule 5 specifically provides that in

exceptional cases, officers above the rank of Major/equivalent may be drafted into the R&D. The contention of the appellant appears to us to be based on a fallacious assumption that the R&D cadre exists for the sake of the personnel working therein and not for effectuating the purpose underlying its constitution which is of such vital importance to the Nation's safety. The Organisation has been formed with a view to have a highly specialised cadre of technological and scientific experts to design and develop military hardware etc., for the Armed Forces of the country keeping abreast of the latest developments and advances in the field of defence science. To effectuate this purpose, such an Organisation by its very nature cannot remain static or stagnant, but has to be constantly expanding qualitatively and quantitatively. The personnel requirements of the Organisation are, therefore, bound to change from time to time and to meet such changing needs, the services of qualified experts with specialised knowledge, skill and experience will have to be enlisted from time to time. A particular service officer in the Army, Air Force or Navy may be the best person suited for being placed in charge of a specialised job newly taken on hand, and in such a situation the Organisation must have the freedom to indent for the services of the officer concerned irrespective of the rank that he may be holding in his parent service. We do not find it possible to recognise any right in the officers already working in the R&D to object to the lateral induction of senior officers under such circumstances. The contention put forward by the appellant that lateral inductions into the R&D cadre constitute an illegal deprivation of the vested rights of persons already working therein and are consequently illegal and void, cannot, therefore, be accepted.

The next point urged by the appellant is that since the impugned rules disturb the previously fixed seniority, it is quasi-judicial in nature and they ought to have been issued only after

472

giving notice to all the affected persons. We have already found that no alteration in the pre-existing policy relating to determination of seniority in the R&D has been brought about by the impugned rules. Quite apart from that, the promulgation of a statutory rule governing seniority is not a quasi-judicial function. It is the exercise of a legislative power and in respect thereof the principles of natural justice have no application at all.

Detailed facts pertaining to the history of service of the various officers impleaded in the appeal as respondents were referred to by the appellant during the course of his arguments, and such of the respondents who appeared in person countered those submissions by placing before us, what, according to them, are the correct facts relating to their service history. The challenge made by the appellant against the ranking and seniority of the officers impleaded as respondents is based solely on his contention that the seniority principle enunciated in rule 16 is arbitrary, illegal and ultra vires and that, in any event, the said principle cannot be applied to him. The said contention has been found by us to be untenable. Hence, it is not necessary for us to refer to the details regarding the service history of the appellant vis-a-vis those of the service officers who have been impleaded as respondents in the appeal.

In the light of our foregoing discussion, it follows that the High Court was perfectly right in upholding the validity of the impugned rule and in rejecting the challenge

raised by the petitioner-appellant against the selections, inductions and promotions made in the R&D Organisation on the basis of the said rule.

In the course of his submissions before this Court, the appellant put forward a grievance that, notwithstanding the directions issued by the High Court in its judgment under appeal, he has not been given any posting or assignment. Counsel appearing on behalf of the Union of India and the Scientific Adviser to the Defence Minister made available for our perusal the files relating to the appellant's posting to the DR&D Laboratory at Hyderabad and the allotment of specific assignments therein to the appellant from time to time. Having gone through the files, we have come to the conclusion that there is no factual foundation for the grievance put forward by the appellant, and hence no directions from this Court are called for in regard to the said matter. We are purposefully refraining from dwelling in greater detail on this aspect lest any observations that we may make should prejudicially affect the future

473

service prospects of the appellant. We, however, consider it necessary to observe that the appellant would do well to rid himself of the obsession that all his official superiors are put to harass or persecute him and open up a new chapter of devoting his high talents and skills for advancing the effectiveness of the R&D Organisation.

The charges put forward by the appellant in the Contempt Application (C.M.P. No. 5698 of 1981) and in C.M.P. No. 69 of 1981 filed by the appellant under Section 340(1), Code of Criminal Procedure are bereft of merit and those applications will accordingly stand dismissed.

In the result, we dismiss this appeal but direct the parties to bear their respective costs.

N.V.K.

Appeal dismissed.

474