

PETITIONER:
D.P. SHARMA & ORS.

Vs.

RESPONDENT:
UNION OF INDIA & ANR.

DATE OF JUDGMENT 21/02/1989

BENCH:
SHETTY, K.J. (J)
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SHETTY, K.J. (J)
KULDIP SINGH (J)

CITATION:
1989 AIR 1071 1989 SCR (1) 791
1989 SCC Supl. (1) 244 JT 1989 (1) 359
1989 SCALE (1) 459

ACT:

Armed Forces Headquarters Clerical Services Rules, 1968: Seniority of officials appointed in the common cadre of LDC prior to coming into force of Rules--Fixation of--Whether to be determined on basis of length of service as prescribed in various memoranda or on basis of confirmation--Whether 1968 Service Rules have retrospective effect.

HEADNOTE:

The Armed Forces Headquarters Clerical Service Rules, 1968 were brought into force with effect from March, 1968. The rules provided that seniority in the service shall be determined on the basis of date of confirmation. Prior to this, the seniority in the cadre of service was required to be determined on the basis of length of service, as laid down by several official memoranda of the Government or that of the Defence Ministry.

After the rules came into force, the seniority of the appellants who joined the Armed Forces Headquarters as L.D.Cs. between 1960 and 1964, on transfer/posting from the lower defence installations, in public interest, and some of whom were later promoted as U.D.Cs., was sought to be disturbed, on the basis of confirmation as prescribed under the rules. The appellants, therefore, moved the High Court contending that the length of service should be the basis of inter se seniority.

A Single Judge of the High Court held that ordinarily the appellants would have been governed by the general principle of seniority based on the date of confirmation as laid down in the 1959 Memorandum of the Home Ministry, but since the Ministry of Defence had preferred to continue the principle of length of service which it had been following prior to 1959, even after the 1959 Memorandum, and which had been incorporated in 1963 Memorandum and reiterated in all memoranda issued thereafter, the seniority of the appellants should be decided by length of service. i.e., their date of joining the Army Headquarters as L.D.Cs.

On appeal by Union of India, the Division Bench held that the

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seniority of the appellants must fail to be determined on

the basis of confirmation as prescribed by the rules, and not on the length of service. Aggrieved by this, the appellants filed appeals before this court.

Allowing the appeals,

HELD: The general rule is if seniority is to be regulated in a particular manner in a given period, it shall be given effect to and shall not be varied to disadvantage retrospectively. [795F-G]

The Armed Forces Headquarters Clerical Service Rules, 1968 no doubt provide that all persons substantially appointed to a grade shall rank senior to those holding officiating appointments in the grade. But the rules have no retrospective effect. It could not impair the existing rights of officials who were appointed long prior to the Rules came into force. [795A-B]

The various office memoranda clearly laid down that length of service should be the guiding principle of arranging inter se seniority of officials. [795B]

The appellants being governed by those memoranda had the right to have their seniority determined accordingly before the Rules came into force. That being their right, the rules cannot take it away to their prejudice. The Division Bench, was, therefore, clearly in error in directing that the seniority shall follow their respective confirmations. [795B-C]

Union of India v. M. Ravi Varma & Anr., [1972] 2 SCR 992 at 1002. relied on.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 41334 134 of 1984.

From the Judgment and Order dated 5.3.1982 of the Delhi High Court in L.P.A. No. 125 and 115 of 1981.

Ashok Mahajan, G.D. Gupta and R. Venkataramani for the Appellants.

Anil Dev Singh, Mrs. Indra Sawhney, Mrs. Sushma Suri and C.V.S. Rao for the Respondents.

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The Judgment of the Court was delivered by

K. JAGANNATHA SHETTY, J. These two appeals by special leave raise the question of determination of seniority of the appellants in the cadre of Lower Division Clerks. The appeals are preferred against the judgment of the High Court of Delhi dated March 5, 1982 in LPA No. 125 of 1981.

The appellants were originally recruited as Civilian School Masters or L.D.Cs., Leading Hand (Technical), etc. either in the Lower Defence Installations comprising Ordnance Factories, Ordnance Depots, Workshops, Regimental Centres, Units, Command Headquarters, etc. under the control of Army Headquarters, New Delhi. Some of the appellants were declared as surplus in those establishments and they came to be posted/transferred to the Armed Forces Headquarters and inter-service organisations as LDCs. Their posting/transfer was done in the public interest. They joined the service in the Armed Force Headquarters on various dates between 1960 to 1964. Some of them were later promoted as Upper Division Clerks. While they were thus continuing in service, rules framed under proviso to Article 309 of the Constitution known as "The Armed Forces Headquarters Clerical Service Rules, 1968 ("The Rules")" were brought into force with effect from March 1, 1968. The Rules inter alia, provide that the seniority in the service shall be determined on the basis of date of confirmation. Prior to the coming into

force of the Rules, the seniority in the cadre of service was required to be determined on the basis of length of service. It was so laid down by several official memorandums of the Government or that of the Defence Ministry. After the Rules came into force, the seniority of the appellants was sought to be disturbed on the basis of confirmation as prescribed under the Rules. The appellants, therefore, moved the High Court of Delhi under Article 226 of the Constitution contending inter alia, that length of service should be the basis of inter-se seniority. They also raised some other questions with which we are not concerned. The learned single Judge accepted the claim of the appellants and made an order dated April 8, 1981. The relevant portion of the order runs as follows:

"It is not disputed by the respondents that the only principle of seniority laid down by various Memoranda was the principle of seniority laid down by various Memoranda was the principle of length of service. No memoranda of Administrative Instructions are brought to my notice by

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the respondents, where any other principle has been laid down. The petitioners, in all the three petitioners were originally in common LDC cadre and are in the common cadre of U.D.C. now. It cannot be said that some of them (Writ Petition No. 423 of 1975) will all be governed by the principles of length of service and no others because they have not expressly stated that their seniority should be fixed on the principles of length of service. It may be noted that in 1959 the Home Ministry issued general principles of seniority to be followed in all Government services except where a service follows a different set of principles. The said Memorandum lays down that seniority of all Government employees, employed subsequent to the issuance of the said Memoranda, will be decided on the basis of the date of confirmation. It further lays down that all confirmed employees would be treated senior to the non-confirmed employees. The petitioners would have been ordinarily governed by these principles since they joined the Armed Forces on transfer after 1959. But the Ministry of Defence preferred to continue the principles of length of service (which they had been following prior to 1959), even after the 1959 Memorandum came into operation. The 1963 Memorandum of the Defence Ministry incorporated the said principles and all Memoranda issued thereafter reiterated the principles of length of service. In these circumstances, the contention of respondents cannot be accepted. The seniority of the petitioners shall be decided by the principle of length of service, that is, their date of joining the Army Headquarters as LDCs. Of course, some of them entitled to additional benefit of past service under the said Memorandum were given that benefit. Since this is the question raised in Civil Writ Petition No. 423/1975, it must succeed."

Being aggrieved by the above decision, the Union of

India preferred an Appeal before the Division Bench of the High Court. The Division Bench reversed the above view holding that the seniority of the appellants must fall to be determined on the basis of confirmation as prescribed by the Rules and not on the length of service. The view taken by the Division Bench has been challenged in these appeals.

We have perused the judgment of the Division Bench and also considered the submissions of the parties. The view taken by the Divi-

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sion Bench appears to be erroneous. The Rules, no doubt provide that all persons substantially appointed to a grade shall rank senior to those holding officiating appointments in the grade. But the Rules have no retrospective effect. It could not impair the existing rights of officials who were appointed long prior to the Rules came into force. The office memorandums to which learned single Judge has referred in detail and which we have extracted above clearly laid down that length of service should be the guiding principle of arranging the inter-se seniority of officials. The appellants being governed by those memorandums had the right to have their seniority determined accordingly before the Rules came into force. That being their right, the Rules cannot take it away to their prejudice. The Division Bench was, therefore, clearly in error in directing that the seniority shall follow their respective confirmations.

In construing similar office memorandums in a different context, this is what this Court has observed in *Union of India v. M. Ravi Varma & Anr.*, [1972] 2 SCR 992 at 1002:

"As the said Office Memorandum has, except in certain cases with which we are not concerned, applied the rule of seniority contained in the Annexure thereto only to employees appointed after the date of that Memorandum, there is no escape from the conclusion that the seniority of Ganapathi Kini and Ravi Varma, respondents, who were appointed prior to December 22, 1959, would have to be determined on the basis of their length of service in accordance with Office Memorandum dated June 22, 1949 and not on the basis of the date of their confirmation."

These considerations apply equally to the present case as well. The general rule is if seniority is to be regulated in a particular manner in a given period, it shall be given effect to, and shall not be varied to disadvantage retrospectively. The view taken by the Division Bench, which is in substance contrary to this principle is not sound and cannot be supported.

In the result, these appeals are allowed with costs. In reversal of the judgment of the Division Bench, we restore that of the learned single Judge.

N.P.V.
allowed.
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Appeals