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SHRI A.K. NIGAM AND ORS.

v.

SHRI SUNIL MISRA AND ANR.

MAY 13, 1994

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[KULDIP SINGH AND YOGESHWAR DAYAL, JJ.]

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Service Law—Seniority—Held, it is not an invariable rule that seniority should be determined only on the basis of the respective dates of appointment to the post—Principles for determining the Relative Seniority of Class I Officers of All India Services on Indian Railways except Officers of the Medical Department and the other Misc. Categories—Laid down.

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The Appellants who originally belonged to the Railway Board Secretariat Service (RBSS), were promoted to the Indian Railway Personnel Service (IRPS). Appellants 1 and 2 were substantively appointed to the Junior Scale of the IRPS on 15-2-1984 and appellant No. 3 on 24-12-1985. Respondent No. 1 was selected for the IRPS as a direct recruit Class I Officer on 12-1-1982. However, appellants 1 and 2 were given seniority with effect from 15-2-1979 and appellant No. 3 w.e.f. 24-12-1980, by applying clause (a) of Principles (vii) of the principles for determining the Relative Seniority of Class I Officers of All India Services on Indian Railways Except Officers of the Medical Department and other Misc. Categories ("Principles") which provided for weightage upto five years. Respondent No. 1 challenged the seniority given to the Appellants over him by filing an application before the Central Administrative Tribunal, Principal Bench, New Delhi. The Tribunal allowed the application, holding that the Appellants could not be ranked senior to him.

Allowing the appeal by special leave, this Court

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HELD : 1. The principle of granting seniority on the basis of past service and lower service to the category of promotee officers is well known and well recognised in service jurisprudence. It is not an invariable rule that seniority should be determined on the basis of the respective dates of appointment to the post and that any departure from it would be unreasonable and illegal. [130-H-B]

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2. It is settled law that the appointing authority or the appropriate

Government can frame rules governing seniority which are reasonable keeping in mind the divergent claims that can be put forward by the various categories of the members of the service. It is however necessary that there should be no discrimination, that is, persons placed in the same group must be treated similarly and further, that any principle which is made the basis of the determination of seniority should if applicable to others, be applied to them also. In other words, if seniority is to depend purely upon the date of confirmation or the date of appointment, the rule should be applicable to all; but if the promotees and special recruits are being given weightage, the principles applicable to the members of the service should be kept in mind while determining the weightage to be given or while laying down rules for determination of seniority. [131-F-G-H; 132-A]

3. Seniority in IRPS is not governed by the date of joining. The dates of increment of the Appellants having been specifically determined by the authorities in accordance with Principle (vii) (a) before Respondent No. 1 joined service, he has to rank junior to the Appellants. [130-A; C]

State of A.P. v. K.S. Murlidhar, [1992] 2 SCC 214 and *Anand Prakash Saksena v. Union of India*, [1968] 2 SCC 611, relied on.

State of Bihar v. A.Khuri Sachindra Nath, [1991] Supp. 1 SCC 334. and *K.C. Vasundeva v. Union of India*, [1980] Supp. SCC 341, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6037 of 1993.

From the Judgment and Order dated 5.3.1993 of the Central Administrative Tribunal (Principal Bench) New Delhi in O.A. No. 1422 of 1987.

K. Madhava Reddy, T.C. Sharma, D. Parkash Reddy and Neelam Sharma for the Appellants.

Harish N. Salve, Ms. Meenakshi Grover, R. Chatterjee and Arun K Sinha for the Respondent No. 1.

P.P. Malhotra, R.P. Srivastava and Mrs. C.V.S. Rao for the Respondent No. 2.

A The Judgment of the Court was delivered by

B **YOGESHWAR DAYAL, J.** This is an appeal on behalf of appellants S/Shri A.K. Nigam, K. Thiagarajan and Suresh Kumar against the judgment dated 5th March, 1993 of the Central Administrative Tribunal, Principal Bench, New Delhi, in O.A. No. 1422 of 1987 filed by respondent No. 1 Shri Sunil Misra, challenging the seniority list of Indian Railways Personnel Service (JS/SS) Officers as on 1st March, 1987. By the aforesaid order the Tribunal had accepted the application of respondent No. 1 and held that the appellants herein could not be ranked senior to him.

C For appreciating the controversy it would be necessary to refer to the facts.

D The appellants 1 and 2 were appointed to the grade of Section Officers (Rs. 650-1200) (Group 'B') in the Railway Board Secretariat Service (RBSS) on the basis of I.A.S., etc, Examination, 1977 and joined the service on 9th July, 1979 and 21st July, 1979 respectively. Appellant No. 3 joined the RBSS as Section Officer (Rs.650-1200) (Group 'B') on 10th June, 1980 based on the I.A.S. etc. Examination, 1978.

E Sh. Sunil Misra, respondent No. 1, appeared in the Civil Services Examinations held in 1980 and was selected for Indian Railways Personnel Service (in short IRPS) as direct recruit Class I Officer on 12th January, 1982.

F On 25th July, 1983 the appellants applied for promotion to Junior Scale Group A of IRPS from RBSS, when options were called for from them.

G On 15th February, 1984 the appellants were found suitable for appointment to Junior Scale Group A of IRPS by a duly constituted D.P.C. and as such were promoted to the above grade from RBSS against 50% quota reserved for Class II Officer. Appellants 1 and 2 were substantively appointed to the Junior Scale of IRPS on 15th February, 1984 and by applying clause (a) of Principle (vii) of the Principles for determining the Relative Seniority of Class I Officers of All Services on Indian Railways Except Officers of the Medical Department and other Misc. Categories (in short Principles), reckoning the weightage for seniority, their date for increment in time scale worked out to 15th February, 1979. Appellant Nos.

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1 and 2 were to get Rs. 900 in Junior Scale Grade I while appellant No.3 A
Rs. 940 and as such were entitled for maximum weightage of 5 years for
the purpose of seniority. Taking into account the pay, the appellants were
to get in Junior Scale Grade A of IRPS, the appellants were granted benefit
of weightage in seniority to the maximum extent of 5 years and thus, the
seniority of the appellants were reckoned from 15th February, 1979 so far B
as appellants 1 and 2 were concerned and 24th December, 1980 so far as
the appellant No. 3 was concerned, by going 5 years backward who was
substantively appointed to the Junior Scale Grade A of IRPS on 24th
December 1985.

The appellants 1 and 2 having completed 5 years service on 15th C
February, 1984 itself were posted in Senior Scale Grade A of IRPS as soon
as they joined their respective Railways viz. Western (appellant No. 1)
South Central (appellant No. 2). They were also promoted to junior
Administrative Grade with effect from 14th May, 1987 by reckoning their
service from 15th February, 1979, as one who has completed 8 years of D
service, is eligible for consideration for promotion to Junior Administrative
Grade.

On 21st May, 1987 the Railways Board circulated a seniority list of
IRPS Officers to all the Zonal Railways vide its letter dated 21st May, 1987.
The said seniority list did not contain the name of appellant No. 3 as his E
date for increment in Time Scale was decided only during 1988.

Aggrieved by this seniority list, respondent No. 1 made a repre-
sentation to the Chief Personnel Officer, Rail Coach Factory, Kapurthala,
Jalandhar. However, the same was rejected and respondent No. 1 was F
informed that the seniority to the appellants has been correctly assigned.
Against the rejection of his representation by order 20th August, 1987, the
respondent No. 1 filed O.A. No. 1422 of 1987 before the Central Ad-
ministrative Tribunal, Principal Bench, New Delhi.

It will be noticed that the challenged before the Tribunal was to the G
grant of weightage of 5 years to the appellants for purposes of seniority as
per Principle (vii). There was no challenge either to grant of increments in
Time Scale to appellants 1 and 2 to 15th February, 1979 and to a similar
date to appellant No. 3 who was to get Rs. 940 whereas appellant Nos. 1
and 2 to get Rs. 900 in Junior Scale Grade A. H

A One thing may be noticed that the seniority in IRPS is not governed by the date of joining. If one look at the Principles, as approved by the President, Principle (i) is - "the seniority of officers, appointed to various Indian Railway - Services (Class-I) shall be determined on the basis of the 'date for increment on time scale' to be specifically determined in each case in accordance with these principles". It is not an invariable rule that

B seniority should be determined only on the basis of the respective dates of appointment to the post and that any departure from it would be unreasonable and illegal. It is open to the rule making authority to take a note of the relevant circumstances obtaining in relation to each department and determine objectively the rules that should govern the *inter se* seniority and

C ranking. The dates of increment of the appellants in time scale having been specifically determined by the authorities before respondent No. 1 joined service, he has to rank junior to the appellants. Besides, Principle (vii), which is the relevant Principle, may be extracted for understanding its scope :—

D "Principle (vii)

In the case of Class II Officers permanently promoted to Class I Services, if two or more than two or more than two officers are promoted on the same date their relative seniority will be in the order of selection. Subject to the aforesaid provisions the seniority of officers, permanently prompted from Class II to Class I services, shall be determined by giving weightage based on ;

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(a) the year of service connoted by the initial pay on permanent promotion to Class I Service; or

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(b) half the total number of years of continuous service in Class II, both officiating and permanent;

whichever is higher, subject to a maximum weightage of five years."

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It was in accordance with Principle (vii) (a) that the date of increment on time scale for the appellants were determined. Once this position becomes clear, there is no difficulty in applying Principle (vii).

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The principle of granting seniority on the basis of weightage of past service and lower service to the category of promoting officers is well known and well recognised in the service jurisprudence.

We may mention that the appellants were initially members of RBSS and were thus actively associated in personnel matters and it was because of this the Railway Board thought it fit to provide avenue for promotion to these officers in IRPS. The nature of working being done by them while working for RBSS was similar to the work which they were required to perform in superior service viz. IRPS.

The principle for conferment of limited benefit or weightage was held to be not unreasonable or illegal by this Court in the case of *State of Andhra Pradesh and another v. K.S. Murlidhar and others*, [1992] 2 SCC 241.

Learned counsel for respondent No. 1, however, referred us to the decision of this Court in the *State of Bihar and others v. Sri Akhouri Sachindra Nath and others*, JT (1991) 2 SC 279. It will be noticed that there was no principle like Principle (vii) in the service which this Court was dealing with in that matter. Learned counsel then referred us to the decision of this Court in *K.C. Vasudeva and others v. Union of India and others*, [1980] Supp. SCC 341. It will be noticed that there the dispute was in relation to fixation of seniority between existing employees and those taken over from an autonomous body after its dissolution. Although employees of the erstwhile body were not recruited on the basis of qualification prescribed for Central Government servants, credit or weightage given to them for their service in that body for the purpose of seniority in the Central Government department in which they were given fresh appointments. The Bench of this Court, on facts, did not find it reasonable and thus held that it violated Article 16 of the Constitution.

It is settled law that the appointing authority or the appropriate government can frame rules governing seniority which are reasonable keeping in mind the divergent claims that can be put forward by the various categories of the members of the Service. It is, however, necessary that there should be no discrimination, that is, persons placed in the same group must be treated similarly and, further, that any principle which is made the basis of determination of seniority should, if applicable to others, be applied to them also. In other words, if seniority is to depend purely upon the date of confirmation or the date of appointment, that rule should be applicable to all; but if the promotees and special recruits are being given weightage, the principles applicable to the members of the service should be kept in mind while determining the weightage to be given or while laying

A down rules for determination of seniority.

In the case of *Anand Prakash Saksena v. Union of India*, AIR (1968) SC 754 this Court considered the rules or seniority contained in the Regulation of Seniority Rules and the Special Recruitment Seniority Regulations, 1960 to be valid not offending Articles 14 and 16 of the Constitution. Under Rule 3(3)(b) of the Regulation of Seniority Rules the year of allotment of a promotee was to be determined by his continuously officiating on a senior scale post included in the Indian Administrative Service. Under Regulation 3(3) of the Special Recruitment Seniority Regulations, 1960, the year of allotment of special recruits was to be determined by the formula. While upholding the validity of these Rules and not regarding them to be arbitrary or discriminatory, it was observed that the promotees can claim that total length of service in the Provincial Civil Service be considered for determining seniority. On the other hand, the direct recruits can say that the seniority should depend upon their entry in the Indian Administrative Service. This Court took the view that the rule contained in Rules 3(3) (b) and (c) was a mean between these extreme views and was regarded to be just and fair. Similarly, the rule contained in Regulation 3(3) of the Special Recruitment Seniority Regulations, 1960 was considered to be fair and equitable.

E There are similar principles for determination of seniority between promotees and direct recruits to the Indian Police Service. Those rules also contemplate an order of allotment being given to a promotee which may be much earlier to his actual induction in Indian Police Service when he was still in the Provincial Police Service and weightage was given to the year of allotment for purposes of seniority.

F In the present case the RBSS is in the nature of a lower grade of similar Service. The appellants were promoted from Class II Service to Class I Services and rules having been framed for determining the seniority based on the grant of increments. Having once determined the date of increment, rest follows and consequently the conferment of seniority.

G Learned counsel for respondent No. 1 submitted that these very appellants had earlier appeared in the present Class I Service but had not qualified and were selected only for Class II Service and when respondent No. 1 was selected for Class I Service, the appellants were still Class II Service.

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We are afraid this argument has no merit once we uphold- first the principle of seniority and second the provision for grant of weightage. The Principle for determination of seniority had not been challenged before us. Only challenge before us was the grant of weightage for past service as Class II Officers. A

As we have noticed earlier even the order by which the date of earning increment in time scale was determined by the appropriate government for appellants 1 to 3 was never questioned and in any case could not be questioned while challenging the seniority list which was presented as late as in 1987. B

For the aforesaid reasons the appeal is allowed and the impugned order of the Central Administrative Tribunal, Principal Bench, New Delhi, dated 5th March, 1993 is set aside. Parties are, however, left to bear their own costs. C

R.R.

Appeal allowed.