

CASE NO.:  
Appeal (civil) 2702 of 1997

PETITIONER:  
Union of India

RESPONDENT:  
Vs.  
Kuldip Singh Permer & Ors.

DATE OF JUDGMENT: 18/08/2003

BENCH:  
BRIJESH KUMAR & ARUN KUMAR.

JUDGMENT:  
J U D G M E N T

WITH

CIVIL APPEAL NO.â\200\â\200\â\200\2003  
(Arising out of S.L.P.Â© No. 5674/1997

ARUN KUMAR, J.

C.A.No.2702/1997 :

This appeal is directed against the judgment dated 15th March, 1996 of the Central Administrative Tribunal, Chandigarh Bench. The original application was filed by respondent No.1 before the tribunal challenging seniority list issued by the Department wherein his seniority had been fixed from the date of absorption in the Department. Respondent No.1 was claiming seniority from the date he initially joined the Department on deputation. To appreciate the issue involved in the appeal, it is necessary to give some facts. Respondent No.1 had joined the service in the Himachal Education Department, a department of the State Government, as a trained graduate teacher. He was appointed as a Science Master with effect from 26.9.1970 in the pay scale of Rs.220 - 500. This scale was subsequently revised to Rs.620 â\200\223 1200 with effect from 1.1.1978.

After the Chinese aggression, the Government of India had started a department called Special Services Bureau under the Directorate General of Security (DGS). To govern the service conditions in the Special Services Bureau, rules called the Special Services Bureau (Junior Executive) Service Rules, 1976 were promulgated with effect from 30th June, 1976. Respondent No.1 joined the said Bureau on deputation with effect from 8th February, 1977 as Circle Organizer. On his exercising option in this behalf, he was absorbed in the said post of Circle Organizer with effect from 8th August, 1984.

The Department issued a tentative seniority list of Circle Organizers on 24th October, 1986. The respondent was aggrieved of the said list as his seniority was determined from the date of his absorption in the Department as Circle Organizer. Respondent was claiming seniority with effect from the date he joined the Department on deputation. He made representation against the tentative seniority list. However, on 6.12.1987 and thereafter on 30.6.1988 seniority lists were issued in which respondent No.1 was assigned seniority on the basis of the date of his absorption in the Department. The respondent made some representations against the same which were, however, rejected. Ultimately, he filed the Original Application before the Central Administrative Tribunal, Chandigarh Bench, in the

year 1989. This was allowed by the tribunal by its judgment dated 15th March, 1996, which is under challenge in this appeal.

The stand of the appellant is that respondent No.1 is entitled to seniority only from the date of his absorption in the Department and not prior thereto. To examine this stand of the appellant, reference has to be made to the Service Rules, that is, Special Services Bureau (Junior Executive) Service Rules, 1976 and the relevant Government of India instructions.

Rule 6 refers to initial constitution. Sub-rule(1) only is relevant for the present purpose which runs as under :

"(1) All persons holding, as on the appointed day, any one of the categories of posts specified in rule 4, whether in a permanent or temporary or officiating capacity or on deputation basis, shall be eligible for appointment to the service at the initial constitution thereof."

It is seen from the said Rule that deputation is envisaged as one of the modes of appointment to the service. Respondent No.1, it will be recalled had come on deputation and therefore he was eligible to join the service. Rule 7 refers to seniority of those appointed at the time of initial constitution.

"SENIORITY OF THOSE APPOINTED AT THE TIME OF INITIAL CONSTITUTION :

Seniority of persons appointed on a permanent basis in each grade at the initial constitution of the service shall be in the order in which they are shown in the relevant lists prepared in accordance with provisions of rule 6."

The respondent in the present appeal had joined subsequently, therefore, Rule 7 is not relevant.

Rule 10 refers to fixation of seniority at the maintenance stage. We need not refer to the said Rule because it stood deleted vide Notification dated 10th June, 1982 and therefore at the time when the exercise for fixation of seniority took place in the present case, that is, which was much after 1982, the said Rule was not in existence. It is not disputed that in the absence of specific rules, the general principles and guidelines issued by the Government of India from time to time are applicable. The Government of India vide OM No. 9-11/55, RPS, dated 22nd December, 1959 issued certain instructions regarding fixation of seniority of Government employees. Respondent No.1 was an absorbee in the Department and therefore clause (7) of the said instructions got attracted. The same is reproduced as under :

"7. Absorbees -- (i) The relative seniority of persons appointed by absorption to a Central Service from the subordinate offices of the Central Government or other departments of the Central or state Governments shall be determined in accordance with the order of their selection for such absorption.

(ii) Where such absorptions are effected against specific quotas prescribed in the Recruitments Rules therefor, the relative seniority of such absorbees, vis-à-vis direct recruits and promotees shall be determined according to

the rotation of vacancies which shall be based on the quotas reserved for absorption, direct recruitment and promotion respectively in the Recruitment Rules.

(iii) Where a person is appointed by absorption in accordance with a provision in the Recruitment Rules providing for such an absorption in the event of non-availability of a suitable candidate by direct recruitment or promotion, such absorbee shall be grouped with direct recruits or promotees, as the case may be, for the purpose of Para 6 above. He shall be ranked below all direct recruits or promotees, as the case may be, selected on the same occasion.

Iiv) In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant Recruitment Rules provide for 'Deputation/Absorption), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from

--the date he has been holding the post on deputation, or

--the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department, whichever is later.

The fixation of seniority of an absorbee in accordance with the above principle will not, however, affect any regular promotions to the next higher grade made prior to the date of such absorption. In other words, it will be operative only in filling up of vacancies in higher grade taking place after such absorption. "

It may be noted here that sub-clause (iv) was added on 29th May, 1986. We may also note here that the said O.M. along with its amendments from time to time is admittedly applicable for the purpose of determination of seniority in the present case. According to sub-clause (iv) of the said O.M., for purpose of determining seniority of an absorbee, if he was already holding on the date of absorption the same or equivalent grade on regular basis in his parent department, his regular service in the grade is to be counted. In the present case, respondent No.1 was holding a post of Science Master on regular basis in an equivalent grade with effect from 1.1.1978. The grade of the said post was revised to Rs. 620 with effect from 1.1.1978. Thus, respondent No.1 was holding a post in a rather higher grade than the grade of post of Circle Organizer in his parent department on regular basis with effect from the date the scale of that post stood revised which was 1.1.1978. Thus, it is clear from the Government's own instructions that the respondent No.1 is entitled to be assigned seniority with effect from 1.1.1978.

The learned counsel for the appellant made a vain attempt to

contend that the word 'equivalent' in sub-clause (iv) of clause 7 of O.M. dated 22nd December, 1959 should be read as 'equivalent post' and since respondent No.1 was not holding an equivalent post, he cannot be given benefit of the said O.M. With reference to equivalent post the argument further proceeded that it should have similar duties etc. This argument, in our view, is totally untenable. The relevant word used in the Government's instructions is 'grade'. It is not disputed that with effect from 1.1.1978, respondent No.1 was holding a post in the parent department on regular basis in a grade higher than the grade of the post of Circle Organizer which he held in the department where he was absorbed.

In the present case, the relevant Government instructions had come into force on 29th May, 1986 while the tentative seniority list was issued on 24th October, 1986. The revised seniority list was issued much later. It was held by this court in Sub-inspector Rooplal and another vs. Lt. Governor through Chief Secretary, Delhi and others [ 2000 (1) SCC 644 ] that a person should get benefit of length of service rendered on regular basis in equivalent grade for the purpose of fixation of his seniority. The following observation needs to be quoted:

"...any rule, regulation or executive instruction which has the effect of taking away the service rendered by a deputationist in an equivalent cadre in the parent department while counting his seniority in the deputed post would be violative of Articles 14 and 16 of the Constitution. Hence, liable to be struck down."

This leads to the inevitable conclusion that respondent No.1 is entitled to benefit of service rendered by him on regular basis with effect from 1.1.1978. In other words his seniority in the post of Circle Organizer is to be fixed after counting his service in his parent department from 1.1.78 onwards. The appeal is accordingly without any merit.

The same is hereby dismissed.

C.A.No.2702/1997 @ SLP@ 5674/1997 :

Leave granted.

For the reasons stated in the judgment pronounced today in C.A. 2702/1997, this appeal is dismissed subject however to the modification that the Tribunal had granted benefit of seniority to respondent No.1 with effect from 28th September, 1973 when he joined the Special Services Bureau on deputation. As held by us in C.A.No.2702 of 1997, the benefit of length of service will be available to respondent No.1. only from the date when he came in the equivalent grade on regular basis, that is, grade equivalent to the post of Circle Organizer in the Bureau. This happened with effect from 1.1.1978 when the grade of the post held by him on regular basis in the Himachal Education Department was revised. Therefore, respondent No.1 in this appeal is entitled to seniority only with effect from 1.1.1978 and not from an earlier date as held by the tribunal. To this extent, the judgment of the tribunal stands modified. The appeal is dismissed accordingly.

JUDIS