

CASE NO.:
Appeal (civil) 4325 of 2006

PETITIONER:
Arun Kumar & Ors

RESPONDENT:
Union of India & Ors

DATE OF JUDGMENT: 03/04/2007

BENCH:
Dr. Arijit Pasayat & S.H. Kapadia

JUDGMENT:
J U D G M E N T

KAPADIA, J.

A short question which arises for determination in this civil appeal is whether the State Government could have invoked Rule 14 of the Punjab Police Service Rules, 1959 (dealing with the power of relaxation) when there was no provision in the said Rules for absorption of Deputationists on permanent basis from Central Reserve Police Force ("CRPF") in Punjab Police Service.

The facts giving rise to this civil appeal are as follows.

Shri Avinder Singh Brar, IPS was killed by the terrorists. He was an officer in the Punjab Police Service. On account of the above incident, his sister, Ms. Amrit Brar-respondent no. 4, stood appointed on 9.6.1989 as Assistant Commandant in CRPF on probation for two years. She was appointed in CRPF under above tragic circumstances. She was the only child of her parents. She was appointed in CRPF as her assignment was relatively safer in CRPF than in Punjab Police Service. These facts are important since they show that the appointment of respondent no. 4 was not compassionate but as an exception. Her appointment was to be governed by CRPF Rules. She completed her probation on completion of two years. On 16/17.8.1993, Ms. Amrit Brar was appointed on deputation to the post of Superintendent of Police (SP) in Punjab Police. She retained her lien as Assistant Commandant in CRPF till 11.9.1998 when she was absorbed as DSP in Punjab Police. She was allowed all benefits including pay and seniority from 9.6.1989. In between, Ms. Amrit Brar was promoted to the post of Deputy Commandant in CRPF in March, 1995.

The appellants herein are officers of Punjab Police Service. Some of the appellants are recipients of the President's medal for gallantry for having fought terrorism in the State of Punjab. The appellants challenged the orders of the State Government in the Punjab and Haryana High Court granting absorption to Ms. Amrit Brar, particularly on the ground that the Punjab Police Service Rules did not contemplate absorption of a deputationist from CRPF. The appellants challenged the absorption on the grounds that Ms. Amrit Brar was granted benefit of compassionate appointment as Assistant Commandant in CRPF in 1989 and, therefore, she was not entitled to double benefit of compassionate absorption in 1998 and that too from 9.6.1989. The appellants' main grievance before the High Court was that

giving the benefit of seniority to Ms. Amrit Brar from 9.6.1989 would make her senior to almost ten other officers. According to the appellants, the consequences of seniority being given to Ms. Amrit Brar would mean supersession of the appellants. According to the appellants, Ms. Amrit Brar stood appointed to Class I post in the CRPF as Assistant Commandant on compassionate ground and, therefore, there was no cause for second exercise of this power by the State Government after almost nine years. The appellants further submitted before the High Court that there were many officers on deputation with Punjab Police Service from various Para Military Forces, including CRPF, most of whom had come on deputation even prior to Ms. Amrit Brar. Appellants further contended before the High Court that, in fact, the State Government had notified Punjab Absorption of Officers of Para Military Forces (Group A) Service Rules, 2005 and under the said Rules, the State Government had created ex-cadre posts for absorption of Para Military Forces officers, who were on deputation with the State of Punjab and who were to be absorbed in Punjab Police Service. According to the appellants, if the benefit of seniority was to be given to Ms. Amrit Brar from 9.6.1989 then even in the matter of absorption she would supersede a number of other officers.

By the impugned judgment dated 24.1.2006, the High Court dismissed CWP No. 11548/96 filed by the appellants herein. One of the main grounds urged by the appellants before the High Court was that regularization of the services of Ms. Amrit Brar with effect from 9.6.1989 and absorption of a deputationist in Punjab Police Service would amount to creation of a separate Method of Recruitment. According to the appellants, under the said Rules there were only two sources of recruitment, 80% is by promotion and 20% is by direct recruitment. This contention was rejected by the High Court saying that the word(s) "direct appointment" in the said Rules would include appointment by deputation and, therefore, Rule 14 was applicable to the present case. Aggrieved by the decision of the High Court, the appellants have come to this Court by way of the present civil appeal.

On behalf of the appellants, it was urged that the State Government had violated the appellants' fundamental rights under Articles 14 and 16(1) of the Constitution of India by reason of absorption of Ms. Amrit Brar as Deputy Superintendent of Police with effect from 9.6.1989. According to the appellants, Ms. Amrit Brar was appointed on compassionate grounds in CRPF as an Assistant Commandant and she retained her lien in CRPF till she stood absorbed in Punjab Police Service on 11.9.1998. According to the appellants, Ms. Amrit Brar was even given promotion in CRPF from the post of Assistant Commandant to the post of Deputy Commandant. According to the appellants a number of concessions were given to respondent no. 4. Ms. Amrit Brar was appointed in 1989 as Assistant Commandant in CRPF on compassionate ground; that her post in Punjab Police was taken out of the purview of Public Service Commission vide Government's Order dated 13.10.1997 and that even the rules of competitive examination were relaxed. According to the appellants, Ms. Amrit Brar was not entitled to the double benefit of appointment in CRPF on compassionate grounds and absorption in Punjab Police Service again on compassionate grounds. According to the appellants, deputation is not a source of recruitment in Punjab Police Service. According to the appellants, the effect of the impugned judgment was to open one more source of

recruitment which is not provided for under Punjab Police Service Rules, 1959 ("1959 Rules"). According to the appellants, CRPF in its activities is confined to law and order whereas Punjab Police functions require crime detection, in addition to policing. Moreover, according to the appellants, Ms. Amrit Brar had not undergone that required training. According to the appellants, even ACRs. were not scrutinized when Ms. Amrit Brar was taken on deputation in Punjab Police Service on 16/17.8.1993. According to the appellants, CRPF personnel are governed by CRPF Rules. They are not governed by the said Punjab Police Service Rules, 1959. Under the said 1959 Rules, the State Government has not even maintained ACRs. of Ms. Amrit Brar between 16/17.8.1993 and 11.9.1998. The reason being that Ms. Amrit Brar had a lien to a post in CRPF. It is for this reason that Ms. Amrit Brar stood promoted to the post of Deputy Commandant on the basis of ACRs. given in March, 1995. Therefore, her entire service record during the above period was governed by the CRPF Rules and, consequently, her absorption in Punjab Police was without authority of law and in violation of appellants' fundamental rights under Article 14 read with Article 16(1) of the Constitution of India, particularly in view of the Government conferring the benefit of seniority on her with effect from 9.6.1989.

On behalf of the State Government, it was urged that under Punjab Police Service Rules, 1959 the Method of Recruitment has been provided. Under the said 1959 Rules, there are two sources of recruitment. The sources include direct recruitment. It was urged on behalf of the State Government that the words 'direct recruitment' in the said 1959 Rules has been defined to mean appointment by any mode. According to the respondents, a deputationist would come within the definition of direct appointment under Rule 2(b) read with Rule 13. In the circumstances, it was urged on behalf of the State that once the concept of deputation fell within the meaning of direct appointment, the State was entitled to apply the rule of relaxation contemplated in Rule 14. According to the Government, the post was taken out of the purview of Public Service Commission vide letter dated 13.10.1997. Further, Rule 6 which refers to competitive examination stood relaxed and accordingly on such relaxation, Ms. Amrit Brar was absorbed as a Deputy S.P. in Punjab Police in 1998 with effect from 9.6.1989, which the State Government was entitled to do. It was urged on behalf of the State Government that, on her absorption, Ms. Amrit Brar stood appointed in Punjab Police as a direct recruit. According to the State Government, Ms. Amrit Brar had worked in Punjab Police on deputation from 16/17.8.1993. According to the State Government, Ms. Amrit Brar who had worked as an Assistant Commandant/ Deputy S.P. in CRPF between 9.6.1989 and 16/17.8.1993 and, consequently, absorbed in 1998 as a Deputy S.P. in Punjab Police, was entitled to the benefit of her experience in CRPF with effect from 9.6.1989. It was urged on behalf of the State Government, that even in CRPF the designation of Ms. Amrit Brar was Deputy S.P. and that the nature of the duties of Deputy S.P. in CRPF and the functions of Deputy S.P. in Punjab Police were identical and, therefore, the experience and the work put in by Ms. Amrit Brar as Deputy S.P. in CRPF had to be taken into account while absorbing her in Punjab Police Service. According to the State Government, on application of Rule 14, Ms. Amrit Brar was entitled to the benefit of the past service and accordingly she had been given seniority in Punjab Police on and from 9.6.1989, therefore, according to the State Government, there

was no breach or violation of Article 14 and Article 16 of the Constitution.

At the outset, we may state that the country owes its gratitude to the brave officer, Shri Avinder Singh Brar, IPS, who was killed at the hands of terrorists. The above facts show that Ms. Amrit Brar was appointed rightly on compassionate grounds as an Assistant Commandant in CRPF on 9.6.1989. The State Government was right in initially appointing her as an Assistant Commandant in CRPF, since in 1989 terrorism was at its peak in the State and that her posting as an Assistant Commandant was relatively safer than her posting in Punjab Police. She was the only child of her old parents. She had to be, therefore, protected. However, that could not make her appointment a compassionate appointment. It was an exceptional appointment. There cannot be a second opinion on this count. After the situation improved, she was taken on deputation in Punjab Police. This was in 1993. We do not find any infirmity in the action of the State Government under the above circumstances in appointing Ms. Amrit Brar as a deputationist even in Punjab Police Service. We make it clear that Punjab Police Service Rules provide for two sources of recruitment. One is by direct recruitment, another is by way of promotion. Although, the said 1959 Rules do not provide for such appointment as a deputationist in the normal cadre, the Government, in exceptional cases, can appoint deputationists in Punjab Police Service. This is one such case. We do not find any infirmity in the action of the State Government in appointing Ms. Amrit Brar as a deputationist in Punjab Police Service. She is entitled to those benefits under the above circumstances. Further, as state above, Ms. Amrit Brar stood absorbed in Punjab Police Service as Deputy S.P. on 11.9.1998. Even her absorption has been made on giving relaxation, as indicated above. This was by way of one time exercise in an exceptional case. The only dispute, therefore, is whether Ms. Amrit Brar was entitled to one more benefit of seniority with effect from 9.6.1989.

Direct appointment as a source of recruitment is different from Deputation/ Transfer in the method of recruitment. In the present case, the dispute revolves around inter se dispute in the cadre of DSP, in Punjab Police, which is the Feeder Post. If seniority is to be given to Ms. Amrit Brar with effect from 9.6.1989 then she supersedes the appellants, who have also contributed in the elimination of terrorism in the State. It is the next higher post which the appellants and respondent no. 4 aims for. It is the inter se seniority which gives rise to the dispute between the appellants and the State. When inter se seniority is to be fixed the concept of equality has to be kept in mind. Equality before law and equal protection of law are the basic postulates of Article 14 read with Article 16(1) of the Constitution. We have to keep in mind the rights of the appellants, who have been in service and who are also entitled to seniority and promotion in the cadre. We quote hereinbelow Rules 2(b), 6, 7, 8, 10, 13 and 14 of Punjab Police Service Rules, 1959.

"2. Definitions.-In these rules, unless there is anything repugnant in the subject or context,-

xxx

(b) 'direct appointment' means an appointment made otherwise than

by promotion of an Inspector.

xxx

6. Method of recruitment.- (1) Recruitment to the Service shall be made -

(i) Eighty per cent by promotion from the rank of Inspector, and twenty per cent by direct appointment:

Provided that only those Inspectors will be eligible for promotion who-

(a) in the case of Inspectors (both promoted from subordinate rank and directly recruited) have got six years continuous service (officiating as well as substantive) in the rank of Inspector; and

(b) in case they are Prosecuting Inspectors, have got eight years' continuous service (both officiating and substantive) in the rank of Prosecuting Inspector.

(2) Appointments by promotions shall be made by the Government from Inspectors brought on list 'G' which will be a list of officers considered fit for promotion to the rank of Deputy Superintendent of Police, prepared by Government in consultation with the Commission. The names in this list prepared at one time shall be arranged according to their inter se seniority. This list will be maintained in two parts: Part I (for officers from the Executive line) and Part II (for officers from the Prosecution line).

(3) Direct appointment to the Service shall be made on the result of a competitive examination conducted by the Commission. The syllabus and rules relating to the examination will be framed by the Government in consultation with the Commission. The examination will include a viva voce test. Only those candidates will be interviewed for the viva voce test who obtain not less than the minimum qualifying marks fixed by the Commission in the written examination. The Inspector-General of Police, Punjab will be present at the interview and will be entitled to put questions to the candidate and to express his views to the Commission. A

candidate's position shall be determined by adding the marks obtained by him in the written examination and in viva voce test.

Provided that other things being equal, preference will be given to a candidate who has worked for the cause of national independence or has rendered some outstanding social or public service.

7. Qualifications.- (1) No person shall be recruited to the Service by direct appointment unless-

(i) he is not less than twenty-one years and not more than twenty-five years of age on the first of February of the year in which appointment is to be made;

(ii) he produces a certificate of physical fitness as prescribed by rule 3.1 of the Punjab Civil Services Rules, Volume, Part I;

(iii) he has a minimum height of 5'-7" and normal chest measurement of 33" with expansion of 1-1/2".

(iv) he is a graduate of a recognized university and possesses knowledge of both Hindi and Punjabi upto the Matriculation or its equivalent standard.

Provided that the upper age limit prescribed in sub-clause (i) shall be thirty years in the case of Scheduled Castes, Scheduled Tribes and Backward Classes;

Provided further that the physical standard prescribed in sub-clause (iii) shall not be relaxed without special sanction of the Government;

(2) No male candidate who has more than one wife living and no female candidate who has married a person having already a wife living shall be eligible for appointment to the service;

Provided that this disqualification shall not be applicable in cases where it was incurred before the 8th September, 1954, and the recruitment is to be made by promotion.

(3) (i) The Government shall notify to the

Commission the number of vacancies to be filled by direct appointment during the year, and the Commission will proceed to give publicity to the proposed appointments and invite applications. If applications are invited before the results of the University Examinations have been notified, candidates appearing or who have appeared in the Bachelor of Arts or equivalent examination, will be allowed to submit provisional applications.

(ii) The applications received will be referred for scrutiny to the Inspector-General of Police, Punjab, who may make such enquiries as he may think fit and shall thereafter return all the application with his remarks, if any, to the Commission.

(iii) The Commission will scrutinize all applications received and admit to the examination mentioned in sub-rule(3) of rule 6 all those candidates who are found to be eligible in accordance with these rules.

(iv) Success in the examination will confer no right on any candidate to appointment, unless Government is satisfied, after such enquiry as may be considered necessary, that the candidate is suitable in all respects for appointment to the Service.

8. Probation of members of Service.

(a) Members of the Service shall be on probation for two years, which shall include the period of training at the Police Training School, Phillaur, and in the districts and in the case of members recruited by promotion the Government may, by a special order in each case, permit periods of officiating appointment, to the Service to count towards the period of probation.

(b) The services of a member recruited by direct appointment may be dispensed with by Government on his failing to pass the final examination at the end of his period of training, or on his being reported on, during or at the end of his period of probation, as unfit for appointment.

Provided that the Government may, if it deems fit extend the period

of probation by not more than one year.

(c) The Inspector-General of Police, Punjab may require any member of the service on probation appointed by promotion from the rank of an Inspector to undergo a special course of training and to pass the prescribed examination in any subject or subjects, including a compulsory language in which his qualification may be defective. Any such probationer failing to pass the examination prescribed for him or being unfavourably reported on, may be reverted to his substantive rank of Inspector.

xxx

10. Seniority of members of Service. The seniority of members of the Service shall be determined by the date of confirmation in the service.

Provided that if two or more members are confirmed on the same date.

(i) a member who is appointed to the Service by promotion shall be senior to a member appointed otherwise.

(ii) in the case of members who were appointed by direct appointment, the seniority shall be determined in accordance with their position in the competitive examination;

(iii) in the case of members who were appointed to the service by promotion, the seniority shall be determined in accordance with the date of their entry in promotion list 'G'.

xxxx

13. Matters not expressly provided in these rules- In respect of all matters not specifically mentioned in these rules, the member of the Service shall be governed by such general rules as may have been or may hereafter be framed by the Government under the provisions of the Constitution of India in this respect.

14. General powers to relax rules.- Where the Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons."

Heavy reliance has been placed on behalf of the State Government and on behalf of respondent no. 4 on the judgment of this Court in the case of K. Madhavan and anr.

v. U.O.I. and ors. reported in (1987) 4 SCC 566. In that case the petitioners, Madhavan and Sen, were directly recruited as DSP in CBI on 6.7.1963 and 10.8.1963 respectively. O.P. Sharma, respondent no. 5, who was appointed as DSP on 13.7.1962 in Rajasthan State Police, was sent on deputation to CBI as DSP on 1.7.1967. At that time, this Court found that majority of officers in CBI were deputationists. O.P. Sharma was confirmed as DSP in Rajasthan Police Service on 1.12.1964. Madhavan and Sen were confirmed as DSP in CBI on 30.3.1967. In the seniority list published by CBI on 17.10.1981 the name of O.P. Sharma, respondent no. 5, was shown above the names of the petitioners, Madhavan and Sen. The petitioners, Madhavan and Sen challenged the inter se seniority list on the ground that respondent no. 5 was the deputationist in CBI and that on absorption he was not entitled to the benefit of his services in Rajasthan Police Service. On this contention, this Court vide para 19 held that, in computing the requisite period of service in the matter of appointment/ promotion to the post of SP in CBI, the period during which O.P. Sharma, respondent no. 5, held the post of DSP in Rajasthan State Police Service should be taken into consideration.

Relying on this paragraph, it is urged on behalf of respondent no. 4, Ms. Amrit Brar, that her services in CRPF should also be taken into account in the matter of fixation of inter se seniority and that she was entitled to weightage with regard to the service which she had between 9.6.1989 and 16/17.8.1993. However, the judgment in the case of K. Madhavan (supra) clearly indicates that this Court examined the Service Rules in which there was a third source of recruitment, namely transfer, and, therefore, in para 21, this Court observed that, there was no much difference between deputation and transfer, and since under the rules transfer was the source of recruitment, O.P. Sharma was entitled to weightage for the service put by him as DSP in Rajasthan State Police Service. Admittedly, in the present case, transfer is not the third source of recruitment. On the contrary, the above judgment equates deputation with transfer. It does not equate deputation with direct appointment as done by the impugned judgment. To this extent, there is infirmity in the impugned judgment.

Before we proceed further, we may make it clear that, in our judgment, we have observed earlier that we do not find any infirmity in the action of the State Government in absorbing respondent no. 4 as Deputy S.P. in Punjab Police Service. However, there is a caveat. According to us, strictly on interpretation of the said 1959 Rules, there is no scope for opening of a third mode of recruitment. Deputation is not the source of recruitment under the said 1959 Rules. It is only as an exceptional case that respondent no. 4 was given the benefit of absorption in Punjab Police Service as Deputy S.P. and we do not find any fault with that exercise. It is the genuine exercise. However, when her services are regularized by the State not from 16/17.8.1993, when she stood appointed as a deputationist, but from 9.6.1989, when she was appointed as Assistant Commandant in CRPF, then infirmity in the action of the State Government crept in. CRPF functions cannot be compared with Punjab Police Service. Apart from policing, an officer of Punjab Police Service has to do the work of investigation of crime detection, which is not within the purview of CRPF. A Deputy S.P. in CRPF need not have the knowledge of CrPC, IPC etc., which an officer in Punjab Police Service needs to possess. The Service Rules

governing CRPF are different from the Service Rules which governed Punjab Police Service. Therefore, even functionally, the two cadres are different. In fact, respondent no. 4, Ms. Amrit Brar, has not undergone training as contemplated under Punjab Police Service Rules. However, she has put in 5 years experience as Deputy S.P. in Punjab Police Service between 16/17.8.1993 and 11.9.1998. That experience should be given due weightage. In our view, having examined the above Punjab Police Service Rules, 1959, it is clear that deputation is not the source of recruitment. Direct recruitment is the source. Promotion is the source. However, deputation is not the source for recruitment. Moreover, in the present case, we are concerned with the rights of the appellants. We are concerned with the inter se seniority in the said post of Deputy S.P. since that seniority ultimately counts for promotion to the next higher cadre. The post of Deputy S.P. is a feeder post in that sense and when the post is a feeder post, the inter se seniority has the role to play. In the circumstances, if deputation is not the source of recruitment, then even in exceptional cases of this nature, weightage cannot be given, in the absence of the rules, to the services rendered by Ms. Amrit Brar in CRPF. Rule 14 talks of relaxation. However, Rule 14 is not applicable to the rules which do not provide for recruitment through deputation. Rule 14 would have applied if the said 1959 Rules had a third source of recruitment, namely, deputation. There is no such third source of recruitment. Hence, Rule 14 has no application. Rule 14 refers to relaxation of rules. Rule 14 contemplates existence of a rule of recruitment. If there is no such rule providing for third source of recruitment, the Government cannot relax a non-existent rule. Therefore, the High Court had erred in treating deputation as a third source of recruitment. There is a difference between direct appointment as a source of recruitment and deputation/ transfer as a source of recruitment. In certain cases, cited before us, weightage has been given to the service put in by the transferee. However, in all those cases, the third source of recruitment was transfer/ deputation. In the present case, there is no such rule to that extent. There is an error in the impugned judgment of the High Court. As stated above, Ms. Amrit Brar has put in 5 years service as a deputationist in Punjab Police Service between 16/17.8.1993 and 11.9.1998. She is certainly entitled to the weightage for the services rendered by her during these 5 years. However, she is not entitled to weightage of service between 9.6.1989 and 16/17.8.1993, as held by the High Court, for the fixation of inter se seniority.

Accordingly, the appeal is partly allowed with no order as to costs.