

PETITIONER:
DILBAG SINGH

Vs.

RESPONDENT:
STATE OF U.P. AND OTHERS

DATE OF JUDGMENT 08/05/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1995 SCC (4) 495 1995 SCALE (3) 699

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

We have heard the counsel on both sides. The Government, exercising its power under the proviso to Article 309 of the Constitution, issued U.P. Non-Technical (Class II) Services (Reservation of Vacancies for Demobilised Officers) Rules, 1973. The same Rules were reissued in 1980. These Rules would be applicable to officers of Short Commissioned or Commissioned Officer recruited to the army between November 1, 1962 to January 10, 1968; and on December 3, 1971 and released at any time thereafter. Admittedly, the appellant was commissioned on September 22, 1974 and was released on November 30, 1979. Advertisement was made for recruitment of Deputy Collectors on May 2, 1979. The appellant had applied for and was selected as a Deputy Collector. He sought for seniority w.e.f. September 22, 1974 in terms of Rule 5 of 1980 Rules. Since it was not given, he filed W.P. No. 2469/89 and the High Court of Allahabad dismissed the writ petition on April 25, 1994. Thus, this appeal by special leave.

It is not in dispute that the Rules have been given retrospective effect and, therefore, the appellant is entitled to the benefit of seniority in accordance with Rule 5 of 1980 Rules. It was contended in the High Court that since 1973 Rules were withdrawn w.e.f. August 6, 1978, the appellant is not entitled to the benefit when he was recruited in the year 1979. That appears to be obviously a mistaken stand taken by the Government, since 1980 Rules have been given retrospective effect w.e.f. 6.8.1978. Thereby even 1973 Rules must be deemed to be in operation till 1980 Rules were framed afresh. As per the memorandum, Ann.II, which is now made part of the record, the Government have clarified that all benefits, except the reservation, were withdrawn by the notification issued w.e.f. August 6, 1978. In other words, even the right of reservation was maintained during interregnum. Accordingly, the appellant is

entitled to the seniority as per 1980 Rules.

The appeal is accordingly allowed with all consequential benefits. No costs.

JUDIS