

PETITIONER:

S. K. GHOSH AND ANR.

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT:

02/04/1968

BENCH:

BHARGAVA, VISHISHTHA

BENCH:

BHARGAVA, VISHISHTHA

RAMASWAMI, V.

SHELAT, J.M.

CITATION:

1968 AIR 1385

1968 SCR (3) 631

CITATOR INFO :

D 1975 SC1269 (7)

ACT:

Rules for recruitment to the grade of Directors of Postal Services in Indian Postal Service, Class 1, in the Posts and Telegraphs Department, r. 3-Promotion as Directors front time scale of Class 1 service based on selection and not seniority Revision of their seniority in the time scale of Class 1 Service later--Seniority of Directors inter se if could be revised --Such revision if violative of Art. 16 of Constitution.

HEADNOTE:

The petitioners were promoted from the Postal Superintendents Service Class II to the time scale of Class I Service, and, respondents 3 to 7 were direct recruits to the time scale of Class I service. On 30th January 1957, Government fixed the inter se seniority between them by showing the petitioners as senior to respondents 3 to 7. Subsequently, the petitioners were promoted as Directors of Postal Services, and some time later, respondents 3 to 7 were also promoted as Directors so that, the petitioners were senior to respondents 3 to 7 even in the grade of Directors. On 5th June 1965 Government revised the seniority of these officers in the time scale of Class I service, by showing respondents 3 to 7 as senior to the petitioners, and on 17th January 1966, their seniority in the grade of Directors was also revised placing respondents 3 to 7 as senior to the petitioners.

The petitioners challenged the two orders in a petition under Art. 32. The Government justified its orders on the grounds, that, the order of 30th January 1957 was passed by mistake as a relevant rule, namely, Supplementary r. 2(15) was not given effect to, and, since the revision of seniority in the time scale of Class I Service was justified, the consequential revision of seniority in the grade of Directors was also valid.

HELD : The revision of seniority in the grade of Directors by order dated 17th January 1966 was not based on any rule or applicable principle. it was therefore arbitrary and violative of Art. 16 and must be struck down. Once that

order was quashed, the petitioners would not be affected by the order dated 5th June 1965, and therefore, it was not necessary to decide on its validity. [638 E-G].

Rule 3 of the Rule,; for recruitment to the grade of Directors of Postal Services in Indian Postal Services Class 1. in the Posts and Telegraphs Department, shows that appointment to the grade of Directors is made by selection and not on the basis of seniority in the time scale. It must therefore be presumed that the promotion and appointment, of the petitioners and respondents 3 to 7 as Director-, was based on merit, which was to be taken into account at the time of selection and not on seniority in the time scale of Class I Service. Once a member of Class I Service in the time scale was selected for promotion to the grade of Directors and given seniority over another officer selected later, the seniority so determined as a result of selection could not be made dependent on the seniority in the time scale. Therefore, even if there was justification for revising the seniority inter se of the petitioners and respondents 3 to 7 in the time scale of Class I Service, that revision could not in any way affect their order of seniority in the grade of Directors to which they were promoted on the basis of selection in accordance with the Rules. [637 G-H;]

638 A-C].

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JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 131 of 1966.

Petition under Art. 32 of the Constitution of India for the enforcement of fundamental rights.

A. K. Sen and K. B. Mehta, for the petitioners.

B. Sen and R. H. Dhebar for respondents Nos. 1 and 2.

B. P. Maheshwari and S. M. Jain, for respondent No. 4.

The Judgment of the Court was delivered by Bhargava, J. S. K. Ghosh and A. M. Narula, the two petitioners in this petition under Article 32 of the Constitution, appeared for the examination held in October, 1945 for recruitment to the Indian Audit and Accounts Service and other Allied Central Services. On the basis of the result of the examination, both of them were selected for appointment to the Postal Superintendents' Service Class II. Petitioner No. 1, S. K. Ghosh, joined a post in that Service on probation with effect from 9th April, 1947, while petitioner No. 2, A. M. Narula, joined as a probationer on 11th February, 1947. At that time there was no Class I Service in the Postal Department. In Class II Service, to which these two petitioners were appointed, recruitment was made by a competitive examination to the extent of 50 per cent, while the remaining 50 per cent posts were filled by promotion from lower cadres of the Department.

On 24th May, 1948, the Government sanctioned the creation of Indian Postal Service Class I with four grades as follows

- (i) Directors of Postal Services, Grade I,
- (ii) Directors of Postal Services, Grade II,
- (iii) Senior Time Scale, and
- (iv) Junior Time Scale.

This decision of the Government was communicated to the Director-General, Posts and Telegraphs, by their letter dated 13th November, 1948, which also laid down the manner of recruitment to the Service and the various sources from which recruitment was to be made. The normal rule laid down was that appointment to the junior time-scale were to be

made by direct recruitment against 75% of the vacancies and the remaining 25% were to be filled by promotion by selection of the best officers in the Postal Superintendents' Service Class II, seniority being regarded only when all other qualifications were practically equal. To this rule, however, an exception was laid down to the effect that all initial appointments to the time scale cadres of the Indian Postal Service Class I consisting of 64 posts (23 in the senior scale and 41 in the junior scale) were to be made by promotion from amongst officers of Postal Superintendents' Service Class II by selection. Future recruitment was to be governed by the general rule cited above. Appointments to Grade IT of the Directors of Postal Services was to be made by promotion by selection

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of the best officers in the senior time scale of the Indian Postal Service, Class 1, seniority being regarded only where other qualifications were practically equal. These promotions were to be made through a Departmental Promotion Committee consisting of the Director-General, Posts and Telegraphs, Senior Deputy Director-General, Posts and Telegraphs, and a member of the Federal Public Service Commission. Appointments to Grade I of Directors of Postal Services were to be made by promotion from Grade 11 of Directors in the order of seniority, provided the senior officer was considered fit for such promotion. The Service under these rules was, in fact, constituted with effect from 15th September, 1948, and, even in cases where appointments were actually made later, they were made effective retrospectively from 15th September, 1948. for purposes of confirmation. The two petitioners were still probationers in Postal Superintendents' Service Class II on 15th September, 1948; and, since only persons holding permanent posts in the cadre of Class 11 were to be considered for appointment to this Class I Service, the petitioners were not considered at the initial stage. Both the petitioners completed their probation in Class 11 Service in the year 1949. According to the petitioners, petitioner No. 1 was promoted to Class I Service on 2nd December, 1949, and petitioner No. 2 on 5th December, 1949. They were shown as officiating in this Service. Subsequently, petitioner No. 1 was confirmed in the junior time scale of Class I Service with effect from 11th May, 1951, while petitioner No. 2 was confirmed with effect from 12th February, 1952. In the meantime, direct recruitment to Class I Service was also made on the basis of competitive examinations held in the years 1948 and 1949, and a number of direct recruits were selected for appointment to this Service. Amongst them were K. Ramamurti, N. C. Talukdar, Shiv Nath, S. L. Rajan and B. N. Dubey, respondents Nos. 3 to 7 in the petition. Besides these, a number of other direct recruits were also taken, but it is unnecessary to take notice of them, because the petitioners have sought relief against these five respondents only, the others having already retired by the time this petition was filed. These five respondents joined Class 1 Service as probationers on various dates falling between 16th March, 1950 and 22nd November, 1950. Thereafter, the question of fixing seniority inter se between the direct recruits and officers promoted from Class II Service came up for consideration of the Government. Government communicated their final decision through 'the letter dated 30th January, 1957. The letter indicated the considerations that led the Government to fix the seniority of the various officers and to the letter was annexed an Appendix giving the seniority of junior time scale officers.

In this list, the two petitioners were placed at Nos. 31 and 32, while the five respondents were placed junior to them at Nos. 33, 36, 41, 42 and 44. In the letter, the Government speci-

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fically stated that, in arriving at the decisions, the Government had given due consideration to all the representations submitted by officers on the subject and replies to these representations were not, therefore, being sent separately. Only one representation of A. C. Mohamedi was still under consideration; but, with that representation, we are not concerned in the present writ petition. The Government added that the seniority list along with a copy of the memorandum was to be given to all the officers concerned for their information and they were to be informed that any further representations against the principles on the basis of which the seniority list had been prepared, would not be entertained. At the time when this seniority was fixed, the principles, which, according to the petitioners, were applicable, were those laid down in the Ministry of Home Affairs' Office Memorandum dated 22nd June, 1949, paragraph 2 of which contained the decision that seniority in respect of persons employed in any particular grade should, as a general rule, be determined on the basis of the length of service in that Grade as well as service in an equivalent Grade, irrespective of whether the latter was under the Central or Provincial Government in India or Pakistan. The order of seniority laid down by the order dated 30th January, 1957 continued in force for a number of years.

The Ministry of Home Affairs subsequently issued an Office Memorandum on 22nd December, 1959, laying down general principles for determining seniority of various categories of persons employed in Central Services. This Memo. referred to various earlier Office Memoranda, including the one dated 22nd June, 1949 issued by the Home Ministry. Paragraph 3 of this Office Memo. laid down that the instructions contained in those various Office Memoranda were thereby cancelled but made an exception in regard to determination of seniority of persons appointed to the various Central Services prior to the date of this Office Memorandum. The revised General Principles embodied in the Annexure to this Memorandum were not to apply with retrospective effect, but were to come into force with effect from the date of issue of these orders, unless a different date in respect of any particular service/grade from which these revised principles were to be adopted for purposes of determining seniority had already been or was to be thereafter agreed to by the Home Ministry. In para. 2 of the Annexure it was again laid down that, subject to the provision of para. 3 below, persons appointed in a substantive or officiating capacity to a grade prior to the issue of these general principles were to retain the relative seniority already assigned to them or such seniority as might thereafter be assigned to them under the existing orders applicable to their cases and were to be en bloc senior to all others in that grade. It was, thus, the case of the petitioners that this Office Memorandum of 2nd December, 1959 did not in any way affect their seniority

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Government dated 30th January, 1957. Subsequently, the petitioners as well as respondents Nos. 3 to 7 were promoted as Directors. The common case of both the parties was that, by the time these promotions were made, the two grades of Directors of Postal Services were amalgamated into one

single grade, and the promotions of the petitioners as well as respondents Nos. 3 to 7 were to that grade. The case of the petitioners was that respondents Nos. 3 to 7 were promoted as Directors after the petitioners, so that the petitioners were recognised as seniors in the grade of Directors also. These promotions, according to the petitioners, were made some time in the years 1961 and 1962. Subsequently, by an Order dated 5th June, 1965, the Government suddenly revised the seniority of these various officers. The letter dated 5th June, 1965 mentioned the subject as "Revision of seniority in the erstwhile Junior Time Scale of the Indian Postal Service, Class 1 of direct recruits from the combined competitive examinations held in 'the years 1947, 1948 and 1949.'" As a result of this revision of seniority in the junior time scale of the Indian Postal Service Class 1, respondents Nos. 3 to 7 were shown as senior to the petitioners. The places allotted to respondents Nos. 3 to 7 were at Nos. 17, 20, 22, 23 and 25, while the two petitioners were placed below them at Nos. 26 and 27. Later, again another Order was issued on 17th January 1966 revising the seniority in the grade of Directors of Postal Services, and, in that revision also, respondents Nos. 3 to 7 were placed as seniors at Nos. 14, 15, 17, 18 and 19, while the two petitioners were shown as junior to them at Nos. 20 and 21. The petitioners, consequently, filed this petition under Article 32 of the Constitution challenging the revision of their seniority in the junior time scale by the order dated 5th June, 1965 as well as 'the revision of their seniority in the grade of Directors of Postal Services by the order dated 17th January, 1966.

The principal -round, on which these orders were challenged by the petitioners, was that they had been made by the Government arbitrarily in exercise of their power to fix seniority and, by such arbitrary action, had adversely affected the rights of the petitioners vis-a-vis respondents Nos. 3 to 7 in violation of Article 16 of the Constitution. The point taken was that the seniority having once been fixed by the Order dated 30th January, 1957 in accordance with the Rules then in force could not be arbitrarily disturbed by the Government, particularly when the Rules were never revised subsequently, nor were any fresh Rules issued governing the seniority of these officers who had been appointed to the junior time scale of Class 1 Service prior to 30th January, 1957. Learned counsel appearing for the petitioners formulated four different grounds for challenge of the Order dated 5th June, 1965, all leading to the contention that that Order violated Art. 16 of the Constitution, or was passed against the principles of natural justice. In addition, the Order dated 17th January, 1966 was challenged on one more ground, viz., that, even if it be held that the re-fixation of seniority in the junior scale of Class I Service was justified, the Order of the Government revising the seniority in the grade of Directors was in any case void and illegal. This point was urged on the basis that appointment to the Directors' grade was made on the basis of selection and there could not be automatic revision of seniority in that grade consequent upon the revision of seniority in the time scale of the Service.

The petition was opposed by respondents 1 and 2, the Union of India, and the Director-General of Posts and Telegraphs, as on behalf of some of the other respondents. Most of the facts put forward by the petitioners have been admitted, but

the inferences and conclusions drawn by the petitioners as well as the submissions on their behalf in the writ petition were challenged. The principal contention for resisting the petition was that the order dated 30th January 1957 fixing the seniority had been made by mistake as a result of the Government having ignored Supplementary Rule 2(15), the effect of which was that for purposes of seniority the service of respondents 3 to 7 in junior time scale Grade I was wrongly taken as commencing from the date of their confirmation in the Service, while, correctly, it should have been taken from the date on which these respondents joined as probationers. It was urged that, on a correct interpretation of the Rules, respondents Nos. 3 to 7 should have been held, even initially, to be senior to the petitioners in the junior scale of the Class T. Service. It was further urged that, since the revision of seniority in the junior time scale of Class I Service was justified and not arbitrary, the consequential revision of seniority in the grade of Directors of Postal Services was also valid. Arguments were addressed at length on both aspects of the case, but we think that it is not necessary for us in this case to decide the first point raised on behalf of the petitioners regarding the validity of the re-fixation of their seniority in the junior time scale of Class I Service by the order dated 5th June, 1965, because the petitioners could even obtain adequate relief on the alternative ground that the revision of seniority in the grade of Directors by the order dated 17th January, 1966 was void. The petitioners in para. 4 of their petition made a definite assertion that respondents 3 to 7 were all promoted as Directors after the petitioners. This factual assertion made in this paragraph has not been denied in any counter-affidavit filed on behalf of the various respondents. In the course of arguments before us, it was urged by learned counsel appearing for the respondents that the peti-
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tioners as well as respondents 3 to 7 were only shown as officiating in the grade of Directors in the Civil List and, consequently we should not base our decision on acceptance of the allegation made 'by the petitioners that the petitioners and respondents 3 to 7 had all been promoted as Directors. We are unable to accept this submission. The entry in the Civil List is no proof that the petitioners and the live respondents have not been promoted in accordance with the Rules laid down by the Government for promotion. If it was a fact that there had been no promotion in compliance with those Rules, the assertion made on behalf of the petitioners in the petition should have been specifically controverted.

The principles for appointment to the post of Directors of Postal Services were initially laid down by the Home Ministry's Memorandum dated 24th May, 1948 to which we have already referred. As indicated earlier, it was laid down that appointments to Grade It of the Directors of Postal Services were to be made by promotion by selection of the best officers in the senior time scale of the Indian Postal Services Class 1, seniority being regarded only where other qualifications were practically equal. From the very first stage, therefore, appointments to the Posts of Directors of Postal Services were to be made on the basis of merit and not on the basis of seniority. Seniority was to be taken into account -only if other qualifications were practically equal. it appears that, after 'the two grades of Directors of Postal Services were amalgamated, some fresh rules were promulgated. The relevant Rules have been brought to our

notice by placing before us extracts from Posts and Telegraphs Manual Volume IV, 4th Edn., in which paragraph 153 mentioned that the rules for recruitment to the grade of Directors of Postal Services in the Indian Postal Service Class I in the Posts and Telegraphs Department are given in Appendix 6-A. A copy of Appendix 6-A has also been placed before us. The Appendix bears the heading "Rules for recruitment to the grade of Directors of Postal Services in the Indian Postal Services, Class I in the Posts and Telegraph Department". Rule 2 in this Appendix lays down the scale of pay of the post in the grade which is admittedly Rs. 1,300-601,600. Rule 3 prescribes the method of recruitment and is as Follows:-

" Recruitment to posts in the grade shall be by selection from among the officers of the Senior Time Scale of the Indian Postal Service, Class I, one post being reserved for promotion of Presidency Postmasters, on the basis of selection."

This Rule also makes it clear that appointment to the grade of Directors of Postal Services is made by selection and not on the basis of promotion in accordance with seniority. The presumption exists that the promotion of the petitioners and respondents

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3 to 7 to the grade of Directors must have been made in accordance with these instructions and rules, so that the appointment of all these concerned parties as Directors was based on merit to be taken into account at the time of selection and not on seniority in the time scale of Class I Service. Once a member of the Class I Service in the time scale was selected for promotion to the grade of Director and given seniority over another officer selected later, the seniority so determined as a result of selection could not be made dependent on the seniority in the time scale. It is clear that, in these circumstances, even if there was justification for revising the seniority inter se of the petitioners and respondents 3 to 7 in the time scale of Class I Service, that revision of seniority could not in any way affect their order of seniority in the grade of Directors to which they were promoted on the basis of selection in accordance with the rules. It is, therefore, clear that, even if it be held that the order of the Government dated 5th June, 1965 revising the seniority of these officers in the junior time scale was valid, the order dated 17th January, 1966 revising the seniority in the grade of Directors of Postal Services is not valid and justified. The seniority in the grade of Directors of Postal Services was not dependent on the inter se seniority in the junior time scale and any alteration in the seniority in the latter could not form the basis for revising the seniority in the former grade. No other justification for the revision of the seniority in the grade of Directors of Postal Services was put forward on behalf of any of the respondents. It is, thus, clear that the revision of seniority in the grade of Directors of Postal Services by the order dated 17th January, 1966 was not based on any rule or appropriate principle applicable to determination of seniority in that grade, and must, therefore, be held to be totally arbitrary. Such an arbitrary order, which affects the civil rights of the petitioners in respect of future promotion, must, therefore, be struck down as violating Art. 16 of the Constitution. Once this order dated 17th January, 1966 is quashed, the petitioners will no longer be affected in future by the revision of their seniority in the time scale

of the Service by the order dated 5th June, 1965 and, consequently, we have refrained from going into the question of the validity of that order. The petitioners are not claiming any relief on the basis of the invalidity of the order dated 5th June, 1965 which would give to them any additional benefit over and above the relief which they can obtain on the order dated 17th January, 1966 being quashed. As a result, we allow this petition and quash the order dated 17th January, 1966, revising the seniority of the petitioners and respondents Nos. 3 to 7 in the grade of Directors of Postal Services. In the circumstances of this case, we direct that the petitioners 'will receive their costs from respondent No. 1.' V.P.S. Petition allowed. L7Sup.C.I./68--2,500-Sec. VI-24-4-69-GIPF.

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