

(2014) 05 AHC CK 0173

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 22972 of 2014

Arvind Kumar Dwivedi

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-05-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309, 352, 372
Government of India Act, 1935 — Section 241

Citation : (2014) 6 ADJ 236 : (2014) 4 ALJ 657 : (2014) 3 ESC 1797

Hon'ble Judges : Shashi Kant, J; Rajesh Kumar Agrawal, J

Bench : Division Bench

Advocate : Namit Srivastava, Ashok Khare and Navneet Kumar Shukla,
Advocate for the Appellant

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Heard Sri Ashok Khare, Senior Advocate, assisted by Sri Namit Srivastava and Navneet Kumar Shukla, learned counsel for the petitioner and Sri C.B. Yadav, learned Senior Advocate and Additional Advocate General, assisted by Sri Shashank Shekhar Singh, learned counsel for the respondents. The present writ petition is being disposed of with the consent of learned counsel for the parties in accordance to Rules at the stage of admission itself.

2. By means of the present petition, the petitioner is challenging the order dated 4th April, 2012, passed by the State Government, Annexure-20 to the writ petition, and the order dated 31st March, 2014, passed by the Central Administrative Tribunal, Lucknow Bench, in Original Application No. 179 of 2012 (Arvind Kumar Dwivedi v. Union of India and others).

3. Brief facts, giving rise to the present petition, are that the petitioner has worked as a Short Service Commissioned Officer (Demobilised) from 23rd March, 1975 to 20th April, 1980 and thereafter has been released from the service. In pursuance of the Advertisement NO. A-1/E-2/1980-81, relating to the Combined State Services Examination, 1980, the petitioner applied against four reserved

vacancies for released/disabled Army Officers/Emergency Commissioned/Short Service Commissioned Officers. The petitioner has been selected. An appointment letter dated 6th July, 1982 has been issued appointing the petitioner as a Deputy Collector. Pursuant to the appointment letter, the petitioner joined and started discharging his duties. He has been given the seniority on the basis of the selection in pursuance of the aforesaid advertisement. The petitioner filed Writ Petition No. 4816 of 1986, in respect of fixation of his seniority. Said writ petition has been disposed of by this Court vide order dated 24th September, 1991, asking the respondent to decide the representation of the petitioner in the light of the judgment dated 25th April, 1990 in Writ Petition No. 7409 of 1986.

4. It appears that Santosh Kumar Dwivedi and Susheel Kumar Yadav have also filed writ petitions in respect of fixation of their seniority. Their writ petitions have also been disposed of in the same term. Against the order of the writ Court, in the case of the petitioner as well as in the case of Santosh Kumar Dwivedi and Susheel Kumar Yadav, the State of U.P. filed Special Leave Petitions, which have been disposed of vide order dated 14th January, 1990. It is informed that SLP No. 13860 of 1993 relates to the petitioner. The Hon"ble Apex Court has observed that the High Court has committed manifest error in following the ratio of Kharbanda's case in Writ Petition No. 7409 of 1986. The order of the writ Court has been set aside and the matter has been remitted back to this Court for fresh disposal. In pursuance of the order of the Apex Court, Writ Petition Nos. 5930 of 1993 and 36370 of 1991 of Santosh Kumar Dwivedi and Susheel Kumar Yadav have been decided on 4th February, 1997.

5. The dispute before the Court was whether the services rendered in the Indian Army was to be included for the purposes of determination of the seniority, in accordance with Rule 5 of U.P. Non-Technical (Class-II/Group-B) Services (Appointment of Demobilised Officers) Rules, 1980 (In short "1980 Rules").

6. It may be mentioned here that Santosh Kumar Dwivedi worked in the Indian Army as a Short Service Commissioned Officer from 21st August, 1976 to 14th September, 1985. He appeared in U.P. Provincial Civil Services Exam, conducted in the year 1982, and joined the U.P. Provincial Civil Service on 15th September, 1985. He was allotted seniority of 1982 Batch in the Index of Gradation List. Susheel Kumar Yadav was commissioned as a Short Service Commissioned Officer in the Indian Army on 24th August, 1975 and released from the Army on 21st September, 1980. He appeared in the U.P. Provincial Civil Services Examination in December, 1980 and has been appointed as the Deputy Collector on 10th July, 1984. He has been allotted the seniority of 1981 Batch in Index of Gradation. The Division Bench of this Court held as follows:

"For aforesaid reasons the two writ petitions succeed and are allowed. The State Government is directed to correct the index of graduation list of officers of U.P. Provincial Civil Services by allotting the seniority to petitioners Santosh Kumar Dwivedi with the batch of 1977 and petitioner No. 2 Sushil Kumar Yadav with a

batch of 1976. The petitioners will be entitled for all benefits, in case they have been deprived of any, which they would have received had their seniority been shown in graduation list and its index in accordance with rule 5 of U.P. Non-technical (Class II)/Group B (Appointment) of Demobilised Officers Rules of 1980. A copy of this judgment will be kept on record of writ petition No. 36370 of 1991.

There shall be no order as to costs."

7. Aforesaid order has been corrected by the order dated 25th April, 1997 and in place of "1977", "1976" has been substituted. Against the order of the Division Bench, the State Government filed two Special Leave to Appeals No. 12314 and 12315 of 1997. By the order dated 26th September, 1997, the Apex Court has passed the following order:

"Shri S.B. Sanyal, the learned senior counsel appearing for the petitioner submits that in the impugned judgment, the High Court has placed reliance on the earliest judgment of this Court in Dilbag Singh v. State of U.P. and others, (1995) 4 SCC 495. The learned counsel has submitted that in Dilbag Singh case (supra) the Court has failed to take note of the provisions contained in Rule 4 of the U.P. Non-technical (Class-II) Services (Appointment of Demobilised Officer) Rules of 1990 which fixes the out off date August 6, 1978 and that benefit of seniority under Rule 5 is available only in respect of persons in whose case the process of recruitment was concluded or commenced prior to that date. The submission is that Dilbag Singh's case needs re-consideration. We consider it appropriate that the matter may be placed before a Bench of three Hon"ble Judges.

We order accordingly."

8. The three Judges Bench of the Apex Court, while deciding Appeals No. 12314 and 12315 of 1997, on 25th August, 1998, in the case of Mahesh Chand and Others Vs. State of U.P. and Others, held as follows:

6. The scope of Rule 5 is wider. It regulates the seniority and pay of persons appointed against vacancies referred to in the 1973 Rules. Therefore, while it may cover those who are appointed under Rule 4, it also covers all others who are appointed against vacancies referred to in the 1973 Rules. That being so, the judgment in the case Dilbag Singh which construed Rule 5, does not require reconsideration on the ground that Rule 4 was omitted from consideration.

9. In pursuance thereof, vide order dated 31st July, 1999, the seniority of Susheel Kumar Yadav and Santosh Kumar Dwivedi has been fixed.

10. Learned counsel for the petitioner submitted that it is not known that whether in pursuance of the order of the Apex Court, remanding the case back to this Court, whether Writ Petition No. 4816 of 1986, filed by the petitioner, has been decided or not. The file of the case is not traceable. Before the Tribunal, it was stated that the petition is still pending.

11. However, the petitioner filed a representation on 22nd January, 1999, which is Annexure-12 to the writ petition, before the State Government. In the representation, it has been stated that in view of the decision of the Apex Court, in the case of Dilbag Singh v. State of U.P. and others, dated 8th May, 1995, reported in Dilbag Singh Vs. State of U.P. and Others, wherein it has been held that Rule 5 of Seniority Rule, 1980 would be enforced upto 19th August, 1980, and in accordance to 1980 Rules and the decision of the Apex Court in Dilbag Singh's case, his seniority may be fixed taking into account services rendered in the Army. He also claimed parity with the case of Santosh Kumar Dwivedi and Susheel Kumar Yadav to whom seniority has been provided from 1977 and 1976, respectively, after giving the benefit of services rendered in the Army.

12. By the order dated 27th August, 1999, the State Government allowed the representation of the petitioner and has given seniority to the petitioner since 1976.

13. On the basis of the seniority fixed by the order dated 27th August, 1999, the Government Of India, Ministry of Personnel, Public Grievance and Pension, (Department of Personnel & Training), issued a notification dated 9th December, 2010, appointing the petitioner in the Indian Administrative Service against the vacancies determined by the State Government.

14. It appears that the similar benefit has been given, by the order dated 13th March, 2003 to Sudhir Kumar and Rajendra Singh and their names in the seniority list were placed in the years 1976 and 1977 in place of 1985 and 1987, respectively.

15. Being aggrieved by this order, three writ petitions, namely, Writ Petition Nos. 494 (S/B) of 2003 (Madhukar Dwivedi v. State of U.P. and others), 504 (S/B) of 2003 (Arvind Narain Mishra and others v. State of U.P. and others) and 1083 (S/B) of 2003 (Hari Charan Prakash v. State of U.P. and others) were filed in the Lucknow Bench of this Court.

16. By the order dated 30th September, 2008, all the aforesaid writ petitions were allowed and the Government Order dated 13th March, 2003 was quashed and the State Government was directed to reconsider the seniority of Sudhir Kumar and Rajendra Singh, after giving opportunity of hearing to the petitioners.

17. Against the aforesaid order of the writ Court, Sudhir Kumar and Rajendra Singh filed SLPs before the Apex Court. Rajendra Pratap Singh Yadav and Sureshwar also filed SLPs against giving seniority to Rakesh Kumar Jolly, who was in U.P. Police Service.

18. All the SLPs have been converted into Civil Appeals and have been decided by the Apex Court vide order dated 5th July, 2011. The judgment of the Apex Court is in Rajendra Pratap Singh Yadav and Others Vs. State of U.P. and Others,

19. The Apex Court ruled that 1973 Rules ceased to exist after five years, that is, after, 5th August, 1978. The life of the Rules, according to the judgment

delivered in Dilbagh Singh's case (supra), was extended upto 1980. In any event, no one could be given the benefit of 1973 Rules after 1980. It is further ruled that those appointments, which were not against the vacancies reserved under 1973 Rules, cannot be given benefit of 1973 Rules. It is observed that the respondent in the Appeal and other similarly placed employees could not have been given benefit of 1973 Rules as those Rules were not in existence when they were appointed. Therefore, they could not have derived any benefit from 1973 Rules. The Court has directed the State of Uttar Pradesh to prepare a fresh seniority list.

20. As per the law laid down by the Apex Court in the case of Rajendra Pratap Singh Yadav (Supra), it appears that a fresh seniority list has been prepared and by the order dated 27th November, 2011, the seniority of Sudhir Kumar and Rajendra Singh has been refixed denying the benefit of the service rendered in the army. In view of the law laid down by the Apex Court in the case of Rajendra Pratap Singh Yadav, the State Government issued notice to the petitioner to review the seniority of the petitioner in view of the law laid down by the Apex Court. The petitioner filed the reply on 8th December, 2011. On consideration of the reply of the petitioner, the Principal Secretary, State of U.P., passed the impugned order dated 4th April, 2012 wherein after denying the benefit of the service rendered in Army, the order dated 27th August, 1999 has been cancelled and fixed the seniority allotting batch of 1981.

21. Being aggrieved by the order, the petitioner filed Original Application No. 179 of 2012, which has been rejected by the impugned order.

22. Learned counsel for the petitioner submitted that:

(i) So far as fixation of the seniority, which has been determined by the order dated 27th August, 1999 is concerned, the same has become final inasmuch as it has not been challenged before any of the Court.

(ii) The seniority of the petitioner has been fixed in view of the law laid down by the three Judges' Bench of the Apex Court in the case of Mahesh Chandra wherein two Judges' Bench's decision in the case of Dilbag Singh has been approved. Dilbag Singh's case has not been set aside or over-ruled by the Apex Court.

(iii) In the case of Rajendra Pratap Singh Yadav, the petitioner was not the party, therefore, it was not binding upon the petitioner and as such reopening the case of the petitioner is wholly unjustified after such a long time. Though the judgment of the Apex Court operates retrospectively, but it may not be used to re-open the issue relating to the seniority, which has attained finality qua the petitioner.

(iv) In the case of Rajendra Pratap Singh Yadav, the Apex Court has observed that the benefit of Rule 1980 has been wrongly given in the case of Rakesh Kumar Jolly, Rajendra Singh and Sudhir Kumar. However, there is no direction to

reopen the case so far as the petitioner is concerned.

(v) The petitioner has been promoted to Indian Administrative Service Cadre and is working as the Divisional Commissioner, Basti. Since he ceased to be a member of Provincial Civil Service and, therefore, re-determination of the seniority of the petitioner is not justified.

(vi) It is the contention of learned counsel for the petitioner that in the said Special Leave Petition, the Intervenor Application has been filed by one Jintendra Mohan Sharma, stating therein, that two officers, namely, Santosh Kumar Dwivedi and Susheel Kumar Yadav were given the benefit of 1980 Rules as per the judgment of the Apex Court in the case of Dilbag Singh v. State of U.P. (supra) and others and Mahesh Chandra v. State of U.P. and others (supra), even though these officers did not fulfil the criteria of Rule 4 of the Appointment Rules of 1980. It is further stated that ten officers, who fulfilled the conditions of Rule 3 of Rule 1973, they did not fulfil requirement of Rule 4 of 1980 Rules. However, despite the factual and legal position and even though they did not fulfil the eligibility criteria, the benefit of services rendered by them in the Army has been extended to them for the purposes of seniority. A prayer has been made from the Court to issue notice to such persons. It is the contention of learned counsel for the petitioner that no such notice has been issued.

23. Sri Ashok Khare has filed a supplementary-affidavit, annexing copy of the order dated 15th April, 2014 wherein the benefit of 1980 Rules have been provided to one Chotai Ram Yadav, after his retirement, allotting him seniority of 1971 batch, although he has joined Uttar Pradesh Civil Services on 14th August, 1984.

24. Sri C.B. Yadav, learned Additional Advocate General, submitted as follows:

(i) The decision in the case of Rajendra Pratap Singh Yadav v. State of U.P., is a judgment in rem and not in persona and as such it is applicable to all the similarly situated persons.

(ii) In the case of Rajendra Pratap Singh Yadav (supra), the Apex Court has noticed the judgment in the case of Dilbag Singh (supra) and Mahesh Chandra (supra) and has ruled that 1973 Rules ceased to exist after five years, that is, on 5th September, 1978. The life of the Rules, 1973, according to the judgment, delivered in Dilbag Singh's case (supra), was extended upto 1980. In any event, no one could be given benefit of Rules, 1973 after 1980.

(iii) The Apex Court in the case of State of U.P. and Another Vs. Dinkar Sinha, has held that 1973 Rules was a temporary statute, which died its natural death on expiry thereof. 1980 Rules neither repealed nor replaced 1973 Rules and as such the question of continuation of 1973 Rules, thus, did not and could not arise.

(iv) He submitted that in paragraph 44, in the case of Rajendra Pratap Singh (supra) the Apex Court has categorically observed that "...We are clearly of the view that Respondent No. 4 and similarly placed employees could not have been

given the benefit of the 1973 Rules. These Rules were not in existence when they were appointed. Therefore, they could not have derived any benefit from 1973 Rules." The Apex Court further directed the State of U.P. to prepare a fresh seniority list. While preparing the fresh seniority list, similarly situated persons, like the petitioner, could not be ignored. All the similarly situated persons, including the petitioner, have to be placed in the seniority list as per law laid down by the Apex Court. Therefore, it is not open to the petitioner to state that the case of the petitioner for the redetermination of the seniority cannot be re-opened in the light of the decision of the Apex Court in the case of *Rajendra Pratap Singh Yadav v. State of U.P. and others* (supra).

(v) He submitted that initially Uttar Pradesh Non-Technical (Class II Services Reservation of Vacancies for Demobilised Officers) Rules, 1968 has been introduced on 29th March, 1968, which remained in force for a period of five years from the date of its commencement, which provided 20% permanent vacancies in all non-technical Class II Services to be filled by direct recruitment through competitive examination in any year to be filled by the Emergency Commissioned Officers and the Short Service Commissioned Officers of the Armed Forces, who were commissioned on or after November 1, 1962 and who were released at any time thereafter. On the expiry of five years, the Uttar Pradesh Non-Technical (Class II Services Reservation of Vacancies for Demobilised Officers) Rules, 1973 has been introduced on 6th August, 1973, which remained in force for a period of five years from the date of its commencement and expired on 6th August, 1978, which provided reservation of 10% vacancies to be filled by a competitive examination for Disabled Defence Services Officers, Emergency Commissioned Officers and the Short Service Commissioned Officers of the Armed Forces, who were commissioned on or after November 1, 1962, but before 10th January, 1968 and again on or after 3rd December 1971 and released any time thereafter. Further, Uttar Pradesh Non-Technical (Class-II/Group-B) Services (Appointment of Demobilised Officers) Rules, 1980 was introduced on 19th August, 1980 to cover those cases where the process of the recruitment was concluded or commenced prior to 6th August, 1978.

(vi) The object of introducing these Rules was to provide benefit to those youngmen who joined armed forces during the emergency and to those who were already in service and due to exigency of service had to serve during emergency. The object of these Rules has been considered by the Apex Court in the case of *Ram Janam Singh Vs. State of Uttar Pradesh* and another,

(vii) He next submitted that the petitioner has not been selected against the 10% vacancy of 1973 Rules, therefore, he is not entitled for any benefit under 1973 Rules. The petitioner has been selected in the year 1982. There is no pleading in the writ petition that the petitioner has been selected and appointed against 10% reserved vacancy for the Demobilised Commissioned Officers.

(viii) He submitted that in the year 1977, by the Government Order, bearing No.

2003, issued by the Government of U.P. on 20th August, 1977, reservation to the extent of 8% was provided to the Ex-Army Men, which has subsequently been reduced to 2%. The Advertisement No. A-1/E-2/1980-81 for combined State Services Examination, 1980, which is Annexure-2 to the writ petition, reveals that the total vacancy was 50 for Deputy Collector out of which 4 has been reserved for Released/Disabled Army Officers/ECO/SSG. Four vacancies against 50 vacancies, comes to 8%. This reservation was in pursuance of the Court's order dated 20th August, 1977. The petitioner applied against 8% quota reserved for Ex-Army Men. After the selection, the appointment letter has been issued on 6th July, 1982. In the appointment letter, it is categorically mentioned that the seniority of the above officers between themselves and in comparison to other officers who had been appointed in above services or who has to be appointed, will be determined lateron as per Uttar Pradesh Civil (Executive Branch) Service Regulation, 1941. Section 21 of Regulation 1941 provides that the seniority in the service will be determined by the date of the order of the appointment in a substantive vacancy, provided that if two or more candidates are appointed on the same date, their seniority will be determined according to the order in which the appointment of the candidate has been notified under sub-rule (1) of Rule 20. Therefore, the petitioner was not entitled for the benefit of 1973 Rules and 1980 Rules.

(ix) It is submitted that the decision in the case of Dilbag Singh and in the case of Mahesh Chandra Sharma has been considered in detail by the Division Bench of the Apex Court in the case of State of U.P. and Another Vs. Dinkar Sinha, wherein it has been held that 1980 Rules would cover only those persons, who were appointed against the vacancies referred in 1973 Rules and not those persons, who joined much later. Dilbag Singh's case and Mahesh Chandra Sharma's case has again been considered by the Division Bench in the case of Rajendra Pratap Singh Yadav v. State of Uttar Pradesh and others (Supra). The submission is that while replying the question No. 5, the Apex Court held that the service conditions mentioned in the order of appointment are binding on the employee and the employer alike, if the same are not against the statutory rules governing the service conditions or public policy or the provisions of the Constitution of India. Therefore, the seniority of the petitioner has to be determined in accordance Regulation of 1941 and in accordance to U.P. Public Service Rules 1942.

(x) He then submitted that on the noncompliance of the direction given by the Apex Court in the case of Rajendra Pratap Singh Yadav v. State of U.P. and others (supra), Arvind Kumar Mishra filed the Contempt Petition before Apex Court in which the State of U.P. filed the counter-affidavit wherein it has been stated that the benefit of 1973 Rules and 1980 Rules have been withdrawn in the case of all the similarly placed employees. The list of such employees has been placed before the Apex Court, which includes the name of the petitioner also.

(xi) Further, submission is that in view of the law laid down by the Apex Court,

referred hereinabove, it is evident that the petitioner is not entitled for the benefit of 1973 Rules and 1980 Rules inasmuch as the petitioner's selection was of after 1980 when the said Rules ceased to exist and further selection of the petitioner was not against the vacancy reserved under the said Rules and, therefore, the petitioner would not be entitled for the benefit of such Rules. As per the appointment letter, the seniority of the petitioner would be liable to be fixed in accordance to Regulation 42. The petitioner has been wrongly given the benefit of 1973 Rules and 1980 Rules on the ground of parity as such benefit has been given to Santosh Kumar Dwivedi and Susheel Kumar Yadav. Benefit given to Santosh Kumar Dwivedi and Susheel Kumar Yadav has also been withdrawn.

25. Lastly he submitted that in view of the submissions advanced hereinabove, the impugned order passed by the State Government and the order of the Tribunal are liable to be affirmed and the writ petition, being devoid of merits, is liable to be dismissed.

26. We have considered rival submissions and perused the materials available on record.

27. In the present case, the question for consideration is whether the petitioner is entitled to the seniority on the basis of his services rendered as Short Service Commissioned Officer in the Army.

28. It would be appropriate to firstly discuss the rules relevant for the present case.

29. The Governor of the then United Province (now the State of Uttar Pradesh) in exercise of his power u/s 241 of the Government of India Act, 1935 framed U.P. Police Service Rules, 1942 (for short "the 1942 Rules"). The terms and conditions of the services of the employees including recruitment thereto are governed thereby. Rule 21 of the 1942 Rules reads as under:

"21. Seniority in the Service shall be determined according to the date of the order of appointment in a substantive capacity and if two or more candidates are appointed on the same date, their seniority inter se shall be determined according to the order in which their names appear in the order of appointment:

Provided that-

(1) The inter se seniority of direct recruits selected in one batch shall be determined according to their merit at the selection but a candidate may lose his seniority if he fails to join without sufficient reasons when appointment is offered to him and the decision of the Governor as to the sufficiency of the reasons shall be final;

(2) The inter se seniority of the promotees, selected at one selection, relating to one particular year of recruitment shall be determined according to their seniority in the post from which they are promoted;...

(3) Vacancies are required to be filled on every occasion both by direct

recruitment and promotion and the inter se seniority of persons appointed by promotion and direct recruitment against the vacancies of a particular year, shall be determined by arranging their names alternatively, the first name being of the person appointed by promotion, and placing the names of the remaining persons below en bloc.

Explanation.--A direct recruit will not be entitled to seniority of the year earlier to the year of his recruitment solely on the ground that there had been no recruitment in that year."

30. The said Rule, upon coming into force of the Constitution of India, continued to remain in force in terms of Article 372 of the Constitution of India.

31. The President of India proclaimed Emergency on 1.11.1962 under Article 352 of the Constitution of India consequent upon the Chinese aggression. On account of grave threat to the security of India, a large scale recruitment of officers was to be made therefor. To answer the call of the nation, a large number of young persons gave up their softer career options and got themselves recruited to the Armed Forces of the Union of India to serve the motherland. The Emergency so proclaimed was revoked on 10.1.1968.

32. The Governor of U.P. on or about 29.3.1968 framed rules known as U.P. Non Technical (Class-II) Services (Reservation of Vacancies for the Demobilized Officers) Rules, 1968 (for short "the 1968 Rules") for a period of five years whereby and where-under inter alia reservation to the extent of 20% of the vacant posts were conceived for demobilized officers who had been commissioned in the Armed Forces during the Emergency. For the said purpose, relaxations were also made in certain areas. Rule 4 of the 1968 Rules provided grant of seniority to such demobilized officers by raising a legal fiction, subject however to the condition, that they would be deemed to have entered service at their second opportunity of competing for recruitment.

33. On or about 3.12.1971, in the wake of Indo-Pak war with regard to Bangladesh imbroglio, another external Emergency was proclaimed. A large scale recruitment was also made to Short Service and Emergency Commission wherein again many young persons opted to join the Armed Forces of the Union of India.

34. The Governor of U.P. on or about 6.8.1973 framed rules known as U.P. Non Technical (Class-II) Services (Reservation of Vacancies for the Demobilized Officers) Rules, 1973 (for short "the 1973 Rules") containing similar provisions. However, the extent of reservation was reduced from 20% to 10%. The benefit of the 1973 Rules was extended only to those officers who were commissioned between 1.11.1962 to 10.1.1968 and upto those who joined on or after 3.12.1971 and released at any time thereafter. The 1973 Rules were made applicable for a limited period of five years. It expired on 5.8.1978.

35. It appears that a GO bearing No. 2003 was issued by the Government of U.P. on 20.8.1977 providing for reservation to the extent of 8% only which was

eventually reduced to 2% in Class-II and Class-III Services of the State Government.

36. A new set of Rules known as U.P. Non Technical (Class-II/Group "B" Services) Appointment of Demobilized Officers Rules, 1980 (for short "the 1980 Rules") was made by the State on or about 19.8.1980 for the purpose of regularizing the appointments of demobilized officers whose selection process had been commenced or concluded under the 1973 Rules but appointments had not been made before the expiry thereof.

37. Indisputably, the 1980 Rules do not contain any provision in regard to reservation of vacancies for the demobilized officers of the Armed Forces of the Union of India.

38. To provide benefit to such persons who have joined armed forces and have been demobilised, U.P. Non-Technical (Class II Services Reservation of Vacancies for Demobilised Officers) Rules 1973 was introduced. It was enforced for five years, that is, upto 5th August, 1978. Relevant part of the Rules reads follows:

No. 6/1/72-Apptt. (4)

dated August 6, 1973.

In exercise of the powers under the proviso to Article 309 of the Constitution, and in suppression of the Uttar Pradesh Non-Technical (Class II) services (Reservation of vacancies for Demobilised Officers) Rules, 1968, published with Government notification 8/2/66-Apptt. (B), dated March 19, 1968, the Governor is pleased to make the following rules:

THE UTTAR PRADESH NON-TECHNICAL (CLASS II) SERVICES (RESERVATION OF VACANCIES FOR DEMOBILISED OFFICERS) RULES, 1973

1. Short title and commencement:

(1) These rules may be called the Uttar Pradesh Non-Technical (Class II) services (Reservation of Vacancies for Demobilised Officers) Rules, 1973.

(2) They shall come into force at once.

(3) They shall remain in force (for a period of five years) from the date of their commencement.

2. Definition: In these rules unless the context otherwise requires:

(1) "Armed Forces of the Union" means the, Naval, Military or Air Forces of the Union and includes the Armed Forces of the former Indian states,

(2) "Disabled Defence Service Officer" means a commissioned officer who while serving in the Armed Forces of the Union was disabled in the course of operations against the enemy or in disturbed areas:

(3) "Non Technical (Class II) Services" means all class II services (except

engineering services) recruitment to which is made upon the result of competitive examination.

(3) Reservation of Vacancies: (1) Ten percent of the permanent Vacancies in all non-technical (Class II) services to be filled substantively by direct recruitment through competitive examination in any year, shall be reserved for being filled in by the Disabled Defence Service Officers, emergency Commissioned officers and the short service Commissioned Officers of the Armed Forces of the Union who were commissioned on or after November 1, 1962, but before January 10, 1968, and again on or after December 3, 1971 and released at any time thereafter.

Provided that the reservation so made shall be utilized first for the appointment of Disabled Defence Service Officer and if any vacancy remain unfilled, the same shall be then be made available to other emergency commissioned officers and short service commissioned officers.

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4. Method of recruitment: (1) for the purpose recruitment to the vacancies reserved under sub-rule (1) or sub-rule (3) of rule 3, a competitive examination shall be held by the Lok Sewa Ayog in only the compulsory subjects prescribed for the competitive examination under the rules applicable to the service concerned.

(2) After the marks obtained by candidates in the written test have been received the Ayog shall summon for viva voce test as any candidates as have in its opinion, shown their suitability for appointment in the written test and shall award marks up to the maximum prescribed in the relevant service rules.

Army service also be taken into account while awarding marks in the viva voce test. The marks so allotted will be added to be marks obtained in the written test.

6. Seniority and pay:(1) Seniority and pay of candidates appointed against the vacancies (reserved under sub-rule (1) of rule 3), shall be determined on the assumption that they entered the service concerned at their second opportunity, of competing for recruitment, and they shall be assigned the same year of allotment as successful candidates of the relevant competitive examination;

Provided that any such candidate who had two opportunities before the date of his joining the training prior to his commission, whether he actually availed any such opportunity or not, shall be assigned the same year of allotment as successful candidate of the first competitive examination held after the said date.

Explanation: The year of a candidate's second opportunity will be determined by the date of his birth in relation to the prescribed minimum age for competing for recruitment to the service.

(2) Seniority inter se of candidates who are appointed against vacancies reserved under sub-rule (1) of rule 3 and allotted to a particular year, shall be determined according to the merit list prepared by the Ayog on the basis of the results of

their performance at the examination.

(3) All candidates appointed against vacancies reserved under sub-rule (1) of rule 3 and allotted to any particular year shall rank below the candidates who were successful at the competitive examination held for recruitment to the service in that year.

(4) The pay of candidates appointed against vacancies referred to in sub-rule (3) of rule 3 shall so be determined in the same manner as indicated in sub-rule (1) of this rule but their seniority shall be determined in accordance with the foregoing sub-rules only if and at the point of time when they are appointed substantively against permanent vacancies.

39. In cases where the process of recruitment either has not been concluded or commenced prior to 6th August, 1978, to regularise the appointment of such Demobilised Short Service Commissioned officers, Uttar Pradesh Non-Technical (Class-II/Group-B) Services (Appointment of Demobilised Officers) Rules, 1980 (In short "1980 Rules") has been introduced. 1980 Rules read as follows:

Published in the P Gazette, Part-I-A, dated December 20, 1980

KARMIK VIBHAG

August 19, 1980

No. 6-1-72 Karmik-2-In exercise of the power under the proviso to Article 309 of the Constitution the Governor is pleased to make the following rules:

1. Short title and commencement: (1) These may be called the Uttar Pradesh Non-Technical (Class II/Group B) Services [Appointment of Demobilised Officers] Rules, 1980.

[2] They shall be deemed to have come into force with effect from August, 1978.

2. Overriding Effect.--These rules shall have notwithstanding any thing to the contrary contained in any rules or orders.

3. Definitions.--In these rules unless the context otherwise requires.

[a] "Armed Forces of the Union" mean the Nava, Military or Air Forces of the Union and include the Armed Forces of the Armed forces of the former Indian States;

[b] "Disabled Officer" means Disabled Defence Service Officer, Emergency Commissioned Officer and the Short Service Commissioned on or after November 1, 1962, but before January 10, 1968 or on or after December 3, 1971 and released at any time thereafter.

[c] "Disabled Defence Service Officer" means a Commissioned Officer who while service in the Armed Forces of the Union was disabled in the course of operation against the enemy or in disturbed areas.

4. Appointment: A person, selected for appointment to a non-technical Class II/ Group B service or post, against the vacancies reserved for Demobilised Officers, as a result of recruitment, the process of which was concluded or commenced prior to August 6, 1978. In accordance with the Provisions of the Uttar Pradesh Non-Technical [Class II] Service [Reservation of Vacancies for Demobilised Officer] Rules, 1973 [hereinafter to be referred to as the said rules] shall be eligible and be considered for appointment against the vacancies reserved for Demobilised Officers under the said rules:

Provided that the reserved vacancies shall be utilized first for the appointment of Disabled Defence Service Officers, and, if any such Vacancies still remain unfilled the same shall then be made available to other Emergency Commissioned Officers and Short Services Commissioned Officers:

Explanation: the notification of vacancies or the advertisement there of by the Commission shall, among other, be a process of recruitment within the meaning of this rule.

5. Seniority and pay: [1] Seniority and pay of persons appointed against the vacancies referred to in the said rules shall be determined on the assumption that they entered the service concerned at the second opportunity of competing for recruitment, and they shall be assigned the same year of allotment as successful candidates of the relevant competitive examination.

Provided that any such candidate who had two opportunities before the date of his joining the training prior to his commission, whether he actually availed any such opportunity or not, shall be assigned the same year of allotment as successful candidates of the first competitive examination held after the said date.

Explanation [1] The year of candidate's second opportunity will be determined by the date of his birth in relation to the prescribed minimum age for competing for recruitment to the service.

[2] Seniority inter se of candidates, referred to in sub-rule [1] and allotted to a particular year shall be determined according to the merit list prepared by the Public Service Commission on the basis of their performance at the examination.

[3] All candidates appointed against vacancies, referred to in sub-rule [1] and allotted to any particular year, shall rank below the candidate who were successful at the competitive examination held for recruitment to the service in that year.

[4] The day of candidate's appointed against permanent vacancies, initially to be filled on temporary basis, or against temporary vacancies which are likely to be made permanent or to continue on a long term basis, shall also be determined in the same manner as indicated in sub-rule [1] of this rule but their seniority shall be determined in accordance with the foregoing sub rules only if and at the point of time they are substantively appointed against permanent.

40. In view of the aforesaid Rules, those Ex-Army Men, who have been selected and appointed against the reserved vacancies under such Rules, they have been given the benefit of their services rendered in the Army in determination of their seniority.

41. 1968 Rules, 1973 Rules and 1980 Rules came up for consideration before the Apex Court in the case of Narendra Nath Pandey and Others Vs. State of U.P. and Others,

42. The aforesaid Rules have been considered in extensia in the case of State of U.P. and others v. Dinkar Sinha (supra) wherein the decisions of the Apex Court in the case of Dilbag Singh's case (supra) and Mahesh Chand's case (supra) have also been considered. The Apex Court held as follows:

"The said Rule upon coming into force of the Constitution of India, continued to remain in force in terms of Article 372 of the Constitution of India. The President of India proclaimed Emergency on 1.11.1962 under Article 352 of the Constitution of India consequent upon the Chinese aggression. On account of grave threat to the security of India, a large scale recruitment of officers was to be made therefor. To answer the call of the nation, a large number of young persons gave up their softer career options and got themselves recruited to the Armed Forces of the Union of India to serve the motherland. The Emergency so proclaimed was revoked on 10.1.1968.

The Governor of U.P. on or about 29.3.1968 framed rules known as U.P. Non Technical (Class-II) Services (Reservation of Vacancies for the Demobilized Officers) Rules, 1968 (for short "the 1968 Rules") for a period of five years whereby and whereunder inter alia reservation to the extent of 20% of the vacant posts were conceived for demobilized officers who had been commissioned in the Armed Forces during the Emergency. For the said purpose, relaxations were also made in certain areas. Rule 4 of the 1968 Rules provided grant of seniority to such demobilized officers by raising a legal fiction, subject however to the condition, that they would be deemed to have entered service at their second opportunity of competing for recruitment.

On or about 3.12.1971, in the wake of Indo-Pak war with regard to Bangladesh imbroglio, another external Emergency was proclaimed. A large scale recruitment was also made to Short Service and Emergency Commission wherein again many young persons opted to join the Armed Forces of the Union of India.

The Governor of U.P. on or about 6.8.1973 framed rules known as U.P. Non Technical (Class-11) Services (Reservation of Vacancies for the Demobilized Officers) Rules, 1973 (for short "the 1973 Rules") containing similar provisions. However, the extent of reservation was reduced from 20% to 10%. The benefit of the 1973 Rules was extended only to those officers who were commissioned between 1.11.1962 to 10.1.1968 and upto those who joined on or after 3.12.1971 and released at any time thereafter. The 1973 Rules were made applicable for a limited period of five years. It expired on 5.8.1978.

It appears that a GO bearing No. 2003 was issued by the Government of U.P. on 20.8.1977 providing for reservation to the extent of 8% only which was eventually reduced to 2% in Class-II and Class-III Services of the State Government.

A new set of Rules known as U.P. Non Technical (Class-II/Group "B" Services) Appointment of Demobilized Officers Rules, 1980 (for short "the 1980 Rules") was made by the State on or about 19.8.1980 for the purpose of regularizing the appointments of demobilized officers whose selection process had been commenced or concluded under the 1973 Rules but appointments had not been made before the expiry thereof.

The 1968 Rules, the 1973 Rules and the 1980 Rules were framed with a view to encourage young men to join Indian Army. They were made with a view to meet particular exigencies. Whereas the 1968 Rules and the 1973 Rules were primarily made for providing reservation to vacancies for demobilized officers, the 1980 Rules sought to achieve a different purpose, as it does not provide for any reservation.

Whereas Rule 3(1) of the 1973 Rules provided for reservation of 10% to the Emergency Commissioned or Short Service Commissioned officers who were commissioned during the period mentioned therein, Rule 4 thereof conferred benefit on persons appointed only in that category. Benefit of seniority and pay was to be extended on such employees on assessment of their second opportunity of competing. Such second opportunity was to be counted from the date of birth in respect of minimum age for competing. The State made the said provision only for a section of employees who might have intended to sacrifice their soft career during the period of Emergency as recruitment process in their case might have started during the period when the 1973 Rules were in force but could not be completed. The 1980 Rules seek to give limited retrospective effect by conferring benefits in regard to appointment to the reserved post for the demobilized officers whose process of recruitment was to be completed or commenced before 6.8.1978 in accordance with the 1973 Rules. Rule 5 of the 1980 Rules, however, is in pari materia with Rule 6 of the 1973 Rules.

Respondent had never contended that his case was governed by the 1973 Rules. He proceeded on the basis that only because the process of selection started in the year 1975, and he having been selected when the 1973 Rules were applicable, his case for recruitment did not come within the purview of the reserved category of candidates as envisaged under the 1973 Rules which, it will bear repetition to state, was in force only upto 5.8.1978.

Submission of Mr. Rai that the respondent having joined the pre-commissioned training in 1978 would be entitled to the benefit of the 1973 Rules or thereby rights were accrued to him, in our opinion, has no merit.

The 1980 Rules, as noticed hereinbefore, only have a limited operation by regularizing appointments of demobilized officers whose selection process had

been commenced or concluded under the 1973 Rules but appointments had not been made before the expiry thereof. There was no provision for reservation of vacancies for the demobilized officers of the Armed Forces of the Union of India.

The 1973 Rules was a temporary statute. It died its natural death on expiry thereof. The 1980 Rules does not contain any repeal and saving clause. The provisions of the relevant provisions of the General Clauses Act will, thus, have no application. Once a statute expires by efflux of time, the question of giving effect to a right arising thereunder may not arise. In any event, in this case, no such right accrued to the respondent. Reservation to the extent of 2% might have been fixed by reason of a Government Order issued in the year 1977 but the same had nothing to do with the 1973 Rules or with the 1980 Rules. Provision for reservation made in general by the State in exercise of its executive power could not have conferred a benefit in terms of the provisions of a rule which seeks to apply to a particular category of employees in the service.

The 1980 Rules neither repealed nor replaced the 1973 Rules. The question of continuation of the 1973 Rules by the 1980 Rules, thus, did not and could not arise. The 1980 Rules provided for a new set of rules. They were to have a limited application, viz., regularization of appointment of demobilized officers.

Not only the nomenclature of the 1980 Rules is different from that of the 1973 Rules, the purport and object is also different. Whereas the 1973 Rules provided for reservation of vacancies for the demobilized officers, the 1980 Rules provided for appointment of demobilized officers to a limited category of employees.

The 1980 Rules to the aforementioned effect has been given a retrospective effect, i.e. from 6.8.1978 only for achieving the said purpose noticed hereinbefore. By reason thereof, thus, the 1973 Rules had not been kept alive. We may at this juncture notice that Lahoti, J. (as the learned Chief Justice then was) in *Ramji Purshotam (D) by Lrs. and Others Vs. Laxmanbhai D., Kurlawala (D) by Lrs. and Another*, stated:

"14. Justice G.P. Singh states in *Principles of Statutory Interpretation* (9th Edn., 2004, at p. 462)-

The fact that a prospective benefit under a statutory provision is in certain cases to be measured by or depends on antecedent facts does not necessarily make the provision retrospective.... the rule against retrospective construction is not always applicable to a statute merely "because a part of the requisites for its action is drawn from time antecedent to its passing".

In *Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha*, the Constitution Bench held that Bombay Act 57 of 1947 is a piece of legislation passed to protect the tenants against the evil of eviction. And the benefit of the provisions of the Act ought to be extended to the tenants against whom the proceedings are pending on the date of coming into force of the legislation."

In Dilbag Singh (supra), whereupon strong reliance has been placed by Mr. Rai, the appellant therein was commissioned on 22.9.1974 and in the aforementioned situation, it was held that the selection process having started after 1973 and he having been appointed during the period when the 1973 Rules had been into force, by reason of Rule 5 of the 1980 Rules, the 1973 Rules must be deemed to be in operation till then. The decision of this Court in the fact of that case may be correct but then it is distinguishable in the sense that in the instant case the respondent had joined Commissioned Service only in the year 1979. Whether he was selected as a commissioned officer or whether he had undergone pre-commissioned training is not relevant for applicability of the 1980 Rules. What was relevant is as to from which date he became a Commissioned Officer. If he became a Commissioned Officer only after 5.8.1978, i.e., after the expiry of the 1973 Rules, the question of his getting any benefit under the 1973 Rules would not arise.

The same principle has been reiterated in Mahesh Chand (supra) wherein this Court held: (SCC p. 494, para 6)

"6. The scope of Rule 5 is wider. It regulates the seniority and pay of persons appointed against vacancies referred to in the 1973 Rules. Therefore, while it may cover those who are appointed under Rule 4, it also covers all others who are appointed against vacancies referred to in the 1973 Rules. That being so, the judgment in the case of Dilbag Singh which construed Rule 5, does not require reconsideration on the ground that Rule 4 was omitted from consideration."

It is, therefore, evident that the 1980 Rules would cover only those persons who were appointed against the vacancies referred to in the 1973 Rules and not those who joined much later.

The purport for which such benefits had been given has been considered in Ram Janam Singh (supra), wherein it has been held: (SCC p. 629, para 14)

"14. Can it be said that the persons who had joined Army after the declaration of emergency due to foreign aggression and those who joined after the war came to an end stand on the same footing? Those who joined Army after revocation of emergency joined Army as a career. It is well known that many persons who joined army service during the foreign aggression, could have opted for other career or service. But the nation itself being under peril, impelled by the spirit to serve the nation, they opted for joining Army where then risk was writ large. No one can dispute that such persons formed a class by themselves and by rules aforesaid an attempt has been made to compensate those who returned from war if they compete in different services. According to us, the plea that even persons who joined army service after cessation of foreign aggression and revocation of emergency have to be treated like persons who have joined army service during emergency due to foreign aggression is a futile plea and should not have been accepted by the High Court. It need not be impressed that whenever any particular period spent in any other service by a person is added

to the service to which such person joins later, it is bound to affect the seniority of persons who have already entered in the service. As such any period of earlier service should be taken into account for determination of seniority in the later service only for some very compelling reasons which stand the test of reasonableness and on examination can be held to be free from arbitrariness."

The Respondent in this case admittedly joined the services after the Emergency was over. Furthermore, he joined the State service only in the year 1988 when the 1980 Rules ceased to have any force.

43. 1973 Rules and 1980 Rules again came up for consideration before the Apex Court in the case of Rajendra Pratap Singh Yadav and others v. State of U.P. and others (Supra). The Apex Court in this case has considered earlier decisions of the Apex Court as also the decision of the Apex Court in the case of Dilbag Singh and in the case of Mahesh Chand. The Apex Court has held as follows:

It is well known that many persons who joined the Army service during the foreign aggression could have opted for other career or other softer career or service but the nation itself being under peril, impelled by the spirit to serve the nation, they opted for joining the Army where the risk was little more. Such persons formed a class by themselves and by framing Rules an attempt had been made to compensate those who returned from the war if they compete in different services. The persons who joined the Army service after cessation of the foreign aggression and revocation of emergency cannot be treated like persons who have joined the Army during emergency due to foreign aggression and similar benefits cannot be given to such persons even by making rules.

The appellants also submitted that whenever any particular period is spent in any service by a person is added to the service to which such person joined later; it is bound to affect the seniority of persons who have already entered in the service. As such, any period of earlier service should be taken into account for determination of seniority in the latter service only for special or compelling reasons, which stand test of reasonableness and on examination, can be held to be free from arbitrariness. Therefore, the decision of the Government of India to give seniority to respondent No. 4, who did not join the armed forces during emergency and thus stealing a march over 181 officers is not only contrary to the Rules but is discriminatory and arbitrary and violative of Articles 14 and 16 of the Constitution of India.

According to the appellants, the High Court in the impugned judgment did not appreciate the controversy involved in the case in proper perspective and dismissed the writ petition. The appellants aggrieved by the said judgment of the High Court filed these appeals before this Court.

In Ex-Capt. A.S. Parmar and Others Vs. State of Haryana and Others, this Court held that the seniority of the Military Service rendered by the Armed Forces Personnel who joined the Military Service during emergency would only be counted for the purpose of seniority in the civil service and the Military Service

rendered subsequent to the lifting of emergency cannot be taken into account for the purpose of reckoning the seniority in the civil post.

In *Union of India v. Dr. S. Krishna Murthy*, (1989) 4 SCC 689, this Court observed that the persons who had joined the armed forces after the declaration of the emergency at the time when the security of the nation was in peril due to external aggression had voluntarily offered their services for the defence of the country. They belong to a separate class and there is no question of discrimination in giving the benefits of seniority to them in the civil services by framing Rules.

This Court in *Dhan Singh and others Vs. State of Haryana and others*, , specifically held that the young persons who had joined the military service during emergency and those who were already in the service and due to exigency of the service had been compelled to serve during the emergency form two distinct classes. Those who joined the Army before the proclamation of the emergency had chosen the career voluntarily and their services during emergency were a matter of course. The person who got enrolled or commissioned during the emergency, on the other hand, on account of the call of the nation joined the Army at that critical juncture of national emergency to save the motherland by taking a greater risk where danger to life of a member of the armed forces was higher. They include persons who could have pursued their studies, acquired higher qualifications and could join a higher post and those who could have joined the Government service before attaining the maximum age prescribed and thereby gained seniority in the service. Foregoing all these benefits and avenues, they joined the Army keeping in view the needs of the country and assurances contained in conditions of service in executive instructions. The latter formed a class by themselves and they cannot be equated with those, who joined the Army before proclamation of the emergency.

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Under Rule 3 of 1973 Rules, 10% of the permanent vacancies in all Non-Technical (Class-II) services were reserved for Emergency Commissioned Officers who joined the armed forces during the first emergency i.e. 1.11.1962 to 10.1.1968 and during the second emergency i.e. 3.12.1971 to 27.3.1977. Under Rule 1(2), these rules were to remain in force only for a period of 5 years. Rule 6 provided for seniority and pay and specifically provided that seniority of the candidates appointed against the 10% vacancies reserved under Rule 3 should be determined on the assumption that they entered the service at their second opportunity of competing of recruitment and they should be assigned the same year of allotment as successful candidates of the relevant competitive examination. Therefore, the benefit of the 1973 Rules cannot be extended after these Rules ceased to exist on 5.8.1978 and to the persons whose appointment in the civil posts was not under the vacancies reserved under Rule 3 of the 1973 Rules.

When the 1973 Rules lapsed in 1978 some selections for the vacancies reserved under the 1973 Rules were concluded or the selection process was on but the appointments could not be made. To regularize the selection and appointment of these officers against the vacancies reserved under the 1973 Rules, a new set of Rules i.e., 1980 Rules were promulgated on 19.8.1980 by the State Government.

The 1980 Rules have been given retrospective effect with effect from. 6.8.1978 to regularize the appointment of the demobilized officers whose selection process was concluded or commenced before 6.8.1978 otherwise appointment orders of those officers after 6.8.1978 to 19.8.1980 would have been invalid who were given benefit of 1973 Rules. Rule 4 of the 1980 Rules prescribes a cut-off date which provides that benefits of the Rules shall be available only against the vacancies reserved for demobilized officers under 1973 Rules whose process of recruitment commenced or was completed prior to the 6.8.1978 when the 1973 Rules had lapsed. Therefore, a demobilized officer, whose selection was not against the vacancies reserved under the 1973 Rules and his process of selection started after 6.8.1978, by no stretch of imagination, is entitled to the seniority under the 1980 Rules.

In the case of Rana Randhir Singh and Others Vs. State of U.P. and Others, , this Court has specifically held that the seniority of the officers appointed in the U.P. Police Service after 1980 shall be determined in accordance with the provisions of Rule 21 of the U.P. Police Service Rules, 1942. Therefore, the respondent could not have been assigned seniority of eight years only because he happened to be a Short Service Commissioned Officer.

In reply to question No. 5 i.e. "when the order of appointment itself provides that the seniority of the selected Short Service Commissioned Officer shall be determined according to the Uttar Pradesh Police Service Rules, 1942, can the Government de hors the terms of the appointment order grant him seniority of 8 years because he happened to be a Short Service Commissioned Officer", the appellants submitted that it is trite law that the service conditions mentioned in the order of appointments are binding on the employee and employer alike if the same are not against the statutory rules governing the service conditions or public policy or the provisions of the Constitution of India. The appointment order of respondent No. 4 specifically mentions that the seniority of Respondent No. 4 and other officers selected shall be determined in accordance with the U.P. Police Service Rules, 1942. It is also submitted that having accepted this service condition as mentioned in the appointment order, the claim of respondent No. 4 for grant of eight years seniority as he was Short Service Commissioned Officer could not have been allowed.

In Dinkar Sinha (supra) the controversy has been set at rest where this Court has categorically held that a person whose appointment in the civil/police service is not against the vacancies reserved under the 1973 Rules cannot claim seniority under the 1980 Rules.

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The 1973 Rules ceased to exist after five years i.e. on 5.8.1978. The life of the Rules, according to the judgment delivered in Dilbag Singh (Supra) was extended upto 1980. In any event, no one could be given benefit of 1973 Rules after 1980. Admittedly, respondent No. 4 was appointed in 1994 and the benefit could not have been extended to respondent No. 4.

The same Rules came up for consideration in Dinkar Sinha's case (supra) wherein the Court observed as under:

"31. The 1973 Rules was a temporary statute. It died its natural death on expiry thereof. The 1980 Rules does not contain any repeal and saving clause. The provisions of the relevant provisions of the General Clauses Act will, thus, have no application. Once a statute expires by efflux of time, the question of giving effect to a right arising thereunder may not arise. In any event, in this case, no such right accrued to the respondent. Reservation to the extent of 2% might have been fixed by reason of a Government order issued in the year 1977 but the same had nothing to do with the 1973 Rules or with the 1980 Rules. Provision for reservation made in general by the State in exercise of its executive power could not have conferred a benefit in terms of the provisions of a rule which seeks to apply to a particular category of employees in the service.

32. The 1980 Rules neither repealed nor replaced the 1973 Rules. The question of continuation of the 1973 Rules by the 1980 Rules, thus, did not and could not arise. The 1980 Rules provided for a new set of rules. They were to have a limited application viz. regularisation of appointment of Demobilised Officers."

Consequently, persons who joined the Army after the emergency was over cannot also be given the benefit which was extended to those persons who joined the Army during emergency. Those who joined the Army during the period of emergency virtually joined the war which was being fought by the nation. The benefit extended to such persons cannot be extended to the members of the armed forces who had joined the Army during normal periods.

Persons who have joined the Army during the foreign aggression could have opted for other career or softer career or service but the nation itself being under peril, impelled by the spirit to serve the nation, they opted for joining the Army where the risk was much more. Such persons formed a class by themselves and the benefit extended to them cannot be extended to the persons who joined the Army during the normal times. The differential treatment given to those who joined the Army during emergency cannot be termed as discriminatory and arbitrary.

Respondent No. 4, after the judgment of the High Court and after four years from the date of publication of the final list, filed a representation before the State Government that he be similarly placed as Dinkar Sinha as he being assigned seniority of 1980 batch. The State Government granted seniority to

respondent No. 4 and he was given a jump of 181 places and the final seniority list was disturbed by the State. The appointment of respondent No. 4 was not against the vacancies reserved under the 1973 Rules, therefore, he cannot get benefit of 1973 Rules.

In Rana Randhir Singh's case (supra), this Court clearly held that the seniority of the officers appointed in the U.P. Police Service after 1980 shall be determined in accordance with the provisions of Rule 21 of the U.P. Police Service Rules, 1942. Respondent No. 4 was appointed in 1994, therefore, the 1942 Rules would be applicable to him as the said Rules are still in force.

Respondent No. 4 did not join the armed forces during emergency and thus stealing a march over 181 officers is not only contrary to the Rules but is discretionary and arbitrary and violative of Articles 14 and 16 of the Constitution. We are clearly of the view that respondent No. 4 and similarly placed employees could not have been given the benefit of the 1973 Rules. These Rules were not in existence when they were appointed. Therefore, they could not have derived any benefit from the 1973 Rules. Consequently, we are constrained to set aside the impugned judgment of the High Court. We have no hesitation in holding that respondent No. 4-Rakesh Kumar Jolly, Rajendra Singh and Sudhir Kumar were wrongly given the benefit of the 1973 Rules.

We deem it appropriate to reiterate that in service jurisprudence there is immense sanctity of a final seniority list. The seniority list once published cannot be disturbed at the behest of person who chose not to challenge it for four years. The sanctity of the seniority list must be maintained unless there are very compelling reasons to do so in order to do substantial justice. This is imperative to avoid avoidable litigation and unrest and chaos in the services.

We, therefore, direct the respondent-State of U.P. to prepare a fresh seniority list and place all three of them on their respective positions as they had not received the benefit of 1973 seniority. There has been a considerable delay in this matter, therefore, we direct the State of U.P. to publish a fresh seniority list as expeditiously as possible, in any event within two months from the date of this judgment.

In the facts and circumstances of this case, we make it clear that the financial benefits which have already been extended to Respondent 4 Rakesh Kumar Jolly, Rajendra Singh and Sudhir Kumar may not be recovered from them.

44. In brief, the Apex Court ruled as follows:

(i) The 1980 Rules, as noticed hereinbefore, only have a limited operation by regularizing appointments of demobilized officers whose selection process had been commenced or concluded under the 1973 Rules but appointments had not been made before the expiry thereof. There was no provision for reservation of vacancies for the demobilized officers of the Armed Forces of the Union of India.

(ii) The 1973 Rules was a temporary statute. It died its natural death on expiry

thereof. The 1980 Rules does not contain any repeal and saving clause.

(iii) The 1980 Rules neither repealed nor replaced the 1973 Rules. The question of continuation of the 1973 Rules by the 1980 Rules, thus, did not and could not arise. The 1980 Rules provided for a new set of rules. They were to have a limited application, viz., regularization of appointment of demobilized officers.

(iv) The 1980 Rules to the aforementioned effect has been given a retrospective effect, i.e. from 6.8.1978 only for achieving the said purpose noticed hereinbefore. By reason thereof, thus, the 1973 Rules had not been kept alive.

(v) 1980 Rules would cover only those persons who were appointed against the vacancies referred to in the 1973 Rules and not those who joined much later.

(vi) the benefit of the 1973 Rules cannot be extended after these Rules ceased to exist on 5.8.1978 and to the persons whose appointment in the civil posts was not under the vacancies reserved under Rule 3 of the 1973 Rules.

(vii) When the 1973 Rules lapsed in 1978 some selections for the vacancies reserved under the 1973 Rules were concluded or the selection process was on but the appointments could not be made. To regularize the selection and appointment of these officers against the vacancies reserved under the 1973 Rules, a new set of Rules i.e. 1980 Rules were promulgated on 19.8.1980 by the State Government.

(viii) The 1980 Rules have been given retrospective effect with effect from 6.8.1978 to regularize the appointment of the demobilized officers whose selection process was concluded or commenced before 6.8.1978 otherwise appointment orders of those officers after 6.8.1978 to 19.8.1980 would have been invalid who were given benefit of 1973 Rules. Rule 4 of the 1980 Rules prescribes a cut-off date which provides that benefits of the Rules shall be available only against the vacancies reserved for demobilized officers under 1973 Rules whose process of recruitment commenced or was completed prior to the 6.8.1978 when the 1973 Rules had lapsed. Therefore, a demobilized officer, whose selection was not against the vacancies reserved under the 1973 Rules and his process of selection started after 6.8.1978, by no stretch of imagination, is entitled to the seniority under the 1980 Rules.

(ix) When the order of appointment itself provides that the seniority of the selected Short Service Commissioned Officer shall be determined according to the Uttar Pradesh Police Service Rules, 1942, can the Government dehors the terms of the appointment order grant him seniority of 8 years because he happened to be a "Short Service Commissioned Officer".

(x) In Dinkar Sinha (supra) the controversy has been set at rest where this Court has categorically held that a person whose appointment in the civil/police service is not against the vacancies reserved under the 1973 Rules cannot claim seniority under the 1980 Rules.

(xi) The 1973 Rules ceased to exist after five years i.e. on 5.8.1978. The life of the Rules, according to the judgment delivered in Dilbag Singh (Supra) was extended upto 1980. In any event, no one could be given benefit of 1973 Rules after 1980.

(xii) The decisions in the case of Dilbag Singh v. State of U.P. (supra) and in the case of Mahesh Chand v. State of U.P. (supra), have been considered and explained by the Apex Court in the case of State of U.P. v. Dinkar Sinha (supra) and Rajendra Pratap Singh v. State of U.P. and others (supra).

45. In the present case, admittedly, the petitioner has applied for the post of Deputy Collector in pursuance of the Advertisement No. A-1/E-2/1980-81 against four vacancies, which is 8% of the total number of vacancies reserved for Ex-army men and not against 10% reserved vacancies under 1973 Rules. In the appointment letter itself, it is categorically mentioned that the seniority shall be determined as per the Uttar Pradesh Civil (Executive Branch) Service Regulation, 1941, which provides for determination of the seniority according to the date of the order of appointment in substantive capacity.

46. It is not the case of the petitioner that his selection and appointment has been made against 10% vacancies reserved under 1973 Rules for the Demobilised Commissioned Officers. Therefore, 1973 Rules and 1980 Rules is not applicable in the case of the petitioner and no benefit of such Rule can be extended to the petitioner.

47. We are of the view that the issue involved in the present case is squarely covered by the decision of the Apex Court in the case of State of U.P. v. Dinkar Sinha (supra) and Rajendra Pratap Singh Yadav v. State of U.P. (supra).

48. We do not agree with the submissions of learned counsel for the petitioner that the decision of the Apex Court in the case of Rajendra Pratap Singh Yadav (supra) is a judgment in persona and not a judgment in rem. The Apex Court has laid down the law on the subject and thereafter has observed that "We are clearly of the view that the Respondent No. 4 and other similarly placed employees could not have been given the benefit of 1973 Rules. These Rules were not in existence when they were appointed. Therefore, they could not have derived any benefit from 1973 Rules." The Apex Court has further directed the State of U.P. to prepare a fresh seniority list. In the fresh seniority list, the petitioner and other similarly situated employees cannot be ignored. In case if in the seniority list, which is prepared, in accordance to the law laid down by the Apex Court, ignores the petitioner and other similarly situated persons, it would amount discrimination and would be violative of Article 14 of the Constitution of India and de hors to the settled law.

49. It is not in dispute that the petitioner is also similarly placed employee like Rakesh Kumar Jolly, Rajendra Singh, Sudhir Kumar to whom benefit of 1973 Rules was wrongly given and such benefit has been set aside by the Apex Court.

50. It may also be noted that the order dated 27th August, 1999, giving seniority to the petitioner since 1976 has been passed on the representation of the petitioner. There is no order of any writ Court giving such benefit.

51. Thus, in the facts and circumstances, we are of the view that the order dated 27th August, 1999, passed by the State Government, was patently illegal and dehors to the law.

52. It is apparent that the petitioner has been wrongly given the benefit of his services rendered in the army for the determination of his seniority under 1973 Rules and 1980 Rules, which was not available on the date of appointment of the petitioner, which was made in the year 1982 and inasmuch as the selection was not against 10% reserved vacancy for Ex-Army Men under 1973 Rules. Thus, the order dated 27th August, 1999, giving the seniority from the year 1976, has rightly been cancelled by the State Government by the impugned order dated 4th April, 2012, which has rightly been affirmed by the Tribunal.

53. In view of what has been discussed above, in the result, the writ petition, being devoid of merits, fails and is dismissed.

54. Before parting with the case, it would be relevant to observe that it has been brought to our notice through a supplementary-affidavit that the State Government vide an order dated 15th April, 2014 has allowed the benefit of 1980 Rules to one Sri Chotai Ram Yadav, after his retirement, though he has been appointed in U.P. Civil Services on 14th August, 1984, but he has been given seniority of 1971 Batch. If it is so, it appears to be in utter disregard to the law laid down by the Apex Court. However, since he is not a party before us, it would not be appropriate to pass any order. But, if Sri Chotai Ram Yadav is also similarly placed employee as the petitioner and other employees, in whose case benefit of 1980 Rules has been denied, the State Government may re-examine the matter in accordance to law.