
(2007) 07 OHC CK 0037
In the Orissa High Court
Case No : O.J.C. No's. 8670 of 1999

Banambar Pradhan and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 31-07-2007

Acts Referred:

Citation : (2007) CLT 108 Supp

Hon'ble Judges : A.K. Ganguly, C.J;N. Prusty, J

Bench : Division Bench

Advocate : R.K. Rath and N.R. Rout, in OJC. No. 8670/99, J. Patnaik, A.A. Das, B. Mohanty, T.K. Patnaik, S. Das and P.K. Nayak, in OJC No. 10835/99, Sanjit Mohanty, N.C. Sahoo, D. Mohanti and S. Nanda, in OJC No. 12252/99, Dilip Mishra, S.C. Mohanty, G.K. Nayak and R. Mohalik, in OJC No. 2133/2000, for the Appellant; Government Advocate for O.Ps. 1 to 4 in all cases, A.A. Das, B. Mohanty, T.K. Patnaik, S. Das, G.A.R. Dora, G. Rani Dora and J.K. Lenka for O.P. No. 5 in OJC No. 8670/99, G.A.R. Dora and J.K. Lenka for O.Ps. 4 to 26 in OJC No. 10835/99, G.A.R. Dora, G.R. Dora, J.K. Lenka and S.P. Mishra for O.Ps. 5 to 27 in OJC No. 2133/2000, for the Respondent

Final Decision : Dismissed

Judgement

N. Prusty, J.—In all these writ petitions the respective Petitioners have mainly challenged the common order dated 29.06.1999 passed by the Orissa Administrative Tribunal in O.A. Nos. 143 of 1992, 30 of 1992, 2121 of 1993 and 2881 of 1999 respectively.

2. O.J.C. No. 8670 of 1999 has been filed by the applicant No. 6 in O.A. No. 143 of 1992 along with four others, who were not parties to the said O.A. They have filed this writ petition along with Petitioner No. 1, being adversely affected by the impugned order dated 29.06.1999 passed in the O.A. The opposite party No. 5 was also not a party to the O.A. and he has been arrayed as a party in this case as per order dated 27.1.2003 passed on his application for intervention.

3. The applicants in the above said O.A. were ministerial employees i.e. section

Officers, Senior Assistant and Junior Assistants in the Directorate of Treasuries and Inspections and subsequently they have been appointed under the Controller of Accounts, Orissa, Bhubaneswar, which was initially an office under the Directorate. In the year 1994, the said office of the Controller of Accounts became separate Heads of the Department.

4. The main prayer in the O.A. was for quashing the Resolution of the Finance Department dated 06.12.1991 (Annexure-5), which was on the basis of a Policy decision of the Government "for setting up a State Government Accounts Organization for pension and provident fund of the employees of the Educational Institutions", on the ground that it is in contravention of the G.A. Department Resolution Dated 01.01.1985 which lays down the principles of promotions and fixation of seniority of ministerial officers in the office of the Heads of the Department.

5. In this writ petition, the Petitioners have also prayed for quashing Annexure-1, which is a common order, passed by the learned Orissa Administrative Tribunal in O.A. Nos. 30, 143, 266 of 1992 as well as O.A. No. 2121 of 1993 and O.A. No. 2881 of 1994 as well as Annexure-5 which is the Resolution of the Government of Orissa in Finance Department dated 06.12.1991.

6. O.J.C. No. 10835 of 1999 has been filed by applicant Nos. 1, 2, 3 and 6, 7, and 8 in O.A. No. 30 of 1992 as Petitioner Nos. 1, 2,3,4,6 and 7. The other three applicants in the O.A. i.e. applicant Nos. 4, 5 and 9 have not been made parties in this writ petition. However, even though Petitioner Nos. 5, 8, 9 and 10 were not parties in the O.A., they have filed the present writ petition along with the above applicants in the O.A. as the persons aggrieved. The opposite parties 4 to 26 in this writ petition were also not parties to O.A. No. 30 of 1992 and they were applicants in O.A. No. 2881 of 1994. In the O.A., the applicants, who were Auditors in the Directorate of Treasuries and Inspections had prayed for quashing paragraphs 3-A, 3-B (i) and (ii) and Paragraph-4 (i) of the Resolution of the Government of Orissa in Finance Department dated 06.12.1991 and also for a direction to the Government to nominate the applicants for being absorbed as Accountants in the new organization under the Controller of Accounts against 28 posts of Accounts.

7. As such the main claim of the applicants in the O.A. is that since they were Auditors in the Directorate of Treasuries and Inspections, they should be absorbed in all the 28 transferred posts in the new organization and to be nominated against these 28 posts of Accountants, which represent 28 posts of Auditors brought over from the Directorate and designated as Accountant in the new organization.

8. In this writ petition, the Petitioners have prayed for quashing the impugned common order/judgment dated 29.6.1999, Clause 3-A of the Resolution dated 06.12.1991 as well as for declaring the selection of 28 auditors in the Directorate of Treasuries and Inspection pursuant to Resolution dated 29.6.1991 as illegal

and arbitrary.

9. O.J.C. No. 12252 of 1999 has been filed by three Petitioners, out of ten applicants in O.A. No. 2121 of 1993 challenging the impugned common order dated 29.06.1999 passed by the State Administrative Tribunal, Bhubaneswar.

10. As it appears, the Petitioners have not impleaded to this writ petition seven applicants as well as the private Respondents in the O.A.

11. The Petitioners/applicants were Senior Clerks in the old Koraput District and had been selected and appointed as Accountants in the new organisation. The private Respondents in the O.A. were Senior Assistants and Auditors of the Directorate of Treasuries and Inspections. By the time of filing of the O.A. both the applicants and the private Respondents were working as Accountants in the new office. In the O.A. the applicants have prayed for quashing Para 3-A, 4(i) and 6(ii) of the impugned Resolution dated 29.06.1991 and for a direction to prepare the gradation list in accordance with the select list prepared by the Selection Committee and for promotion to S.O. Level-II in accordance with their seniority and to place the private Respondents below them, since they have come through a selection process by a duly constituted Selection Committee where as the private Respondents have not come through such selection process.

12. The Petitioners while praying for quashing the impugned order dated 29.06.1999 have also prayed for a direction to the opposite parties 1 to 4 to fix inter se seniority of the Petitioners as per their date of appointment as Accountants and as per the list prepared by the Selection Committee basing on the merit, above the Accountants recruited without selection i.e. 24 auditors and 11 Senior Assistants of the Directorate of Treasuries and Inspection appointed vide order dated 22.08.1992 and to promote the Petitioners to the post of section Officer Level-II with retrospective effect from 15.09.1995 i.e. from the date, the juniors were promoted with all consequential benefits.

13. O.J.C. No. 2133 of 2000 has been filed by some of the private Respondents in O.A. No. 2881 of 1994 challenging the common order dated 29.06.1991 passed by the Orissa Administrative Tribunal in the said O.A. which was filed by opposite party Nos. 5 to 27 as applicants. The applicants/opposite party Nos. 5 to 27 were Auditors in the Directorate of Treasuries and Inspections dealing with pension and G.P.F. of the employees of Aided Educational Institutions and were brought over to the new organization as Accountants. The private Respondents/Petitioners were senior assistants brought over to the new organizational so as Accountants. The private opposite parties being aggrieved by paragraph 4(i) of the Finance Department Resolution of the Government of Orissa dated 06.12.1991 filed the O.A. challenging the said paragraph of the Resolution according to which the Senior Assistants of the Directorate were given en bloc seniority over the Auditors in the cadre of Accountants as well as they have also challenged the order dated 22.08.1992 (Annexure-6) to the O.A. by which they have been inducted to the cadre of Accountants in the office of the Controller of

Accounts and Annexure-7 which is a provisional gradation list, in which they are placed against those who were Senior Assistants in the Directorate (Respondents to the OA). They have sought for a direction to declare their date of appointment as Accountants as 06.12.1991 when the new office was set up.

14. In this writ petition the Petitioners have prayed for quashing the impugned judgment/order of the Tribunal dated 29.06.1999 (Annexure-2) and for a direction to the opposite party Nos. 2 to 4 implement the Resolution dated 06.12.1991 without any alteration.

15. It may be noted that, no writ petition has been filed by the applicants in O.A. No. 266 of 1992.

16. As such, in all the above writ petitions, challenge has been made by the respective Petitioners to the Resolution of the Government of Orissa in Finance Department dated 06.12.1991, some of the paragraphs of the Resolution and the impugned order/judgment dated 29.06.1999 as well as for a direction to the opposite parties for implementation of the Resolution without any alteration, which was also the prayer of the applicants in their respective Original Applications.

17. In the impugned order/judgment dated 29.06.1999, the factual backdrop of all the aforesaid Original Applications and each individual case along with the prayer made by the respective applicants therein have been discussed in paragraph Nos. 3 and 4 in detail. Taking into consideration the contents of the Original Applications, counter affidavit, rejoinder, memo of citations and the submissions made by the respective parties, the grounds of challenge urged by them have been summed up in Paragraph-6 and also the issues to be decided in the cases have been framed in paragraph-7 of the impugned judgment. While answering to all the disputes raised, each individual issue has also been answered in paragraph-8 of the judgment. Finally, in paragraph 8.1, it has been held that violation of the Rules of business not being a plea advanced in any of the original applications, the counter is also silent on this aspect. Against this background, only those provisions of the Resolution which are inconsistent with any order or Rules issued by the General Administration Department can be quashed. In paragraph 8.2, it has been observed:

(i) The Resolution dated 01.01.1985 was violated provided it was applicable to the office of the Controller of Accounts. The G.A. Department Resolution had laid down certain principles for promotion and fixation of seniority of ministerial officers in the offices of the Heads of the Department. Was the office of the Controller of Accounts, a Head of Department when it came into existence? In our opinion the answer to this question is an emphatic "No".

(ii) The very fact that it was declared as a Head of Department in 1994 indicates that it did not enjoy the status of a Head of Department in 1991 when the Resolution was issued. Hence the G.A. Department Resolution dated 01.01.1985 is not applicable to the new organization, which was not a Head of Department,

and the impugned Resolution is not vitiated on the ground that - that it is inconsistent with G.A. Department instructions.

(iii) It is important to note here that all provisions of the OMS Rules 1994 will not apply to the organization as the very nomenclature of the Rules indicates that it is meant for recruitment and conditions of service of Assistance and section Officers in the offices of the Heads of Department. In the office of the Controller there are no assistants. The hierarchy is Accountant, section Officer Level-II and section Officer Level-I xxx xxx xxx. It does not indicate the procedure for filling up the post of S.O. Level-II in an office where the feeder cadre of Senior Assistants does not exist.

In paragraph 8.3, it has been held by the learned Tribunal that the challenge made to the Resolution by the employees in the organisation cannot be sustained from which ever source they might have come, since they were all aware of the principles which they now impugn. When a new organization is set up with a specific purpose the employer must have the right to lay down certain norms to ensure its proper functioning and these cannot be interfered with unless these are perverse, arbitrary or offend the accepted norms of propriety, fair play or the law laid down by competent Courts. In paragraph 8.4 of the impugned order, only the provisions of the Resolutions, which were not challenged, were mentioned in detail and the findings on these points have been arrived at by the Tribunal in Paragraph-9 of the impugned judgment. Finally, in paragraph-10 of the impugned order, after a detailed discussion, as indicated above, the learned Tribunal arrived at a conclusion which is mentioned below:

(i) The office of the Controller of Accounts was not a Head of Department till it was declared as such in 1994 and the G.A. Department Resolution dated 01.01.1985 is not applicable to it. The impugned Resolution cannot be quashed as being in conflict with the G.A. Department Resolution.

(ii) The OMS Rules, 1994 shall apply to the said office in so far recruitment to the posts of section Officer, Level-I is concerned.

(iii) Keeping some posts of section Officer, Level-I vacant till the section Officers Level-II acquire eligibility cannot be interfered with as the employer has the discretion to decide when to fill up vacancies, especially since this will ensure compliance to the OMS Rules, 1994. But for three vacancies already filled up, the level-II section Officers of the Directorate should be considered along with the Audit Superintendents and a fresh select list should be prepared within three months from the date of receipt of a copy of this order.

(iv) The Auditors and Senior Assistants of the Directorate absorbed as Accountants in 40 posts shall rank en bloc above the 127 selectees. The inter se seniority of the Accountants so absorbed shall be determined according to their length of service as Auditor/Senior Assistant as the case may be. The inter se seniority of the selectees shall be according to their placement in the select list.

(v) In the cadre of section Officer, Level-II the three erstwhile section Officers of the Directorate, absorbed as such, shall rank en bloc above the selectees. They shall carry their inter se seniority in the Directorate to the new cadre. The inter se seniority of the 18 selectees shall be according to their placement in the select list.

(vi) The Junior Clerks of Treasuries cannot be placed at par with senior Clerks for selection to the posts of Accountants.

18. Mr. R.K. Rath, learned Senior Counsel appearing on behalf of the Petitioners in O.J.C. No. 8670 of 1999 submits that the impugned Resolution dated 06.12.1991 of the Finance Department in the Government of Orissa is bad, since it is against the statutory Rules as well as the Resolution of the G.A. Department dated 01.01.1985; the accounts cadre/auditors etc. cannot be treated as ministerial cadre; unequal cannot be treated as equals; the Directorate of Treasuries being Heads of the Department, employees from the district and subordinate cadre cannot be brought into treasury cadre. However, finally Mr. Rath urged that if the impugned Resolution dated 06.12.1991 (Annexure-5) is upheld, it should be upheld in toto and not in a truncated manner and the Tribunal cannot substitute in any part of the Resolution by their own views. In support of his contention, learned Counsel cited several decisions but finally he relied upon a decision of the Supreme Court in the cases of Anil Kumar Vitthal Shete and Others Vs. State of Maharashtra and Another, (Paragraphs 26 and 31), Indu Shekhar Singh and Others Vs. State of U.P. and Others, (Paragraphs 21,25,32 and 33), S.B. Mathur and Others Vs. Chief Justice of Delhi High Court and Others, (Paragraphs 11 and 13) and Govt. of T.N. and Another Vs. S. Arumugham and Others, (Paragraph-10).

19. Mr. J. Patnaik, Learned Senior Counsel appearing on behalf of the Petitioners in O.J.C. No. 10835 of 1999 and for the intervenors in O.J.C. No. 8670 of 1999 submitted that the notification dated 06.12.1991 created a new organization, namely, Controller of Accounts. The Petitioners are similarly placed like the persons taken against certain post which were included in the notification but the Petitioners have been excluded from those group of persons who are taken without any reasonable classification; The Tribunal is completely silent on this aspect; Since the promotional avenues are better in the new organization, all the auditors of different Government organization should have been given opportunity to participate in the selection process and debarring some others amounts to an unreasonable classification; As such the exclusion of the Petitioners without giving them an opportunity to participate in the selection process in the new organization is completely discriminatory and as such is illegal. In support of his contention Mr. Patnaik, learned Senior Advocate relied upon the decision of the Supreme Court in the case of S.K. Mathur and Others Vs. Union of India and Ors, (Paragraphs 24 and 25).

20. Mr. Dora, learned senior Counsel appearing on behalf of the opposite party Nos. 4 to 26 in this case submitted that a new wing with sections was created in

1983 under the Directorate of Treasuries and Inspection to deal with provident fund and retirement benefits of the employees of the aided educational institutions. 28 persons including opposite parties 4 to 26 were Senior and Junior clerks in different treasuries. Since they fulfilled all the conditions, they were selected as Auditors in the said new wing under the Directorate of Treasuries and Inspection till it was merged with the newly created organization i.e. the Controller of Accounts with effect from 06.12.1991. These opposite parties 4 to 26 have also filed O.J.C. No. 2133 of 2000 who were Senior Assistants in the Directorate of Treasuries and Inspections and they brought over to the new organization as Accountants. As such, these opposite parties 4 to 26 constituted a separate entity and not similarly circumstanced with the auditors working in sections other than P.F. and pension of employees of aided Educational Institutions. In the new office of the Controller of Accounts, seniority in the common cadre could not have been the basis and more so, appointments made on selection basis for which the auditors working in other sections of the Directorate of Treasuries and Inspection opted and participated in the selection.

21. Mr. Sanjit Mohanty, learned senior counsel appearing on behalf of the Petitioners in O.J.C. No. 12252 of 1999 submits that by the time of filing of the Original Application, both the applicants and the private Respondents were working as Accountants in the new office. As such, the Gradation list should be prepared in accordance with the select list prepared by the Selection Committee and the Petitioners are to be promoted to section Officer Level-II in accordance with the seniority in the gradation list, since they have come through a selection process by a duly constituted Selection Committee and as such they are entitled to promotion on the basis of the date of their appointment as Accountants in accordance with the merit list.

22. Mr. D.K. Mishra, learned Counsel appearing on behalf of the Petitioners in O.J.C. No. 2133 of 2000 submits that the learned Tribunal cannot incorporate its own views in the implementation of the Resolution dated 06.12.1991. The Resolution has to be implemented in toto without any alteration not in a truncated manner. The Tribunal cannot substitute anything in the Resolution by its own view.

23. Learned Government Advocate submitted that the Auditors recruited against 28 posts sanctioned for pension and funds work and other Auditors those who were senior to them belong to one combined cadre. Auditors recruited under different schemes were not necessarily entrusted with the specified work concerning to the scheme for which they were recruited. It was decided to transfer 28 posts of auditors to the new organization and to absorb the auditors those who were recruited against the posts sanctioned for the pension and fund work for the office of Respondent No. 2 without coming through the rigid process of selection. The Finance Department Resolution dated 06.12.1991 was widely circulated and the Petitioners had applied to come over to the new organization knowing pretty well regarding their fixation of inter se seniority and accordingly

they had also declaration to the effect that they have gone through the terms and conditions incorporated in the Resolution and in term of it they had offered their willingness to be appointed in the new organization and as such the Petitioners cannot challenge the resolution at this stage.

24. It is also submitted by the Learned Government Advocate that the principles relating to formation of the cadre in the new organization was prescribed in the Finance Department Resolution dated 06.12.1991 and the said Resolution was also concurred by the General Administration Department. As per the said Resolution dated 06.12.1991, a new accounting organization namely, Office of the Controller of Accounts was set up to look after the pension and provident fund matter of the employees of the aided Educational Institutions headed by the Controller of Accounts and ex officio Additional Director of treasuries and Inspections subject to over all control of the Director of Treasuries and Inspection. Absorption of existing personnel in the new organization/new cadre was made as per the terms and conditions prescribed in different paragraphs of the said Resolution dated 06.12.1991. Broadly two different principles were laid down for initial formation of the cadre of different categories of posts in the new organization i.e. (i) absorption of the existing personnel in the new cadre previously sanctioned for the office of the Directorate of Treasuries and Inspection and (ii) recruitment of new personnel and norms to be applied for application for different posts. The inter se seniority of the candidates recruited from different source were to be determined in the said provisional gradation list strictly in conformity with the principles outlined in paragraph 4(i) of the F.D. Resolution dated 06.12.1991. The resolution has clearly stipulated the method of recruitment and principles for fixation of inter se seniority in respect of different posts in the office of the controller of Accounts to avoid any complications and controversy in the matter in future. The said Resolution has been widely circulated among all the recruitees and due care has been taken to ensure that the employees, who wanted to be inducted into the new organization did so being well aware of the conditions incorporated therein. Once the Petitioners have accepted the norms prescribed in different paragraphs of the Resolution for recruitment and fixation of inter se seniority, they cannot challenge the provisions of the Resolution at this stage.

25. Learned Government Advocate further submits that the office of the Controller of Accounts (Educational Employees Pension and Provident Fund) was created by the Finance Department Resolution dated 06.12.1991 as an organization, prior to which the matter relating to pension and provident fund of the aided educational institutions employees were being looked after by a section of the Director of Treasuries and Inspection. This new organization was also kept under the over all control of the Directorate of Treasuries and Inspection in his capacity as the Director of Funds for provident funds and Authorized Officer for pensions under State Government Rules. Later on, this new organization i.e. the Controller of Accounts, Orissa was declared as a Heads of the Department under Rule 20 of the Orissa Service Code vide Finance Department Office Order No.

24103/F dated 06.07.1994. Till 1994, since this organization was not declared as Heads of the Department, the principles envisaged in different paragraphs of the Finance Department Resolution dated 06.12.1991 was being followed for recruitment, promotion etc. to the different posts. As such, there was no illegality or irregularity committed by the new organization in following the procedure prescribed for appointment, promotion etc. to the different posts of the Controller of Accounts on the basis of 1991 Resolution, since it was an organization only and not a Heads of the Department. However, once it became declared a Heads of the Department in 1994, Resolution of the G.A. Department with regard to recruitment and promotion and fixation of seniority etc. has to be followed only after 06.07.1994 and not prior to that. As such, there is no illegality and/or irregularity in following the method of recruitment; fixation of seniority etc. as has been prescribed in the Resolution dated 06.12.1991 of the Finance Department till 06.07.1994. 1985 Resolution of the G.A. Department cannot be applied in respect of recruitment, promotion, fixation of seniority etc. of the new organization since the said Resolution dated 01.01.1985 was only applicable to the Heads of the Department. The Controller of Accounts being an organization only and not Heads of the Department till 1994, 1985 Resolution cannot be made applicable to the said organization. Only after the organization became a Heads of the Department in 1994 vide Notification dated 06.07.1994, the Resolution of the G.A. Department which is a nodal Department of all the Departments of the State Government, can be made applicable to the employees of the Controller of Accounts only after the same was declared as Heads of the Department in 1994. In 1994 prior to this organization became Heads of the Department, a new Resolution of the G.A. Department had come prescribing the principles of recruitment, promotion seniority etc. and as such, after 1994, the G.A. Department Resolution has been followed in respect of the Controller of Accounts. In view of the above, no illegality has been committed by the learned Tribunal in its judgment and order dated 29.06.1999.

26. In the decision of the Supreme Court in case of Anil Kumar Vitthal Shete and Others Vs. State of Maharashtra and Another, , in paragraph-26 it has been categorically observed as follows:

It is entirely a matter for the State to decide whether to have several different cadres or one integrated cadre in its services. That is a matter of policy which does not attract the applicability of the equality clause. The integration of non-clerical with clerical services sought to be effectuated by the combined seniority scheme cannot in the circumstances be assailed as violative of the constitutional principle of equality.

27. And in paragraph 31, it has been observed also as follows:

Dealing with the contention that as a result of merger of cadre, promotional chances of the Petitioner had been adversely affected because his position in the seniority list had gone down, the Court stated that the seniority rules had been carefully framed and Appellant had not suffered prejudice. It, however,

proceeded to state that by reason of such a merger, chances of promotion of some of the employees may be adversely affected or some others may be benefited in consequence. But that cannot be a ground for setting aside the merger which is essentially a policy decision. It is well established that "chances of promotion" is not a "condition of service" and reduction of chances of promotion would not amount to "change in condition of service."

28. In the case of Indu Shekhar Singh and Others Vs. State of U.P. and Others, , it has been held as follows:

Seniority, as is well settled, is not a fundamental right. It is merely a civil right.

...There is no fundamental right in regard to the counting of the services rendered in an autonomous body. The past services can be taken into consideration only when the Rules permit the same or where a special situation exists, which would entitle the employee to obtain such benefit of past service.

...This Court was considering a case where the staff of a new department had been drawn from four different sources.

...Thus in a case where employees were drawn from different sources, although as part of single scheme, which was considered to be a special situation, was formulated in that behalf, this Court opined:

When personnel drawn from different sources are being absorbed and integrated in a new department, it is primarily for the Government or the executive authority concerned to decide as a matter of policy how the equation of posts should be effected. The Courts will not interfere with such a decision unless it is shown to be arbitrary, unreasonable or unfair, and if no manifest unfairness or unreasonableness is made out, the Court will not sit in appeal and examine the propriety or wisdom of the principle of equation of posts adopted by the Government.

29. In the case of Govt. of T.N. and Another Vs. S. Arumugham and Others, , in paragraph-10, the following observation has been made:

...The Tribunal ought not to have directed the Government to change its policy. The Government has a right to frame a policy to ensure efficiency and proper administration and to provide suitable channels of promotion to officers working in different departments and offices.

...Unless there is a clear violation of any provision of the Constitution, the Tribunal ought not to have given directions for formulating a new policy and a different quota.

30. In the case of S.K. Mathur and Others Vs. Union of India and Ors, , which was cited and relied upon by Mr. Patnaik, learned Senior Advocate, the Supreme Court held:

...The transfer cannot wipe out his length of service in the post from which he

has been transferred. It has been observed by this Court that it is a just and wholesome principle commonly applied where persons from different sources are drafted to service in a new service that their pre-existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre (Paragraph-24).

...We are of the opinion that where recruitment is made from two different sources and an integrated seniority list is prepared of the persons so recruited, the benefit of service already rendered on a similar post in a similar organization under the same employer will have to be given to the person appointed on the new post.

...The Tribunal was in error in treating the Appellants to have joined the department only from the date of their substantive absorption. By treating Respondents 3 to 9 as senior to the Appellants, the Tribunal acted contrary to the basic tenets of service jurisprudence discussed above.

31. Considering the submissions made by the learned Counsel for the respective parties and after going through the contents of the writ petitions as well as the decisions relied upon and cited by the learned Counsel, we do not find any illegality, irregularity and manifest error of law in the discussions made and the findings arrived at by the learned Tribunal as mentioned in Paragraphs 8 and 9 of the judgment. So far as the concluding paragraph-10 is concerned, the only question that remains to be answered in all the above cases is as to whether the resolution of the General Administration Department dated 01.01.1985 can be made applicable in respect of the employees of the newly created organization i.e. Controller of Accounts beginning from the date it was created on 06.12.1991 or the General Administration Department Resolution dated 11.04.1994 shall be made applicable to the new organization when it became a Heads of the Department in 6th July, 1994 and as to whether there is any irregularity and/or illegality in the order of the Tribunal in directing to follow the norms indicated in the Resolution of the Finance Department dated 06.12.1991 for appointment/recruitment of the employees, their service conditions - such as seniority, gradation list and promotion etc. and to follow the 1994 Resolution of the General Administration Department after 06.07.1994, when the organization was declared as Heads of the Department.

32. In our considered view, so far as the newly created organization, namely, Controller of Accounts, which came into existence vide Resolution dated 06.12.1991 of the Finance Department is concerned, the service conditions of the employees shall be guided by the terms and conditions as has been envisaged in that Resolution alone. The Resolution dated 01.01.1985 of the General Administration Department, which is applicable only to the employees working in the Heads of the Department, cannot be made applicable in respect of the employees of the newly created organization by virtue of the Finance Department Resolution dated 06.12.1991, since it was an organization created

by a resolution of a Department only, as a wing under the Directorate of Treasuries and Inspection and was not a Heads of the Department then. The employees, who have come to this newly created organization availing the benefits of the Resolution dated 06.12.1991 and absorbed in the organization at a subsequent stage, when this organization became a Heads of the Department, cannot challenge the terms and conditions as has been envisaged in different paragraphs of the 1991 Resolution, since they opted to come to the newly created organization, being fully aware of the contents/procedure of the 1991 Resolution. They were at liberty to remain in the newly created organization and also had option to go back to their parent Department, as initially they came on deputation to this new organization. As stated above, once they have chosen to remain in the newly created organization accepting the terms and conditions of the 1991 Resolution, at a later stage, none of them can claim the benefit of the G.A. Department Resolution dated 01.01.1985, which is applicable to the Heads of the Department only and initially Controller of Accounts was not a Heads of the Department. This newly created organization became the Heads of the Department in the year 1994 and once it became a Heads of the Department, the conditions envisaged in 1991 Resolution of the Finance Department can no more be applicable in respect of the employees of the Controller of Accounts after the date it became a heads of the Department vide Notification dated 06.07.1994. By the time this organization became the Heads of the Department, the Resolution dated 11.04.1994 of the nodal Department i.e., General Administration Department had already come into force and as such the said Resolution of 1994 of the General Administration Department shall be applicable to the newly created Heads of the Department of Controller of Accounts, i.e., from the date this organization became the Heads of the Department on 06.07.1994.

33. In view of the above, the Resolution dated 06.12.1991 of the Finance Department shall be applicable in respect of all the employees working in the office of the Controller of Accounts from the date of its creation on 06.12.1991 till the date when it was declared as a Heads of the Department i.e. 06.07.1994 and since the Resolution dated 11.04.1994 of the General Administration Department was already in existence as on 06.07.1994 when the office of the Controller of Accounts was declared as a Heads of the Department, the 1994 Resolution shall be applicable in respect of those employees from the very date the organization "Controller of Accounts" became a Heads of the Department and as such, O.M.S. Rules of 1994 shall also be applicable to those employees in so far as recruitment/promotion to different posts including the posts of section Officer, Level-I is concerned.

34. So far as the present Petitioners are concerned, the admitted position is that they have been brought from different sources/organizations to work in the newly created organization. It is for the Government to take a decision with regard to the source/department out of which the personnel shall be brought to the office of the Controller of Account. It is also for them to look into the matter

relating to regular absorption of the employees brought from different sources and as to how their seniority etc. shall be maintained while preparing the seniority list as per the Rules and Circulars in this regard and once the seniority list of different posts are drawn up, it is for the Government to take a decision as to how the promotion to next higher post is to be effected from out of the eligible personnel of the seniority list. As such recruitment, seniority, promotion etc, are to be done by the Government with all reasonableness, fairness following the appropriate/respective resolutions in this regard and not in arbitrary manner. As such we are not inclined to express any opinion in this regard and sit over the policy decision of the Government as a Court of Appeal. Accordingly, the opposite party Nos. 1 to 3 are directed to take their independent decision in the matter relating to recruitment, absorption, seniority and promotion of the employees in the office of the Controller of Accounts strictly following the Finance Department Resolution dated 06.12.1991 till this organization became the Heads of the Department by the Government's Resolution dated 06.07.1994 and after the organization became a Heads of the Department, recruitment, absorption, seniority and promotion etc, of the respective employees shall be guided by the General Administration Department Resolution dated 11.04.1994 as well as the OMS Rules 1994. It is accordingly directed that the entire exercise in this regard shall be completed by the opposite parties/appropriate authority within a period of six months from the date of communication of the order.

35. All the writ petitions are accordingly disposed of.

A.K. Ganguly, C.J.

36. I agree.