
(1977) 08 DEL CK 0022

In the Delhi High Court

Case No : Civil Writ Appeal No. 1214 of 1970

I.D. Garg and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-08-1977

Acts Referred:

Citation : (1977) ILR Delhi 517(2)

Hon'ble Judges : T.V.R. Tatachari, J;H.L. Anand, J

Bench : Full Bench

Advocate : B. Kirpal and R.K. Mehra, for the Appellant;

Judgement

H.L. Anand, J.

(1) The principal question that this petition under Article 226 of the Constitution of India by 8 Assistant Directors /Assistant Executive Engineers of Central Water & Power Commission (Water Wing), Government of India, raises is as to whether the seniority of the petitioners vis-a-vis respondents 4 to 232 could be legitimately determined on the basis of their respective length of service, as claimed by the Union of India or in accordance with the date of their confirmation in service, as contended on behalf of the petitioners. The petition raises certain subsidiary questions as well.

(2) It is a common case of the parties that, even though the said respondents were appointed against temporary posts of Assistant Directors/Assistant Executive Engineers in the Central Water & Power Commission earlier in point of time than the petitioners, the petitioners were confirmed against permanent posts earlier than the said respondents, some of whom still continue to work against temporary posts. Parties are also agreed that prior to October 15, 1965, there were no statutory Rules governing the service; that it was only on the said date that the Central Water Engineering (Class 1) Service, to which the parties belong, was constituted by the President under the provisions of Article 309 of the Constitution by the Central Water Engineering (Class 1) Service Rules, 1965;

(for short the Rules of 1965); and that the said Rules do not make any provision with regard to the principles for the determination of seniority. There is also no dispute between the parties that ordinarily seniority is to be reckoned on the basis of confirmation in a post; that with a view to safeguard the interests of thousands of displaced Government servants, who were appointed to Central Services after the partition of India, a departure was made from the normal rule in regard to the determination of seniority; that the Ministry of Home Affairs, the authority competent to decide questions of policy with regard to the service, issued instructions contained in their Memorandum of June 22, 1949 (for short, the 49 Memorandum) which visualises that seniority in a grade was to be governed as a general rule on the basis of continuous length of service in a grade; that the aforesaid instructions were eventually extended to other categories of persons who were appointed to Central Services; and that the instructions contained in the 49 Memorandum continued to govern the determination of seniority of the Central Government employees until the policy was reversed and normal rule was restored with the Ministry of Home Affairs Memorandum of December 22, 1959 (for short, the December 59 Memorandum), being a sequel to the realisation by the Government that in course of time the displaced Government servants, whose peculiar problem had led to the departure from the normal rule had, by and large, been absorbed in the various Central Services and their seniority had been fixed with reference to the length of service rendered by them making the continuance of the departure unnecessary. It is also a common case of the parties that in terms of the December 59 Memorandum permanent Government servants would rank senior to those holding temporary posts and that if the said Memorandum were to be applied to the case of the petitioners and the said respondents the petitioners would be senior to the respondents and would be entitled to be treated accordingly. There is also no dispute that even though in accordance with the Allocation of Business Rules the Ministry of Home Affairs, and subsequently the Cabinet Secretariat, were the competent authorities to lay down principles in regard to various matters relating to service under the Union, the seniority of the petitioners vis-a-vis the said respondents was determined, initially in the year 1968, and thereafter not on the basis of the nature of their respective tenure or the dates of their respective confirmation but on the basis of their entire length of service in derogation of the principles laid down in the December 59 Memorandum by virtue of the provisions of the Office Memorandum of September 11, 1959, of the Ministry of Irrigation and Power (for short, the September 59 Memorandum), which recognised the entire length of service as the basis of seniority.

(3) On the basis of the aforesaid admitted hypothesis the petitioners contend that in terms of the Rules of Business framed under Article 77(3) of the Constitution of India for the allocation of Government business the broad policy laid down from time to time by the Ministry of Home Affairs, and more recently by its counterpart the Department of Personnel in the Cabinet Secretariat, with regard to the method of recruitment in the services, promotions etc. and matters

connected therewith, is binding on all Ministries and that on the restoration of the normal rule with regard to seniority by the December 59 Memorandum the September 59 Memorandum, providing for determination of seniority on the basis of the length of service, stood impliedly repealed and could not, Therefore, be given effect to or be legitimately made a basis for the determination of seniority of the petitioners and the said respondents. The petitioners, Therefore, claim superior seniority on the basis of the December 59 Memorandum on the ground that, having been confirmed against permanent posts prior in time to the said respondents, the petitioners were entitled to rank senior to the said respondents not withstanding the fact that the respondents had joined service earlier than the petitioners, though in a temporary capacity.

(4) While the affected officers, respondents 4 to 232, have stayed away from the proceedings, the determination of seniority on the basis of the length of service in derogation of the provisions of the Memorandum of December 59 was sought to be justified on behalf of the Union, both in the return and in the supplementary affidavits, as indeed, at the hearing of the petition, on the grounds that the operation of the September 59 Memorandum was impliedly saved by the December 59 Memorandum and that the latter did not, by its own force, abrogate the former but gave an option to the Ministries concerned to consider if their existing Rules required modification in the light of the new principles and clearly authorised a departure from the principles with the concurrence of the Ministry of Home Affairs and that the Ministry of Home Affairs had expressly, or at I least impliedly, concurred in the continued application of the provisions of September 59 Memorandum.

(5) The first question that must, Therefore, be considered is as to whether the operation of the September 59 Memorandum was saved expressly or by necessary implication by the December 59 Memorandum. It appears to us that this question must be answered in the negative on the plain language of the December 59 Memorandum.

(6) The December 59 Memorandum (Annexure 28) is described by the Memorandum itself as containing "general principles for determining seniority". It recounts the circumstances in which the 49 Memorandum was issued and notes that since the said Memorandum was issued the problem which necessitated the earlier Memorandum had by and large been solved and it had, Therefore been decided "that hereafter the seniority of all persons appointed to the various Central Services after the date of these instructions should be determined in accordance with the general principles annexed hereto". The operative portion of the Memorandum cancels the various Office Memoranda cited in para 1 of it which are all Memoranda issued by the Ministry of Home Affairs itself from time to time. The general principles are set out in the Annexure to the Memorandum. The extent of the application of the principles and the Exception to it are set out in a part of sub-para (1) of para 1 of the Annexure which runs as follows :

"1(1). These principles shall apply to the determination of seniority in Central

Services and civil posts except such services and posts for which separate principles have already been issued or may be issued hereafter by Government".

(7) A plain reading of the Memorandum and the extracted portion of the Annexure to it leaves no manner of doubt that the general principles incorporated in the Memorandum were to be of universal application to all Central civil services and civil posts in the matter of determination of seniority and the services and posts which are excepted from the operation of the aforesaid Memorandum are such services and posts for which separate principles have already been issued or may be issued hereafter by Government. Having regard to the scheme of the Rules of Business for the allocation of Government business framed under Article 77(3) of the Constitution it is obvious that principles for the guidance of the various Ministries in the matter of service could be issued only by the Ministry of Home Affairs. It is also obvious that what comes within the Exception are not the individual Rules that may have been framed by the Ministries but "principles". Counsel for the Union was unable to contend that the September 59 Memorandum contained any principles, as distinct from Rules of limited application. He was equally unable to trace the origin of the said Memorandum to the Ministry of Home Affairs, which alone was competent to formulate such principles. A cursory perusal of September 59 Memorandum also leaves no manner of doubt that it purports to contain "seniority rules" applicable to certain class of officers in the Central Water and Power Commission. It is, Therefore, not possible to accept the contention that the September 59 Memorandum fell within the Exception envisaged by the general principles contained in the December 59 Memorandum so as to save the former from the operation of the latter. This contention, must, Therefore, fail.

(8) The next question that requires consideration is as to the impact of December 59 Memorandum on September 59 Memorandum : Whether the December 59 Memorandum by its own force, expressly or impliedly, superseded the September 59 Memorandum or not ? Whether the December 59 Memorandum contained a direction which bound the Ministries concerned and obliged them to either bring their existing Rules of Seniority in accord with the revised principles or merely indicate a model desired to be followed leaving the Ministries free to take their own time to revert to the normal rules ? Assuming that the Ministries were bound to conform to the model contained in the December 59 Memorandum, whether their individual Rules nevertheless continued to operate until modified ? These are some of the questions that are posed and must be answered to determine the true impact of December 59 Memorandum on the September 59 Memorandum.

(9) After hearing learned counsel for the parties it appeals to us that having regard to the role assigned to the Ministry of Home Affairs by the Rules of Business for the allocation of Government business, a long standing practice followed in the Government of India in the matter with regard to the method of recruitment to the services and matters connected therewith, and the language

and tenor of the December 59 Memorandum, there is no escape from the conclusion that it was imperative for the Ministries concerned to give immediate effect to the December 59 Memorandum and to revert to the normal rule of determination of seniority and, if necessary, to take up the modification of the existing Rules to bring them in accord with the revised principles and that the Ministries concerned had no option in the matter unless the concurrence of the Ministry of Home Affairs for the continuance of inconsistent Rules was sought and obtained within a reasonable time. It further appears to us that to hold to the contrary would lead to an anomalous position which could not have been intended. The Government of India is an 524 integrated organisation with different limbs dealing with different spheres of national and international affairs. The role assigned to the Ministry of Home Affairs of Rifles of Business for the allocation of Government business and a long standing practice followed in the Government of India in all matters with regard to methods of recruitment to the services and matters connected therewith, the competent authority to lay down broad policy with regard to all matters pertaining to the services was the Ministry of Home Affairs. Uniformity in common matters is an essential expedient of administration and that being so it is difficult to countenance a suggestion that, even though the Ministry of Home Affairs may formulate principles with regard to common matters, such as determination of seniority, they should nevertheless be not binding on the sister Ministries and subordinate offices and leave them free to conform to the model or to continue to apply Rules which are inconsistent with the common model. Lack of uniformity in such a matter was bound to lead to anomalies and heart burning among the services. It is not possible to visualise a situation in which different Ministries of the Government of India may be entitled to follow different and inconsistent Rules with regard to determination of seniority of the staff. The language of the Memorandum and its tenor also do not leave any doubt that even though the Memorandum is not couched in clear peremptory terms the intention that it is binding on the Ministries unless concurrence to the departure is obtained is unmistakable. A part of the annexure to the Memorandum, which has been extracted above, is sufficiently mandatory in nature and leaves no doubt that the general principle incorporated in the Memorandum were to be of universal application to all Central services and civil posts in the matter of determination of seniority except those that are specifically excepted from the operation of the Memorandum unless the departure is concurred in by the Ministry of Home Affairs. In determining the true import of the language it is difficult to ignore that it is not intended to be a directive to a subordinate but an enunciation of principles of universal application for the benefit of sister Ministries and the language of the Memorandum must, Therefore, be construed in that light. Implicit in the provision, that any departure must have the concurrence of the Ministry of Home Affairs, is the binding nature of the principles incorporated in the Memorandum. It would, Therefore, follow that these principles would come into effect immediately and any continuance of Rules which constitute a departure must have the concurrence of the appropriate Ministry. There can, Therefore, be no doubt that the principles incorporated in

the September 59 Memorandum came into effect forthwith and would continue to govern the determination of seniority notwithstanding Rules inconsistent therewith applicable

(10) The further question that thus requires consideration is if, on the material available, it could be said that the continued application of the September 59 Memorandum had the express or implied concurrence of the Ministry of Home Affairs.

(11) In the first affidavit of Shri K. P. B. Menon, Under Secretary to the Government of India, Ministry of Irrigation and Power, which was filed by way of return to the Rule, on behalf of the contesting respondents, it was made out that the general question whether or not the principles of seniority contained in the Annexure to the December 59 Memorandum should be made applicable to the case of Class I and II officers in the Central Water and Power Commission "remained under consideration of the Ministry of Irrigation and Power in consultation with the Ministry of Home Affairs and the Union Public Service Commission for some time". According to this affidavit "it was, however, decided in January 1971 that the status quo should be maintained". An attempt was made to rely on these averments for the conclusion that the department had the concurrence of the Ministry of Home Affairs. In the course of prolonged hearing of the petition it was realised on behalf of the Union of India that these averments were rather vague and indefinite and could not justifiably form a basis either for the contention or such a conclusion. In an attempt to reinforce the contention Union of India sought and was granted opportunity to file supplementary affidavits and copies of the official correspondence and departmental and inter-departmental noting on the question as to the applicability of the Rules for determination of seniority. Supplementary affidavits in reply were also filed on behalf of the petitioners after the petitioners had been granted an opportunity to inspect the relevant records. The petitioners also enclosed copies of certain correspondence and departmental noting. In the second affidavit of Shri Mukesh Chand, Under Secretary to the Government of India, Ministry of Agriculture and Irrigation, which was filed in January 1977, it was pointed out that the Ministry of Irrigation and Power referred the matter after the December 59 Memorandum to the Ministry of Home Affairs and that the reference was answered by the Ministry of Home Affairs (vide Annexure A to the affidavit). It was further pointed out that the matter was also referred to the Union Public Service Commission and the Commission agreed to the suggestion of the Ministry of Irrigation and Power that the Rules contained in the September 59 Memorandum may take effect from September 11, 1959. It was, 526 Therefore, made out that the continued application of the Rules contained in the September 59 Memorandum had the necessary concurrence of the Ministry of Home Affairs. In the third affidavit of Shri Mukesh Chand, Under Secretary, which was filed on April 14, 1977, it was again made out that the question as to the continued operation of the September 59 Memorandum remained under consideration of the Ministry of Irrigation and Power and that it was decided that

the status quo be maintained. It was further claimed that the annexure to the affidavit "will bear out the fact that it was decided after careful consideration and with the approval of the Ministry of Home Affairs and the U.P.S.C. that the seniority of the Central Water and Power Commission Class I and Class II officers may continue to be governed by the Ministry of Irrigation and Power Office Memorandum dated September 11, 1959". At the far end of the hearing, learned counsel for the Union filed yet another affidavit of Mukesh Chand, Under Secretary to the Government of India, placing on record copies of certain notings of the Ministries of Home Affairs and Law.

(12) In the two reply affidavits filed on behalf of the petitioners to the supplementary affidavits, the claim of the Union that the continued operation of the September 59 Memorandum had the concurrence of the Ministry of Home Affairs was challenged. The petitioners also sought leave of the Court to inspect the records and file along with these affidavits copies of some of the Departmental notings on the subject and of certain other documents relating thereto to substantiate their claim that the continued application of September 59 Memorandum was without the concurrence of the Ministry of Home Affairs.

(13) A perusal of the copies of the various notings and other documents relied upon on behalf of the parties unfortunately does not give a complete picture of the process of decision making with regard to the question of the continued application of the September 59 Memorandum. However, a piecing together of these notes and documents does present a somewhat fragmented picture, but gives a fair idea of the thinking on the question, in the Ministry of Irrigation and Power, the Ministry of Home Affairs and the Ministry of Law.

(14) The earliest reference is of March 22, 1960, from Chairman, Central Water and Power Commission, which posed the question if the rules incorporated in the September 59 Memorandum with regard to inter se seniority of direct recruits and promotees, dealt with in para 1(3) of the Memorandum should be applied with retrospective effect or with effect from the date of its issue i.e. September 11, 1959. "The Chairman had made a plea that due to various reasons indicated in the reference, the September 59 Memorandum should take effect from the date of its issue. In support of the plea of prospective application, reliance was placed on the fact that the December 59 Memorandum of the Ministry of Home Affairs was to have prospective operation. The proposal was supported by the Ministry of Irrigation and Power. By its note of March 30, 1960, the Ministry of Home Affairs expressed the view that the rules "can also be given retrospective effect" and that there was "nothing wrong in giving retrospective effect to the principle issued by the Ministry of Irrigation and Power". By his further note of April 1960, the Chairman, Central Water and Power Commission, expressed the view that there was nothing in the noting of the Ministry of Home Affairs which may prevent the prospective application of September 59 Memorandum. A reference was then made on April 16, 1960, to the Union Public Service Commission seeking their concurrence to the rules being applied from the date of

their issue, which elicited a reply from the U.P.S.C. of July 14, 1960, agreeing that the seniority rules as laid down in September 59 Memorandum " may take effect from the date of its issue, i.e. 11th September. 1959, leaving the inter se seniority or officers as determined before that date undisturbed". Subsequently, in 1968. the question as to the validity of the continued application of the Rules contained in the September 59 Memorandum after the issue of December 59 Memorandum was raised by a Member of Parliament in a letter addressed to the then Home Minister. On April 7, 1969, a note was recorded by Private Secretary to the then Home Minister, in which it was pointed out that the Rules contained in the September 59 Memorandum should "no longer be applicable after issuing of the orders of the Ministry of Home Affairs dated 22nd December 1959". It was further pointed out that according to the December 59 Memorandum "whenever it was considered necessary to follow principles different from those laid down in the said Memorandum (December 1959), a specific reference was contemplated to the Ministry of Home Affairs, who would consult the UPSC". The note concluded with the observation that "this requirement also does not appear to have been complied with by the Ministry of Irrigation and Power". This is followed by a note of May 29, 1969, of the Deputy Secretary, Ministry of Home Affairs, in which the question was considered. The material portion of this note runs as under :-

"(II) P.S. to H. M. has pointed out that from the annexure to the Ministry's O.M. dated 22-12-1959 (Flag "G") it is contemplated that deviations from the order will be only after a specific reference to the Ministry. In para I (i) of the annexure, we have clarified that the principles of this O.M. would not apply to such services/ posts for which separate principles have already been issued or may be issued hereafter by Government. We had, however, requested that the Ministries/Departments may consider modifying their rules to bring it in line with our instructions. The portion "A" of flag "G" referred to by P.S. to H.M. is a guideline for framing future rules on seniority where the Ministries did not have their own rules earlier or intended to modify their rules, deviating from our principles regarding seniority. In fact, in actual practice, we have permitted Ministries/Departments to operate on their earlier seniority rules and we have not insisted on any specific concurrence of Home Ministry for operating those rules.

In the circumstances mentioned, we may perhaps suggest that draft reply from H.M. to M.P. placed below may be considered." This note appears to have been approved by the Joint Secretary and eventually the then Home Minister pursuant to which the Member concerned was informed that the December 59 Memorandum did not apply "to such services"" posts for which separate principles have already been issued or may be issued hereafter by Government" on June 4, 1969. The portions of the noting called out on behalf of the petitioner on an inspection of the official records add a new dimension to the situation. In a note recorded by an official of the Ministry of Irrigation and Power on October 6, 1969, it was pointed out that it was proposed to "cancel our separate seniority

rules and fall in line with general principles of seniority contained in the Ministry of Home Affairs orders dated December 22, 1959". The notes that follow culminate in an order of the then Irrigation and Power Ministry. These notes concur in the proposal and the Minister expressed a surprise that the Ministry was "not showing any efficiency in this action in spite of Mr. Sanjivayya drawing attention and writing hard letters". The note of the Deputy Minister is rather revealing when it points out that it was not clear "why the orders of the Home Ministry dated December 22, 1959, could not be made applicable till now and why on some flimsy grounds it is still being delayed". An extract from the letter from the Union Public Service Commission to the Ministry of Irrigation and Power of March 12, 1968, advises the Ministry of Irrigation and Power to "consider, in consultation with the Ministry of Home Affairs, the desirability of cancelling the Office Memo. dated September 11, 1959, and clarify that the general principle of seniority as contained in the Ministry of Home Affairs O.M. dated December 22, 1959, would henceforth apply to the officers appointed to the Central Water and Power Commission". An extract from the letter of the Deputy Secretary, Ministry of Irrigation and Power, to the Ministry of Home Affairs, dated November 26, 1969, informs the Ministry of Home Affairs that "it has been decided to cancel these rules (September 1959) and to fall in line with other Central Departments by following the general principles for determination of seniority as issued by the Ministry of Home Affairs on December 22, 1959, and poses the question if the seniority rules (1965 Rules) be amended. In a note recorded in December 1969, an Under Secretary in the Ministry of Home Affairs referred to the decision to continue and follow the seniority rules as contained in the September 59 Memorandum and the assertion that the Ministry of Home Affairs had no objection was characterised as being "not quite correct". It was pointed out that the note of April 1960 of the Chairman, Central Water & Power Commission, was only on a limited point "whether the seniority principles contained in the Ministry of Irrigation and Power's O.M. of 11-9-59 should be applied with effect from 22-2-1952 or from 11-9-59 (the date on which the Om containing the seniority principles was issued) ", and although the Ministry of Home Affairs had accepted the proposal that the seniority principles in question be enforced from 11-9-1959, this did not "imply that the Home Ministry had agreed with the Ministry of Irrigation and Power that they may not make a formal reference to us for the continuance, beyond 22-12-59, of the orders of 11-9-59 as required in para I (i) of the Annexure to our Om No. 9/11/55-RPS dated 22-12-1959." It was further pointed out that even though "we would not press this point further" it should not be ignored that the Central Water Engineering (Class 1) Service Rules, 1965, made no provision as to how the seniority of the members of the Service would be regulated, and that by virtue of Rule 14 of the said Rules, the Rules contained in the December 59 Memorandum, would be applicable because Rule 14 provides that "other conditions of service of the Members of the Service in agreed with the Ministry of Irrigation and Power that they may not shall be the same as are applicable from time to time to officers of other Central Civil Services (Class 1)". It was, Therefore, suggested that in any event after the

coming into force of the aforesaid rules of 1965, the principles contained in the December 59 Memorandum must be made applicable. A reference of the matter was also suggested to the Ministry of Law. In a note recorded on March 21, 1970, in the Ministry of Law, the question as to the effect of the Rules of 1965 was examined. This is how the reference is answered :-

"UNTIL 1965, the principles laid down in this O.M. would apply to Class I and Class II officers of the Central Water and Power Commission. However, with effect from 15-10-1965, that is date of commencement of the 1965 Rules by operation of rule 14 of the Rules the principles of seniority applicable would be those contained in the Home Ministry's O.M. of 1959. From 15-10-1965 the seniority of persons covered by the 1965 Rules have to be determined in accordance with the Home Ministry's O.M. of 1959."

It was further pointed out that no further steps were necessary as by implication "Rule 14 of 1965 Rules by reference incorporates the principles laid down in the Home Ministry's O.M. of 22-12-1959". It was further pointed out that the continued application of the rules contained in the September 59 Memorandum even after the enforcement of the Rules of 1965 did not appear "to be legally correct", and that if the seniority had not been determined in accordance with law "namely in accordance with Rule 14 read with the Home Ministry's O.M. of 1959, then the proper course of action will be to determine the seniority in accordance with the said provision". In 1970, the question again came up for consideration in the Ministry of Irrigation and Power. In a note recorded on April 16, 1970, the then Secretary to the Ministry, pointed out that the application of the Rules contained in the December 59 Memorandum "will create further anomalies" and that these rules "will confer benefit to 23 officers, but at the same time will adversely affect over 200 persons". A final decision on the question was, however, proposed to be deferred in view of the pendency of a petition in "this Court, and it was suggested that the existing seniority rules may be reviewed after the writ petitions had been disposed of by the Court. This was approved by the then Ministry of Irrigation and Power. By yet another note of May 18, 1970, the then Secretary of the Ministry reiterated the plea that the status quo be maintained "till the situation created by the existence of a large number of temporary employees with long years of service to their credit is suitably dealt with". This note was approved by the then Ministry by a note of May 21, 1970, by an observation that "in engineering, experience and good work counts and not artificial rules". The matter appears to have again come up in August 1970. In a note of August 14, 1970, it was pointed out that the September 59 Memorandum could continue to be applicable notwithstanding December 59 Memorandum if the approval of the Ministry of Home Affairs had been obtained. It was further stated that the approval of the Ministry of Home Affairs had been obtained and that the status quo was being maintained "in consultation with the Ministry of Home Affairs and the Ministry of Law". It was pointed out that on the basis of the advice received from the Ministry of Home Affairs on March 31, 1960, "it was decided that orders contained in the O.M.

dated 11th September 1959 should take effect from the date of issue". In a note recorded on October 21, 1971, the then Deputy Minister, Irrigation & Power, expressed the view that "on the flimsy grounds and lame arguments, the Ministry have not implemented Home Ministry's general principles in C.W. & P.C. which should have been implemented long ago". The later note reiterates this position. In one of the later notes the said Deputy Minister expressed the view on. September 21, 1972, that he did not agree with the "vague and contradictory arguments advanced for no implementation of the general principles of Home Ministry".

(15) The picture however fragmented, that thus emerges on a perusal of these notes and on an examination of the totality of the circumstances attending on the examination of the question in the three Ministries may be broadly summarised thus : In the first place, the basic approach of the Ministry of Irrigation and Power had been that the rules contained in the September 59 Memorandum represent "principles" relating to seniority which had been saved by the December 59 Memorandum, a contention which is clearly unsustainable and has been repelled. Secondly, the claim that the continued application of the September 59 Memorandum, even after the issue of December 59 Memorandum, had the concurrence of the Ministry of Home Affairs was based on a reference made in 1960 by the Chairman of the Central Water and Power Commission and a reference to the noting in the Ministry of Irrigation and Power and the Ministry of Home Affairs in relation thereto and referred to above leave no manner of doubt that in the first instance, the reference was of a limited question if the September 59 Memorandum had retrospective operation or was to be given prospective effect, and secondly, the reference related to the rule contained in the September 59 Memorandum with regard to the determination of inter se seniority between the direct recruits and the promotees. The reply to the reference is likewise confined to the question of the retrospectivity of the September 59 Memorandum. Such a reference could not be considered a reference for the continued operation of the September 59 Memorandum after the issue of the December 59 Memorandum, a question that was neither referred nor answered. The reference related to the position of inter se seniority of two different categories, the promotees and direct recruits, with regard to which the corresponding rules in both the Memoranda are identical. The reference that was required with regard to the continued application of September 59 Memorandum would have related primarily to the rule with regard to the determination of seniority of direct entrants inter se and in particular the question whether the determination of seniority of direct entrants would be on the basis of the entries length of service or on the basis of date of confirmation. Thus, on the existing material, it is not possible to return a finding that the Ministry of Irrigation and Power ever made a formal reference to the Ministry of Home Affairs seeking the latter's concurrence to the continued application of the Rules incorporated in the September 59 Memorandum even after the December 59 Memorandum came into force. It is equally difficult to return a finding that the Ministry of Home

Affairs ever gave, whether on a formal reference or otherwise, its express concurrence to such continued application. At the same time, it is difficult to ignore the position taken up by the Ministry of Home Affairs as exemplified in some of the noting which had the approval of no less a person than the then Home Minister himself, which clearly indicates that, even though falling short of an express concurrence, the Ministry of Home Affairs did not insist on a rigid adherence by all the sister Ministries to the principles enunciated by it in the December 59 Memorandum and in actual practice gave, what may be described as its tacit approval to or acquiesced in the continuance by some of the Ministries of their pre-existing rules relating to determination of seniority, including the rules contained in the September 59 Memorandum on account of what may be described as certain practical difficulties, even though pending the formal decision of the question. In this context, it is useful to bear in mind that the December 59 Memorandum, though couched in somewhat peremptory language, did not purport to be in the nature of statutory provision or a mandatory direction to a subordinate, carrying as it were, a legal obligation to carry it out. It was on the other hand a model containing general principles intended to be followed by the sister Ministries. It is, Therefore, not possible to construe the impact of one Memorandum on the other or to construe the correspondence between the Ministries and the inter-Ministerial noting on the question on the basis that the Ministries concerned either applied the rules contained in the December 59 Memorandum or not at all. All the Ministries of the Government of India are limbs of the same body and have, Therefore, to act in unison even though entitled to ascendancy over the others with regard to the subjects which they are competent to deal with. While the contention that there was express concurrence on a reference to the Ministry of Home Affairs must, Therefore, be rejected, it must nevertheless be held that in view of the attitude of the Ministry of Home Affairs, the continued application of the rules contained in the September 59 Memorandum had the tacit approval of the Ministry of Home Affairs and, in any event, the said Ministry had waived the compulsory application of the new principles until the various questions raised between the Ministries and certain practical difficulties in effecting the change had been finally sorted out.

(16) An examination of the correspondence and the inter-ministerial noting referred to above, however, raised yet another question which must also be examined. According to some of the nothings, it was, by and large, agreed that the principles contained in the December 59 Memorandum of the Ministry of Home Affairs must prevail over the rules contained in the September 59 Memorandum at least with effect from the date on which the Rules of 1965 came into force. This is so because Rule 14 of the said Rules, which constitutes a residuary provision, clearly stipulates "the other conditions of service of all members of the Service in respect of matters for which no provision is made in these rules, shall be the same as are applicable from time to time to officers of other Central Civil Services (Class 1)". A number of nothings in the two

Ministries, as indeed the opinion of the Ministry of Law in that behalf, proceed on the basis that by virtue of this Rule, the principles enunciated in the December 59 Memorandum got incorporated into the Rules of 1965 and, Therefore, acquired a statutory character thereby clearly superseding the rules contained in the September 59 Memorandum. It was, Therefore, pointed out that, in any event, with effect from the date of the enforcement of the Rules of 1965, there was no question, whether or not there was any concurrence, of the rules contained in the September 59 Memorandum being continued to be applied. This contention had been raised at the hearing on behalf of the petitioners although learned counsel for the petitioners, who apparently felt very strong on the other questions raised by him, did not urge this contention with his usual vehemence, and probably for that reason, learned counsel for the Union had more or less glossed over this contention. We had put a specific question to learned counsel for the parties if Rule 14 would attract the principles applicable to the other Central Civil Services with regard to seniority as well on the basis of an apprehension that the expression "conditions of service" in Rule 14 may perhaps exclude seniority, at least on its narrow construction on the ground that the seniority was normally not a condition of service though an important incidence of service and also within the 534 term "matters relating to employment". Counsel for the parties were, however, not able to throw any light on this aspect of the matter. We have, Therefore, since examined this question.

(17) In Industrial Law and, to an extent, in law relating to service under the State in India, a distinction, even though a very thin one, had been maintained between the expression "conditions of service" on the one hand and expressions like "conditions of employment", "incident of service" and "matters relating to employment" on the other. The dictionary meaning of the word "condition" is a provision or a stipulation. "Matters relating to employment" or "incidence of service" are expressions of much wider import than the "conditions of service". Conditions, which had been specifically stipulated or provided in a contract of service or in any non-statutory rule, to which the workman or civil servant subscribes, or were otherwise contained in statutory rules, which were binding on the employers, were generally described as "conditions of service", while other matters of employment, which were not specifically provided, either in a contract or in a rule, whether statutory or otherwise, were considered as "incidence" of or "matters relating to employment". In course of time, however, it appears that there has been a gradual obliteration of this thin line and there has been a tendency to construe the expression "conditions of service" in a broad and liberal sense so as to include even incidence of service, which could not on a narrow construction of the expression be considered to be within the expression. The expression was, inter alia, used in Articles 229(2), 235 and 309 of the Constitution of India and some of the corresponding provisions of the Government of India Act, 1935. The expression also occurs in Section 115 of the States Reorganisation Act, 1956. Article 16(1) on the other hand uses a wider expression "matters relating to employment". In Industrial Law as well, the

expressions "conditions of service" and "conditions of employment" were used in different contexts.

(18) In *North-West Frontier Province v. Suraj Nattain Anand*(1), the Judicial Committee construed the expression "conditions of service" in section 243 of the Government of India Act to be wide enough to include a provision regarding termination of service. This decision was followed by the Supreme Court in the case of *Pradyat Kumar Bose v. The Hon'ble the Chief Justice of Calcutta High Court* (2) in construing Article 229(2) of the Constitution of India. A similar view was expressed by the Supreme Court in the case *P. Balakotaiah v. Union of India* (3). In the case of *Bagalkot Cement Co. Ltd. v. R. K. Pathan & Others*(4), the question as to the meaning of the expression "condition" arose in the context of clause 5(1) of the Industrial Employment (Standing Orders) Act, 1946, *Gajendragadkar, J*" as he then was, and who spoke for the Court, held, that even though the dictionary meaning of the word "condition" was a provision or a stipulation, a provision or a stipulation as to leave and holidays would necessarily include a provision for the quantum of holidays and leave and that for the purpose of construing clause 5 of the Schedule to the Industrial Employment (Standing Orders) Act, 1946, the expression "condition" must be reasonably construed in a "broad" and "liberal" sense rather than in a narrow sense. Relying on the decision of the Judicial Committee, *Hegde, J.*, who spoke for the Court in the case of *State of Madhya Pradesh & Ors. v. Shardul Singh*(5), expressed the view that the expression "conditions of service" was an expression of wide import, and that the dismissal of an official's a matter which fell within the "conditions of service" of a public servant. *Hegde, J.*, pointed out that :-

"The expression "conditions of service" means all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it in matters like pension etc."

The expression came up for interpretation in another line of decisions, *inter alia*, in the context of the provisions of Section 115 of the States Reorganisation Act, 1956. In the case of *C. K. Appana v. State of Mysore & Ors.* (6), it was held by the Mysore High Court that seniority was one of the matters which constitute the "conditions of service" of a Government employee. It was no doubt observed by the Supreme Court in the cases of *State of Orissa v. Durgacharan Das*(7) and the *State of Mysore & Anr. v. G. N. Purohit* (8) that a mere "chance of promotion" was not a condition of service, but it has been held by the Supreme Court on more than one occasion that a Rule which affects the promotion of a person relates to his conditions of service. Reference may be made to the cases of *Gurcharan Das Vaid v. The State of Punjab & Ors.*(9) and of *Mohammed Bhakar & Ors. v. Krishna Reddy and Ors.*(10). A full Bench of the Punjab High Court took a similar view in case of *Sat Pal Sharma & Anr. v. State of Punjab & Ors.*(11) A Division Bench of this Court expressed a similar view in the case of *R. Prasad v. Union of India & Ors.*(12) decided by *Jagjit Singh & Safer, JJ.*, on January 31, 1972. There is thus sufficient authority for the propositions that the expression is

one of wide import and should be liberally construed; that promotion was one of the matters which would be within the expression; and since seniority plays an important part in the matter of promotion, and has assumed a special significance in relation to the service under the State by virtue of the provision of Article 16 of the Constitution of India, Rules relating to seniority would be likewise within the expression. If promotion is a matter which relates to the condition of service of a public servant and the seniority plays an important part in the matter of promotion, it follows that the seniority could not be outside the expression "conditions of service."

(19) The Rules of 1965 deal with the various conditions of service. The Rules contain no provision with regard to seniority. Rule 14, which is a residuary Rule, provides that the other conditions of service in respect of matters for which no provision is made in the Rules "shall be the same as are applicable from time to time to officers of other Central Civil Services (Class 1)". It, however, appears, that the object of Rule 14 is to introduce an element of uniformity in the conditions of service in respect of matters for which provision is not made in these Rules and this object is likely to be frustrated if a narrow construction is given to the expression "conditions of service". It must, Therefore, be held that Rule 14 incorporates the seniority rules envisaged by the December 59 Memorandum, which are admittedly applicable to the other Central Civil Services, with the result that on the promulgation of the Rules of 1965, the non-statutory rules of seniority contained in the September 59 Memorandum stood superseded with" the result that the seniority of the Class I Officers of the Ministry of Irrigation and Power had to be regulated from the date of the enforcement of these Rules in accordance with the December 59 Memorandum.

(20) The impugned seniority lists were admittedly compiled on the basis of determination of seniority in accordance with the Rules contained in the September 59 Memorandum. Such a course was obviously not proper after the promulgation of the Rules of 1965. It is, however, unnecessary to quash these lists as, in our view,, it would be sufficient if a direction is made that a fresh seniority lists would be drawn on the basis of determination of seniority of the officers concerned as on the date of enforcement of the Rules of 1965 in accordance with the Rules incorporated in the December 59 Memorandum.

(21) We, would, Therefore, direct that the authorities would redetermine the seniority of the petitioners and the said respondents as on the date of the promulgation of the aforesaid Rules in accordance with the provisions of December 59 Memorandum. The process of determination would be initiated by the appropriate authorities within three weeks and would be completed within a further period of three weeks there from in the light of the observations made above.

(22) In the way we have looked at the various questions discussed above, it is unnecessary to consider some of the other questions raised by the petitioners in the petition, as indeed at the hearing, particularly if the application of the rules

contained in the September 59 Memorandum to Class I Officers of the Ministry of Irrigation and Power after the enforcement of the December 59 Memorandum constituted an act of hostile discrimination, in that the rules contained in the December 59 Memorandum were made applicable to other service in the Ministry, and as to the validity of determination of seniority of some of the petitioners, who belong to the scheduled caste or scheduled tribes.

(23) The petitioners would also have their costs. Counsel fee is assessed at Rs. 750.00 .