
(1995) 04 SC CK 0065

In the Supreme Court Of India

Case No : Civil Appeal No's. 7002-03 with 7004 of 1993

K.P. Singhal

APPELLANT

Vs

State of Rajasthan and another

RESPONDENT

Date of Decision : 20-04-1995

Acts Referred:

Rajasthan Administrative Service (Emergency Recruitment) Rules, 1976 — Rule 25
Rajasthan Administrative Service Rules, 1954 — Rule 28

Citation : AIR 1996 SC 2218 : (1995) 3 SCC 549 Supp

Hon'ble Judges : A. M. Ahmadii, C.J.; S. P. Bharucha, J; K. S. Paripoornan, J

Bench : Full Bench

Final Decision : Allowed

Judgement

1. The short question which arises for consideration relates to the interpretation of Sub-rule (3) of Rule 32 of the Rajasthan Administrative Service Rules, 1954. The said Sub-rule reads as under:

(3) No member of the service who has not completed 3 years' service on the selection scale posts and 20 years' service in all on the posts included in the service shall be eligible for appointment on the super time scale posts.

Before we interpret the aforesaid sub-rule, it is necessary to notice Sub-rule (5) of Rule 28-B of the said Rules. That sub-rule reads as under:

(5) Subject to the provisions of Sub-rule (7), selection for promotion from the lowest post or category of post in the State Service to the next higher post or category of post in the State Service and for all posts in the Subordinate Services and in the Ministerial Services shall be made strictly on the basis of seniority-cum-merit from amongst the persons who have passed the qualifying examination, if any, prescribed under these Rules, and have put in at least five years' service, unless a different period is prescribed elsewhere in these Rules on the first day of the month of April of the year of selection on the post or category of post from which selection is made.

2. The proviso to the said sub-rule is not relevant for our purpose. This Sub-rule (5) came up for interpretation before the Rajasthan Civil Services Appellate Tribunal. By the decision rendered by that Tribunal on 19-8-1988, the Tribunal while interpreting the sub-rule, both in relation to the length of service and experience, came to the following conclusion:

It is evident from a perusal of these Rules that they make provision for counting of service/experience of a person for promotion to the higher post of any period during which he has not actually performed the duties of the post to which he has been promoted. This can be viewed as creating a legal fiction in their favour so that they are not put in a disadvantageous post vis-a-vis persons who have actually performed the duties of the post with effect from the same year to which such promoted persons have been assigned. We are of the view that the benefit of such legal fiction cannot be denied in the case of emergency recruits who are assigned a notional year of allotment under Rule 25 of the Rules of 1976.

The Rules of 1976 to which a reference has been made are known as the Rajasthan Administrative Service (Emergency Recruitment) Rules, 1976. From the above extracted observation of the Tribunal it is evident that both for the purposes of length of service and counting of experience the service rendered by emergency recruits in the past had to be reckoned on the basis of the notional year of allotment given under Rule 25 of the 1976 Rules. In other words, therefore, the notional service calculated in accordance with Rule 25 of the 1976 Rules had to be taken into consideration while counting the length of service or experience in interpreting Sub-rule (5) of Rule 28-B of the 1954 Rules. This interpretation put by the Tribunal on Sub-rule (5) in the year 1988 was acquiesced in by the State Government. The State Government has been operating the same since then. Sub-rule (3) of Rule 32 was added by Notification dated 12th December, 1989 with effect from 1-4-1988. It was, therefore, introduced after the State Government acquiesced in the Tribunal's order on the interpretation of Sub-rule (5) of Rule 28-B. If the State Government desired to depart from the interpretation placed by the Tribunal on Sub-rule (5) of Rule 28-B, it would have framed Sub-rule (3) of Rule 32 by explicitly stating that the emergency recruits will not be entitled to past service or any part thereof as notional service for the purposes of counting seniority as well as experience. The language of Sub-rule (3) of Rule 32 does not expressly so state nor does the language of that sub-rule by necessary implication so convey. Sub-rule (3) merely states that no member of the service who has not completed 3 years' service on the selection scale post and 20 years' service in all on the posts included in the service shall be eligible for appointment on the super time scale posts. So far as the first part of the rule is concerned, it in no uncertain terms states that the incumbent must have completed 3 years' service on the selection scale post. But the experience of 20 years' service on the post included in the latter part for the purpose of eligibility to super time scale posts does not explicitly eliminate the notional service available to emergency recruits under Rule 25 of the 1976 Rules. If it was the intention of the Rule making authority not

to give the benefit or weightage of post-service to emergency recruits nothing would have been more simple than to say so in express terms. The language of Sub-rule (5) of Rule 28-B is similar to the language of Sub-rule (3) of Rule 32. Sub-rule (5) also uses the expression 'on the post' as is the case of Sub-rule (3) of Rule 32. Therefore, if while interpreting Sub-rule (5) of Rule 28-B of the 1954 Rules the Tribunal came to the conclusion that for the purposes of working out the experience criteria the notional service calculated under Rule 25 of the 1976 Rules would be available to emergency recruits, the same interpretation must be placed on Sub-rule (3) of Rule 32, more so when the Government have acquiesced in the interpretation placed by the Tribunal for otherwise there would be an avoidable conflict. It is indeed true that the private respondent was not a party to the proceedings before the Tribunal but that is no reason why the interpretation placed by the Tribunal on Sub-rule (5) of Rule 28-B and accepted by the State Government which has since become final and has been in operation for all these years should be disturbed, more particularly when such an interpretation does not offend the sub-rule itself. We are, therefore, of the opinion that in calculating the 20 years' service on the different posts-included in the service the notional service to which emergency recruits are entitled under Rule 25 of the 1976 Rules should be added. The High Court has negatived the contention of the appellants on the ground that while Sub-rule (5) of Rule 28-B dealt with the question of seniority, Sub-rule (3) of Rule 32 dealt with the question of eligibility and, therefore, the interpretation need not be identical. We are afraid we cannot accept this distinction for the simple reason that even in Sub-rule (5) of Rule 28-B when it comes to the question of calculating the experience of 5 years it has a relation to eligibility for selection to the next higher post or scale. Therefore, the distinction drawn by the High Court in the impugned judgment of the Division Bench does not seem to be real.

3. In the result, these appeals succeed. The decision rendered by the Division Bench of the High Court is set aside and the judgment and order of the learned single Judge is restored. The benefit of this interpretation will be worked out by the concerned Government so far as the appellants are concerned but so far as the private respondent is concerned he has since been inducted into the All India Services and, therefore, he is not likely to be affected any more. The appeals will stand allowed accordingly with no order as to costs.