
(2025) 02 DEL CK 1136

In the Delhi High Court

Case No : Writ Petition (C) No. 1774 Of 2019 & Civil Miscellaneous Petition No. 37245 Of 2022

Naresh Kumar And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 14-02-2025

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2025) 02 DEL CK 1136

Hon'ble Judges : Rekha Palli, J;Navin Chawla, J;Anup Jairam Bhambhan, J

Bench : Full Bench

Advocate : Vijay Joshi, Devender Singh, Manish Mohan, Jatin Teotia, Aishani Mohan, Varenym Singh, R.K.Shukla, Nisha Maurya

Final Decision : Allowed

Judgement

Rekha Palli, J

1. This Full Bench has been constituted on the orders of the Hon'ble the Chief Justice pursuant to the common reference order dated 12.12.2019 passed by the learned Division Bench in these two petitions wherein, besides seeking recall of judgment dated 07.01.2019 passed in WP(C) No. 10139/2009 and WP(C) No. 1415/2012 titled as Parmod Kumar Kaushik & Ors. v. Union of India & Ors., the petitioners have also sought an order restraining the respondents from revising the seniority list of Inspectors (Accountant) issued on 01.01.2017 as per the directions issued in Parmod Kumar Kaushik (supra). On 12.12.2019, the Division Bench, upon consideration of the petitioners' submissions, directed that the matter be placed before a Larger Bench for examining the correctness of the decision in Parmod Kumar Kaushik (supra). It is in these circumstances that the matter has been placed before this Full Bench to reconsider the decision dated 07.01.2019 of the Division Bench in Parmod Kumar Kaushik (supra).

2. Vide its aforesaid decision dated 07.01.2019, the learned Division Bench while

allowing the two writ petitions being W.P.(C) 10139/2019 and 1415/2012 preferred by the respondent no. 4 and other similarly placed persons, quashed the seniority list of Inspectors (Accountant) issued by the official respondents on 14.10.2008, wherein the seniority of Inspectors (Accountant) was, on the basis of DoPT's Office Memorandums (OMs) dated 29.05.1986 and 27.03.2001, sought to be fixed by taking into account their past service as Inspectors (Combatant Ministerial(CM)). The Court held that the DoPT's OMs dated 29.05.1986 and 27.03.2001, providing for fixation of seniority of persons appointed through absorption by taking into account their past regular service on a post with equivalent grade, would not be applicable to the post of Inspectors (Accountant).

3. The learned Division Bench, therefore, held that the seniority of respondent no. 4 and other similarly placed persons, who had been appointed as Inspectors (Accountant) in the year 2004 had been wrongly revised vide the seniority list dated 14.10.2008 by applying OMs dated 29.05.1986 and 27.03.2001, as a result whereof their seniority as Inspectors (Accountant) had been fixed on the basis of their original seniority as Inspectors (CM). The learned Division Bench held that since the petitioners therein had been absorbed on the post of Inspectors (Accountant) through selection by merit, the fixation of their seniority by applying O.Ms dated 29.05.1986 and 27.03.2001 would even otherwise be in conflict with the Indo-Tibetan Border Police Force, Combatant Ministerial Cadre (Non-Gazette) Recruitment Rules, 1999 (hereinafter referred to as 'Recruitment Rules, 1999'). The official respondents were, accordingly, directed to prepare a fresh seniority list of Inspectors (Accountant) by taking into account their service from the date of absorption on the said post itself and not in accordance with their seniority as Inspectors (CM).

4. In accordance with the directions issued by the Court on 07.01.2019 in Parmod Kumar Kaushik (supra), the respondent nos. 1 to 3 issued a signal dated 30.01.2019 proposing to revise the seniority of all Inspectors (Accountant) by ignoring their seniority as Inspectors (CM).

5. The petitioners herein, who had been serving as Inspectors (Accountant), having been appointed to the said post between 14.12.2015 to 01.12.2016 and had been assigned seniority in the said post by taking into account their earlier regular service as Inspectors (CM), felt aggrieved by these directions and, therefore, preferred a Review Petition being Review Petition No. 55/2019 seeking review of order dated 07.01.2019. The said review petition was, however, dismissed on the ground that since they were not parties to the original writ petitions, they were not entitled to seek review of the same. However, as liberty was granted to them to file an independent writ petition, the present writ petitions assailing the decision dated 07.01.2019 were filed, which, as noted hereinabove, have been placed before this Full Bench to determine the correctness of the decision in Parmod Kumar Kaushik (supra).

6. In support of the petitions, learned counsel for the petitioners has urged that the decision in Parmod Kumar Kaushik (supra) insofar as it holds that the OMs

dated 29.05.1986 and 27.03.2001 could not be applied for fixing the seniority of the Inspectors (Accountant) is incorrect. He submits that this decision of the learned Division Bench overlooks the effect of the provisions of the Indo Tibetan Border Police Force Combatant Accounts Cadre Group A and Group B posts Recruitment Rules, 2012 (hereinafter referred to as 'Recruitment Rules, 2012') notified on 07.11.2012. His plea being that the Recruitment Rules, 1999 under which the petitioners in Parmod Kumar Kaushik (supra) were appointed, clearly prescribed that the absorption would be based on 'selection by merit', however, this position has changed under the Recruitment Rules, 2012, whereunder the petitioners were appointed as Inspectors (Accountant) by absorption without there being any evaluation qua the inter-se merit of the absorbees, as was the position under the Recruitment Rules, 1999.

7. Mr. Chhibber, learned counsel for the petitioners further submits that while coming to the conclusion that the OMs dated 29.05.1986 and 27.03.2001 would not be applicable to Inspectors (Accountant), who are appointed by direct absorption without ever having served on deputation, the learned Division Bench failed to consider the effect of DoPT's clarificatory note dated 13.08.2008. The DoPT, he urges, had specifically clarified that the provisions of the OMs dated 29.05.1986 and 27.03.2001 would be applicable even to those persons, who are directly appointed on a post on absorption basis without having earlier served on deputation on the said post. He, therefore, contends that the findings of the learned Division Bench on both the aforesaid counts are liable to be recalled.

8. While the petition is opposed by the respondent no.4, the official respondents have in their counter affidavit only sought to explain the factual position without taking any specific stand on the correctness of the decision in Pramod Kumar Kaushik (supra). We may, however, note that the respondents have, like the petitioners, urged that the DoPT has categorically opined in their clarificatory note dated 13.08.2008 that the instructions for fixation of seniority issued vide OMs dated 29.05.1986 and 27.03.2001 were applicable in the present case and, therefore, personnel appointed as Inspectors (Accountant) were entitled for counting of service rendered by them in the equivalent grade of Inspector (CM) for fixation of their seniority in the post of Inspectors (Accountant) on which they are absorbed.

9. Having considered the submissions of learned counsel for the parties and perused the record, we find that it is the common case of the parties that OM dated 27.03.2001 reiterates the principles laid down in OM dated 29.05.1986. We, therefore, begin by noting hereinbelow the contents of OM dated 27.03.2001 in its entirety:-

"New Delhi 110001

March 27, 2001

OFFICE MEMORANDUM

Subject: Seniority of persons absorbed after
being on deputation.

The undersigned is directed to say that according to our O.M.No.20020/7/80-Estt(D) dated May 29, 1986 (copy enclosed) in the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for "transfer on deputation/transfer"), his seniority in the grade in which he is absorbed will normally be counted from the date at absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade or regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from

the date he has been holding the post of deputation,

or

the date from which he has been appointed on a regular basis to same or equivalent grade in his parent department, whichever is later

2. The Supreme Court has in its judgement dated December 14, 1999 in the case of Shri S .I. Rooplal & Others Vs. Lt. Governor through Chief Secretary, Delhi, JT1999 (9) SC597 has held that the words "whichever is later" occurring in the Office Memorandum dated May 29, 1986 and mentioned above are violative of Articles 14 and 16 of the Constitution and, hence, those words have been quashed from that Memorandum. The implications of the above ruling of the Supreme Court have been examined and it has been decided to substitute the term "whichever is later" occurring in the Office Memorandum dated May 29, 1986 by the term "whichever is earlier".

3. It is also clarified that for the purpose of determining the 'equivalent grade in the' parent department mentioned in the Office Memorandum dated May 29, 1986 the criteria contained in this Department Office No. 14017/27/75-Estt (D) (pt) dated March 7, 1984 (copy enclosed), which lays down the criteria for determining analogous posts, may be followed.

4. These instructions shall take effect from the December 14, 1999 which is the date of the judgement of the Supreme Court referred to above.

5. In so far as personnel serving in Indian Audit and Accounts Departments are concerned, these instructions are issued in consultation with the Comptroller and Auditor General of India. However, these orders (in keeping with paragraph 4 of the Office Memorandum dated May 29, 1986 as referred to above) will not be applicable to transfers within the Indian Audit and Accounts Department which are governed by orders issued by the C&AG from time to time.

6. The above instructions may be brought' to the notice of all concerned for information, guidance and necessary action."

(Emphasis supplied)

10. From a perusal of the aforesaid, what emerges is that as per the DoPT's instructions, the seniority of a person upon absorption to a post is to be counted from the date of absorption but in a case where he was, before absorption, holding a post on regular basis in an equivalent grade in his parent department, his seniority would be fixed by taking into account his service in the equivalent grade as well. However, since as per these OM's, the benefit of service in an equivalent grade for the purpose of determining seniority upon absorption was to be granted only in cases where the absorption was preceded by deputation, a clarification was issued by the DoPT on 13.08.2008, the relevant extracts whereof read as under:

"Fixation of seniority of persons on deputation who are absorbed subsequently is governed by this Department's OM No.20020/7/80-Estt (D) dated 29.5.1986 and No.20011/1/2000-Estt (D) dated 27.3.2001. The question of seniority in the case of persons, who are appointed on direct absorption basis in a post/service, without being on deputation, was looked into in this Department earlier while handling such cases. "Accordingly, it was decided that, extending the provisions of this Department's OM dated 27.3.2001, the seniority in the post of absorption may be fixed by counting the service rendered on regular basis in the equivalent grade in the parent department held at the time of absorption."

11. From the aforesaid note, it is evident that the DoPT has clarified that this benefit of taking into account past service in a post having an equivalent grade would also be granted in case of persons who are appointed on direct absorption basis without having ever worked on deputation on said post. In these circumstances, we find that none of the parties, including the official respondents as also the petitioners in Parmod Kumar Kaushik (supra), have seriously disputed that after the issuance of this clarification, the absorbees would be entitled seniority to their past service in an equivalent grade without having ever served on deputation prior to absorption.

12. Having noted the effect of the OM's read with the clarification issued by the DoPT on 13.08.2008, we may now turn to the relevant extracts of the decision in Parmod Kumar Kaushik (supra), as contained in paragraph nos. 17 to 19 thereof. The same reads as under :-

"17. It can be discerned by reading the aforesaid OM's and the Recruitment Rules, that the same are applicable in case of deputationists who are absorbed in the department. In fact, perusal of the Recruitment Rules show that absorption by way of deputation is only applicable to Sub-Inspector (CM). Moreover, the above mentioned OM's would not be pertinent to the facts of the present case, as the Petitioners have been absorbed as Inspector/Accountant on selection by merit as per the Recruitment Rules. The word "selection" has been used in the sense of selecting an officer for promotion on the basis of the criterion of selection by merit. The requirement for such a selection is that selection shall be

made on the basis of assessment of performance and not seniority. The said mode lays emphasis on merit only. The selection of the eligible candidates under "selection by merit" is determined by assessing the candidates wherein merit is the governing factor and not seniority.

18. A perusal of the Counter Affidavit filed by the Respondents shows that Respondents do not controvert the applicability of the above-mentioned Recruitment Rules.

19. In view of the aforesaid, it is clear that the downgrading of the settled seniority of the Petitioners is on a wrong premise. The Petitioner's seniority could not be refixed on the basis of the OM's dated 29th March, 1986 and 27th March, 2001. The same would then conflict the recruitment rules discussed above."

13. From the aforesaid extracts in Parmod Kumar Kaushik (supra), we find that the decision of the learned Division Bench in holding that the DoPT's OMs dated 29.05.1986 and 27.03.2001 could not be applied for fixing the seniority for the post of Inspectors (Accountant) appointed by way of absorption by taking into account their service as Inspectors (CM) was premised on two grounds; the first being that the two OMs issued by the DoPT envisaged counting of service in an equivalent grade only when the person remained on deputation before being absorbed on the post with equivalent grade. The Court, therefore, opined that the appointment to the post of Inspector (Accountant), being by way of direct absorption from Inspector (CM), without having served on deputation, the OMs were clearly inapplicable.

14. The second ground for the Court to hold that the seniority of Inspectors (Accountant) could not be fixed by taking into account their past service as Inspectors (CM) was that absorption to the post of Inspector (Accountant) being by way of 'selection by merit', the same could not be treated as simpliciter absorption as envisaged under the OMs. The Court, therefore, held that grant of benefit of his past service as an Inspector (CM) to a person, upon his absorption as Inspector (Accountant), for fixation of his seniority would be in conflict with the Recruitment Rules.

15. Learned counsel for the petitioners has urged that both these findings are erroneous and are contrary not only to the Recruitment Rules of 2012 under which the petitioners were appointed, but are also contrary to the specific clarification issued by the DoPT on 13.08.2008.

16. As it is the petitioner's case that the criteria of 'selection by merit' for absorption as an Inspector (Accountant) as provided under the Recruitment Rules, 1999 under which the petitioners in Parmod Kumar Kaushik (supra) were appointed, was removed while notifying the Recruitment Rules of 2012, it would be apposite to examine the Recruitment Rules of 1999 as also relevant column (5) of the Recruitment Rules of 2012.

17. We may first refer to the Recruitment Rules, 1999, the relevant extracts

whereof reads as under:-

Name of the Post

Number of Posts

Classification

Scale of Pay

Whether by selection-cum- seniority

or selection by merit

Whether benefit of added years of service admissible under rule 30 of the Central Civil Services (Pension) Rules,

1972

Age limit for direct recruits.

(1)

(2)

(3)

(4)

(5)

(6)

(7)

2.

Inspector (Accountant)

10* (2000)

General Central Service Group "B"

(Non-gazetted) \ (Combatant Ministerial)

Rs.

6500-200-

10500/-

Selection by merit

Not applicable.

Not applicable.

Education and other qualifications required for direct recruits

Whether age and education qualification prescribed for direct recruits will apply in the case of promotees

Period of probation, if any

Method of recruitment whether by direct recruitment or by promotion or by deputation/ absorption and percentage of the posts to be filled by various methods

(8)

(9)

(10)

(11)

Not Applicable.

Not Applicable.

Two Years

By absorption failing which by deputation

"Absorption:

From amongst Inspector (Combatant Ministerial) of Indo-Tibetan Border Police Force, who have successfully undergone Cash and Accounts Course conducted by Institute of Secretariat Training and Management or any other recognised institute and being in medical category SHAPE-I.

Deputation:

From amongst Sub-Inspector (Combatant Ministerial) in the pay scale of Rs. 5500-9000 having at least three years regular service in the grade and have undergone Cash and Accounts Course conducted by Institute of Secretariat Training and Management or any other recognised institute and subject to passing Departmental Test and being In medical category SHAPE-I.

(The period of deputation including the period of deputation in another' ex-cadre post held immediately preceding this appointment in same or some other Organisation or department of the Central Government shall ordinarily not exceed three years) The maximum age limit for appointment, by deputation shall be not exceeding 56 years as on the closing date of receipt of applications".

18. We may now note hereinbelow column (5) of the criteria prescribed for appointment to the post of Inspector (Accountant) under the Recruitment Rules, 2012:

RECRUITMENT RULES

(1)

(2)

(3)

(4)

(5)

3. Inspector (Accountant)

15*

(2012) *Subject to variation dependent on work load.

General

Central Service, Group 'B'(NonGazetted), (Combatant Ministerial).

Pay Band-2, Rs. 9300- 34800 and Grade Pay Rs.4600/-

Not applicable

(6)

(7)

(8)

(9)

(10)

Notapplicable

Notapplicable

Not applicable

Not applicable

By absorption failing which by deputation.

(11)

19. From a perusal of the aforesaid, what emerges is that under the Recruitment Rules, 1999, the post of Inspectors (Accountant) was required to be filled by absorption, failing which, by deputation. Absorption, which was based on the principle of 'selection by merit', was to be from amongst Inspectors (CM) of ITBP who had successfully undergone cash and accounts course conducted by Institute of Secretariat Training and Management or any other recognised institute and were in medical category SHAPE-I. Under the Recruitment Rules, 2012, notified on 07.11.2012, while all other conditions for appointment to the post of Inspector (Accountant) have remained unchanged, the provision for 'selection by merit' prescribed in column (5) of the clause dealing with

appointment of Inspector (Accountant) under the Recruitment Rules, 1999 has been removed.

20. When this column (5) of the clause dealing with appointment of Inspector (Accountant) under the Recruitment Rules, 2012 is compared with the corresponding column (5) of the Recruitment Rules, 1999, it clearly emerges that the condition of 'selection by merit' which existed under the Recruitment Rules, 1999, no longer holds the field after 07.11.2012, when the Recruitment Rules, 2012 were notified. Consequently, what follows is that the appointment of Inspector (Accountant) by absorption under the Recruitment Rules of 2012 is based on the recommendations of a screening committee which is only required to consider whether the candidate meets the eligibility criteria and has submitted his willingness for absorption.

21. In the light of this admitted position that the petitioners in Parmod Kumar Kaushik (supra) were absorbed as Inspectors (Accountant) under the Recruitment Rules, 1999, it is evident that they were selected for appointment as Inspectors (Accountant) by following the principle of 'selection by merit'. On the other hand, the petitioners in the present case were absorbed under the Recruitment Rules, 2012 and, therefore, their absorption was not based on merit but only on the basis of their meeting the eligibility criteria, which included qualifying the 'Cash and Accounts' course conducted by Institute of Secretariat Training and Management or in any other recognised training institute and, their being in medical category SHAPE-I. However, the factual position is, that like the petitioners in Parmod Kumar Kaushik (supra), the petitioners in the present petitions were appointed as Inspectors (Accountant) by way of direct absorption without ever having served on deputation remains unchanged.

22. From the aforesaid, what clearly emerges is that the learned Division Bench in Pramod Kumar Kaushik (supra) has erred in holding that the DoPT's OMs dated 29.05.1986 and 27.03.2001 would not be applicable to the petitioners therein because they had never served on deputation before being absorbed as Inspector (Accountant). We say so as we find that after the clarification issued by the DoPT on 13.08.2008, there can be no doubt about the fact that the benefit of past service in an equivalent grade for fixation of seniority is required to be extended even in a case where absorption is not preceded by deputation.

23. Having said so, the question still would be whether, in the light of the provisions under the Recruitment Rules of 1999 clearly providing that the absorption would be by way of selection by merit, it would be appropriate to extend the benefit of the OMs to persons who were appointed as Inspector (Accountant) under the Recruitment Rules, 1999 by way of absorption after selection on merit.

24. Having given our thoughtful consideration to this issue, we are of the view that when appointment under the Recruitment Rules of 1999 was clearly on the basis of assessment of performance of all the eligible candidates and not merely

on the basis of their willingness, it would be highly unjust and unfair to grant them the benefit of their past seniority on the post of Inspector (CM). In our opinion, as has been noted by the Division Bench in Parmod Kumar Kaushik (supra), once selection for absorption being merit based and on the basis of assessment of performance, it would not be permissible to grant seniority to Inspectors (Accountant) simply on the basis of their past service as Inspectors (CM). We find that the learned Division Bench found that by application of the OMs dated 29.05.1986 and 27.03.2001, a situation had arisen where Inspectors (CM) who, despite their seniority were, not selected for absorption as Inspector (Accountant) in the initial selection process because of their low merit but were absorbed only in the subsequent absorption process gained seniority who were selected as Inspector (Accountant) prior to them on merit.

25. The learned Division Bench, therefore, found that permitting such candidates who were not selected in the initial process to steal a march over those who, because of their merit came to be absorbed earlier, would be contrary to the scheme of the Recruitment Rules which clearly provided that selection for absorption was to be on the basis of merit. We find absolutely no infirmity with this view taken by the learned Division Bench in Parmod Kumar Kaushik (supra).

26. We, therefore, hold that even though the Division Bench had erred in holding that the OMs dated 29.05.1986 and 27.03.2001 would not be applicable because absorption of Inspector (CM) as Inspector (Accountant) was not preceded by deputation, its decision that the OMs would not be applicable to the merit based absorption of Inspector (CM) to the post of Inspector (Accountant) under the Recruitment Rules cannot be faulted.

27. However, as already noted hereinabove, this position of merit based selection for absorption as Inspector (Accountant) has radically changed under the Recruitment Rules of 2012, whereunder all the petitioners in the present two petitions were appointed. There being no such clause for 'selection by merit' for appointment of Inspector (Accountant) by way of absorption, persons appointed under the Recruitment Rules of 2012 cannot be deprived of the benefits of the DoPT's OMs dated 25.05.1986 and 27.03.2001 and must, therefore, be granted the benefit of their seniority in the post of Inspector (CM) for fixation of their seniority as Inspector (Accountant).

28. In the light of the aforesaid, we have no hesitation in holding that while the decision of the learned Division Bench in Parmod Kumar Kaushik (supra) in quashing the seniority list dated 14.10.2008 of Inspectors (Accountant) who had been appointed under the Recruitment Rules of 1999 was correct and needs no interference, the decision of the official respondents to apply the same yardstick to persons absorbed under the Recruitment Rules of 2012 is unsustainable. We, accordingly, clarify that all persons who have been or are absorbed as Inspectors (Accountant) under the Recruitment Rules of 2012 will be entitled to counting of their seniority in an equivalent grade in their parent department before the date of their absorption for the purposes of fixing their seniority in the post of

Inspector (Accountant).

29. We, therefore, allow the writ petitions by quashing the impugned signal dated 30.01.2019 issued by the official respondents and direct them to fix the seniority of Inspectors (Accountant) in accordance with the directions issued hereinabove.