
(1988) 12 SC CK 0001

In the Supreme Court Of India

Case No : Civil Appeal No. 6144 of 1983

R.M. Ramual

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 02-12-1988

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : AIR 1989 SC 357 : (1989) 58 FLR 220 : (1988) 4 JT 562 : (1989) LabIC 1015 : (1988) 2 SCALE 1481 : (1989) 1 SCC 285 : (1988) 3 SCR 1009
Supp : (1989) 1 UJ 262

Hon'ble Judges : S. Natarajan, J;M. M. Dutt, J

Bench : Division Bench

Advocate : P.P. Rao and Ranjit Kumar, for the Appellant; Shankar Ghosh, K.G. Bhagat, Public Prosecutor Juneja, Girish Chandra and A. Subhashini, for the Respondent

Final Decision : Disposed Of

Judgement

Murari Mohan Dutt, J.

1.This appeal by appeal leave is directed against the judgment of the Himachal Pradesh High Court dismissing the writ petition of the appellant challenging the Government order dated April 28, 1982 as a result of which the appellant was placed below the respondents Nos. 4 and 5 in the seniority list.

2. The appellant was appointed as Reception Officer in the Department of Public Relations and Tourism, Himachal Pradesh, on February 26, 1962 and was confirmed in that post on May 18, 1966. He was temporarily promoted to the post of District Public Relations Officer in the pay-scale of Rs. 250-500 on May 18, 1966. On June 3, 1966, a post of Assistant Manager, Tourism, was created in the pay-scale of Rs. 250-500. One S.P. Singh, who was junior to the appellant was appointed to that post inasmuch as the appellant was already holding the post of District Public Relations Officer in the same scale of pay. It may be stated here that both the posts of District Public Relations Officer and Assistant Manager

were ex cadre posts.

3. On July 26, 1966 the Department of Public Relations and Tourism was bifurcated and a separate Department of Tourism was created. It is the case of the appellant that he made a representation that he might be transferred to his parent Department, that is, the Department of Tourism.

4. While the representation of the appellant was pending consideration, the Punjab Reorganisation Act, 1966, hereinafter referred to as the Act', was enacted. The appointed day under the Act was fixed a November 1, 1966. u/s 5 of the Act, on and from the appointed day certain territories of the State of Punjab were added to the Union Territory of Himachal Pradesh. Section 33 of the Act provides that every person who immediately before the appointed day is holding or discharging duties of any post or office in connection with the affairs of the existing State of Punjab in any area which on that day falls within any of the successor States shall continue to hold the same post of office in that successor State and shall be deemed, on and from that day, to have been duly appointed to the post or office by the Government of or other appropriate authority in, that successor State. Under the proviso to Section 33 nothing in that section shall be deemed to prevent a competent authority on or after the appointed day from passing in relation to such person any order affecting his continuance in such post or office.

5. The respondents Nos. 4 and 5, who were holding the posts of Tourists Officers in the pay-scale of Rs. 250-350 in the State of Punjab, were allocated to the Union Territory of Himachal Pradesh as Tourist Officers in the pay-scale of Rs. 250-350. Although there were no posts of Tourist Officer in the Union Territory of Himachal Pradesh, in view of Section 33 of the Act, the respondents Nos. 4 and 5 continued to hold the posts of Tourists Officers.

6. The Joint Secretary to the Government of India, Ministry of Home Affairs, in his D.O. letter dated February 14, 1967 issued certain instructions for the purpose of integration of the services of persons from the transferred territory of Punjab into those of the Himachal Pradesh. Paragraph 2 of the said letter is in following terms:

2. Action for the integration of the services would have to be initiated soon after the finalisation of allocations. This would involve two steps:

(i) Determination of equivalent posts, and

(ii) Determination of relative seniority of persons holding equivalent posts but drawn from different integration units.

For determining the equation of posts the following factors would have to be taken into consideration:

(a) The nature and duties of a post;

(b) The responsibilities and powers exercised by the officer holding the posts; the

extent of territorial; or other charge held or responsibilities discharged;

(c) The minimum qualifications, if any, prescribed for recruitment to the posts; and the

(d) the salary of the post.

The following factors would have to be taken into account for the determination of relative seniority:

(x) Length of continuous service, whether temporary or permanent, in the equivalent post, this should exclude periods for which an appointment is held in a purely stopgap or fortuitous attangement; and

(y) age of the person; other facts being equal, for instance, seniority may be determined on the basis of age.

While determining relative seniority as mentioned above, it was also be borne in mind that the inter se seniority of officers drawn from the same integrating unit should as far as possible be maintained.

Thereafter, in paragraph 3 it is inter alia stated as follows:

3. ...In the meanwhile, I would request you to initiate without avoidable delay the work of establishing provisional equations between posts which have come from the Punjab to Himachal Pradesh and those which were in existence in Himachal Pradesh on the 31st October, 1966 and to prepare provisional seniority list as on the 1st November, 1966 based on those equations for each cadre (leaving out all localised cadre or cadres in which the problem of integrating officers from the Punjab with the officers of the Himachal Pradesh does not arise).

7. One of the two steps which was to be taken for the purpose of integration was determination of equivalent posts. For determination the equivalent posts, the factors which would have to be taken into consideration were also suggested in the said letter. One of the factors, which is by far the most important one, was as contained in Clause (d) of paragraph 2, namely, the salary of the post. It is apparent from the instructions given by the Central Government, as contained in the said letter of the Joint Secretary, that for the purpose of integration the first thing which should be done was determination of equivalent post and after such determination, the determination of relative seniority of persons holding equivalent posts would be made.

8. It is surprising that although the instructions as given by the Central Government were very clear and specific in the matter of integration of services, the Government of Himachal Pradesh instead of following the two steps, as mentioned in the said letter of the Joint Secretary, prepared a provisional seniority list of the Tourism Department without first determining the equivalent posts. There can be no doubt that integration of services postulates equation of posts. Without such equation, preparation of inter se seniority lists between different groups of officers holding different posts cannot be conceived. The

Himachal Pradesh Government, however, appears to have ignored the specific, clear and categorical directions of the Central Government to first of all determine the equivalent posts and adopted an arbitrary procedure in preparing the provisional inter se seniority list without such equation of posts. In the provisional seniority list, the said S.P. Singh who was holding the post of Assistant Manager with effect from June 4, 1966 which post, as stated already, is an ex cadre post like the post of District Public Relations Officer held by the appellant, was placed at the top of seniority list as Assistant Manager. After him were placed the names of respondents Nos. 4 and 5 as Tourist Officers. The name of the appellant was placed below the names of the respondents Nos. 4 and 5 as Reception Officer. Admittedly, the appellant was senior to the said S.P. Singh. They were, however, holding posts having the same scale of pay. The Tourist Officers who joined the Tourism Department of the Government of Himachal Pradesh from Punjab as a result of the transfer of certain territories of Punjab to Himachal Pradesh, were placed above the appellant although, admittedly, their scales of pay were less than that of the appellant. Under the directions of the Central Government, the post of Tourists Officer could not be equated with that of the District Public Relations Officer because the scale of pay of the former is less than that of the latter. Moreover, it is not understandable why the appellant's name was mentioned in the provisional seniority list as the Reception Officer, when he was on the appointed day, that is, on November 1, 1966, holding the post of District Public Relations Officer.

9. Be that as it may, the final seniority list that was published under cover of the office Memorandum dated September 13, 1971 appears to be anomalous. In the final seniority list, the names of the Tourists Officers including those of the respondents Nos. 4 and 5 were placed above the Reception Officers and the name of the appellant was under the head 'Reception Officer' below the names of the Tourists Officers including those of the respondents Nos. 4 and 5. It was already noted that the appellant was holding the post of District Public Relations Officer, an ex cadre post in the Public Relations Department.

10. It appears that the appellant had made a representation to the Government regarding his promotion and seniority after the publication of the final seniority list. That representation bore result, for it appears from the Memorandum dated August 7, 1973 of the Commissioner of Transport and Tourism, Himachal Pradesh, that the Government after careful consideration of the representation of the appellant dated June 30, 1973 agreed to give proforma promotion to him as Assistant Manager in the pay-scale of Rs. 225-300, with retrospective effect in consultation with the Public Service Commission. The appellant was requested to intimate as to whether he would opt to revert from the Public Relations Department to serve as the Assistant Manager or would like to continue with the Public Relations Department. The commissioner of Transport and Tourism also sent a telegram dated march 3, 1974 to the appellant informing him of his proforma promotion as Assistant Manager in the Department of Tourism. The telegram was followed by a memorandum wherein it was stated that the

appellant, who was officiating an ex cadre post of District Public Relations Officer in the pay-scale of Rs. 350-500 in the Public Relations Department, was given proforma promotion as Assistant Manager in the Department of Tourism in the pay-scale of Rs. 225-500 (with initial start of Rs. 300) with effect from June 4, 1966. However, it was stated that since the post of Assistant Manager was an isolated one, the question of fixing his seniority did not arise.

11. After the appellant had exercised his option for the Tourism Department, the Deputy Secretary (Tourism) to the Government of Himachal Pradesh by his letter dated February 6, 1975 requested the Managing Director of the Himachal Pradesh Tourism Development Corporation Ltd., Simla, that the appellant might be treated like other employees of the erstwhile Tourism Department, he having exercised his option validly and given a comparable post in the Corporation. In that letter, it was also stated that the appellant had all along been representing and requesting for the grant of extension in time to exercise his option on valid grounds and as advised by the Law Department, the option exercised by the appellant should be deemed to have been given by him for proforma promotion as Assistant Manager with retrospective effect from June 4, 1966.

12. A seniority list was prepared by the Himachal Pradesh Tourism Department Corporation on December 31, 1977. In the said seniority list the name of the appellant was placed at the top of the names of other officers including those of the respondents Nos. 4 and 5.

13. While the appellant was holding the position of the District Public Relations Officer in the said Himachal Pradesh Tourism Development Corporation, his name having been placed above the names of the respondents Nos. 4 and 5, the Department of Tourism issued an order dated April 28, 1982 on the representation of the respondents Nos. 4 and 5 directing that the inter se seniority of the appellant and the respondents Nos. 4 and 5 was to be determined on the basis of their substantive ranks on November 1, 1966. Further, it was directed that the proforma promotion granted to the appellant with retrospective effect would not also entitle him to any advantage in seniority, as he was not eligible to be appointed as Assistant Manager according to the recruitment and promotional rules of the Department. The inter se seniority of the respondents Nos. 4 and 5 was directed to be fixed on the basis of their substantive appointments as on November 1, 1966 and that the said respondents being in higher scale on that case, would rank senior to the appellant.

14. Being aggrieved by the said impugned Government order dated April 28, 1982, the appellant moved a writ petition before the Himachal Pradesh High Court. The High Court, however, took the view that the seniority list once finalised after integrating persons working in the Tourism Department and those coming from Punjab could not be reopened to the disadvantage of other persons. In that view of the matter the High Court, as stated already, dismissed the writ petition. Hence this appeal by special leave.

15. It has been already noticed that both the provisional and the final seniority lists were prepared without complying with the directions of the Central Government, as contained in the letter of the Joint Secretary to the Government of India, Ministry of Home Affairs, dated February 14, 1967. There was no attempt to determine the equivalent posts, that is to say, no endeavour was made by the Government to equate one post with another for the purpose of integration and determination of relative seniority. Instead, the post as they were, were placed in the seniority list. The Government also did not follow the directions of the Central Government in determining the relative seniority. One of the factors that should have been taken into consideration for the purpose of determination of relative seniority, as mentioned in the said letter of the Joint Secretary, is length of continuous service whether temporary or permanent in the equivalent post, excluding periods for which an appointment is held in a purely stop gap or fortuitous arrangement. The appellant was, admittedly, promoted to the post of District Public Relations Officer in the pay-scale of Rs. 250-500 on May 18, 1966. It is not the case of any party that the promotion of the appellant was by way of any stop gap or fortuitous arrangement. The final seniority list as on November 1, 1966 was prepared on September 13, 1971. On November 1, 1966, admittedly, the appellant was holding the ex-cadre post of the District Public Relations Officer. According to the said directions of the Central Government, in preparing the relative seniority the position of the appellant as the District Public Relations Officer should have been taken into consideration. The Department utterly ignored the said direction of the Central Government and the appellant's substantive rank as the Reception Officer as on November 1, 1966 was erroneously taken into consideration for the purpose of preparing the inter se seniority, even though the appellant was on November 1, 1966 not holding the substantive rank of Reception Officer, but the post of the District Public Relations Officer in a temporary capacity. This omission on the part of the Department and/or the Himachal Pradesh Government vitiates the final seniority list, apart from the omission to equate one post with another for the purpose of integration. The final seniority list, as has been already observed, is an anomalous one and does not depict the relative seniority among officers after integration in accordance with the directions of the Central Government.

16. Mr. Shankar Ghosh, learned Counsel appearing on behalf of the respondents Nos. 4 and 5 (respondent No. 5 has since died), submits that after the final seniority list was approved by the Central Government, it had become final and it cannot be challenged in 1982 after 11 years. Further, it is submitted by him that the final seniority list has never been challenged by the appellant and, accordingly, he cannot be allowed to challenge the same by filing a writ petition. It is true that the final seniority list was sent to the Central Government and presumably it was approved, but because a seniority list has been approved by the Central Government, it cannot be laid down as a rule of law that even though it has been illegally prepared in violation of the directions of the Central Government itself to the prejudice of the officer or officers concerned, it cannot

be challenged. Normally, when a seniority list has been made final, it should not be allowed to be challenged. But when a seniority list is prepared ignoring all just principles and also the rules framed or directions given by appropriate authority, seriously affecting any officer, it is always liable to be examined and set aside by the Court. We are, therefore, unable to accept the contention of the learned Counsel for the respondent No. 4 that the seniority list having been made final after the approval of the Central Government cannot be challenged by the appellant.

17. So far as the contention of the learned Counsel for the respondent No. 4 regarding the challenge of the seniority list after 11 years is concerned, it may be pointed out that it is not correct that no challenge was made by the appellant to the seniority list. Indeed, in the Memorandum of the Commissioner, Department of Transport and Tourism, Himachal Pradesh, dated August 7, 1973 addressed to the appellant informing him of the decision of the Central Government to give to the appellant proforma promotion as Assistant Manager in the scale of Rs. 225-500 with retrospective effect referred to the appellant's representation dated June 30, 1973. Apart from this representation, the appellant had also made another earlier representation on June 3, 1968 which has been admitted by the Government of Himachal Pradesh in paragraph 7 of the counter-affidavit dated July 3, 1982 affirmed on behalf of the respondents Nos. 1 and 2 by the Deputy Secretary (Tourism) to the Government of Himachal Pradesh. In the circumstances, it is not correct to say that no representation was made by the appellant.

18. It is true that the seniority list was prepared in 1971, but no prejudice was caused to the appellant by the seniority list, as he was holding the position of District Public Relations Officer all through. Moreover, the appellant was given proforma promotion by the Government on or about August 7, 1973. It is only by the impugned order dated April 28, 1982 that the Government accepted the representation of the respondents Nos. 4 and 5 and directed that the inter se seniority of the appellant and of the said respondents was to be determined on the basis of their substantive ranks on November 1, 1966 and further directed that the respondents Nos. 4 and 5 would rank senior to the appellant. The cause of action really arose to the appellant for moving the writ petition after he was communicated with the impugned order dated April 28, 1982. In our opinion, therefore, there has been no unreasonable delay on the part of the appellant to challenge the impugned order and, consequently, the final seniority list.

19. At this stage, it may be stated that some contentions have been made on behalf of both the parties regarding the creation of the post of Assistant Manager in the Tourism Department under the rules framed on December 7, 1967 relating to recruitment, promotion and service conditions applicable to non-gazetted officers of the Department of Tourism under the proviso to Article 309 of the Constitution of India. It may also be noticed that the post of Assistant manager created under the rules was subsequently abolished. In our opinion, nothing

turns out on the creation or abolition of the post of Assistant Manager.

20. The next contention of Mr. Ghosh is that no promotion with retrospective effect can be given to the disadvantage of others. In support of this contention, learned Counsel has placed much reliance upon a decision of this Court in *State of Himachal Pradesh and Another Vs. Union of India (UOI) and Others*, . In that case, a post was upgraded with retrospective effect and it was held that the State Government of Himachal Pradesh could not upgrade the post with retrospective effect without the sanction of the Central Government u/s 82(6) of the Act. In the instant case, we are not concerned with the question of upgradation of posts, but with proforma promotion given to the appellant with retrospective effect, from November 1, 1966. The said decision, in our opinion, has no application to the facts of the instant case.

21. Next Mr. Ghosh has placed reliance upon another decision of this Court in *N. Subba Rao etc. Vs. Union of India (UOI) and Others*, . That is a case under the States Reorganisation Act, 1955. It has been held that if there is any question of change of conditions of service, it will have to be found out whether in the first place it amounts to change in the conditions of service and, if so, secondly to find out whether there was prior approval of the Central Government. One of the contentions that was advanced before this Court in the said case was that the retrospective regularisation and relaxation of rules by the State of Andhra Pradesh subsequent to the appointed day would amount to a change in conditions of service and conferment of new advantages on Andhra Pradesh Officers to the detriment of the Telengana Officers. In the instant case, however, the question of regularisation and relaxation of rules do not arise. What has been done in the present case is that a glaring injustice was done to the appellant by taking into account his substantive rank as the Reception Officer on November 1, 1966 while, as a matter of fact, on that date he was holding the position of District Public Relations Officer. That was done in violation of the directions of the Central Government, and subsequently the Government rectified the mistake by granting proforma promotion to the appellant with effect from June 4, 1966 to the post of Assistant Manager equivalent to the post of District Public Relations Officer.

22. It is, however, submitted by Mr. Ghosh that as the previous approval of the Central Government was not taken as required to be taken under the proviso to Section 82(6) of the Act, the Government order as contained in the Memorandum dated August 7, 1983 read with that contained in the Memorandum dated March 3, 1974, granting proforma promotion to the appellant as Assistant Manager in the scale of Rs. 225-500 with retrospective effect from June 4, 1966 was illegal. In order to consider this contention, we may refer to the provisions of Sub-sections (1), (2) and (6) of Section 82 of the Act which provide as follows:

82. Provisions relating to other Services.

(1) Every person who immediately before the appointed day is serving in

connection with the affairs of the existing State of Punjab shall, on and from that day, provisionally continue to serve in connection with the affairs of the State of Punjab unless he is required, by general or special order of the Central Government, to serve provisionally in connection with the affairs of any other successor State.

(2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in Sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(3) to (5)....

(6) Nothing in this section shall be deemed to affect on or after the appointed day the operation of the provisions of Chapter I of Part KIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union of any State:

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in Sub-section (1) of Sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government.

23. Under the proviso to Sub-section (6), the conditions of service applicable immediately before the appointed day to the case of any persons referred to in Sub-section (1) or Sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government. Under Sub-section (1) and Sub-section (2), the persons referred to are those who immediately before the appointed day were serving in connection with the affairs of the then State of Punjab. In other words, the respondents Nos. 4 and 6 come within the purview of Sub-sections (1) and (2). In view of proviso to Sub-section (6) of Section 32, the conditions of service applicable immediately before the appointed day to the respondents Nos. 4 and 5 could not be varied to their disadvantage except with the previous approval of the Central Government. The said order, granting proforma promotion to the appellant to the post of Assistant Manager with effect from June 4, 1966, does not at all vary the conditions of service of the respondents Nos. 4 and 5 applicable to them immediately before the appointed day. There is, therefore, no question of taking the previous approval of the Central Government as contemplated by Section 82(6) of the Act. Indeed, the said order was passed in rectification of the mistake committed by the Department of Tourism and/or the State Government and for doing substantial justice to the appellant.

24. We have already expressed our views as to the nature of the seniority list and the manner in which it was prepared in violation of the directions of the Central Government. The High Court has not considered the directions of the Central Government as contained in the said letter of the Joint Secretary dated

February 14, 1967 and the utter violation of the same by the Department and/or the State Government in preparing the final selection list, as indicated above. The High court, as already stated, has dismissed the writ petition of the appellant principally on the ground that the seniority list once finalised after integrating the persons working in the Tourism Department and those coming from Punjab cannot be reopened to the disadvantage of the other persons without considering that the final seniority list was made without complying with the directions of the Central Government to the prejudice of the appellant. In the circumstances, the judgment of the High Court cannot be sustained.

25. For the reasons aforesaid, the appeal is allowed. There will, however, be no order as to costs. The impugned order dated April 28, 1982 and the judgment of the High Court are set aside. The name of the appellant shall be placed above that of the respondents Nos. 4 and 5 (since deceased) in the final seniority list.

26. The application of the interveners are also disposed of accordingly.