
(1992) 09 SC CK 0023
In the Supreme Court Of India
Case No : Civil Appeal No. 2016 of 1987

S.B. Dogra

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 24-09-1992

Acts Referred:

Demobilized Armed Forces Personnel (Reservation of Vacancies in the Himachal State Non-Technical Services) Rules, 1972 — Rule 5(1)
Central Administrative Tribunals Act, 1985 — Section 29(2)

Citation : (1992) 5 JT 667 : (1993) 2 LLJ 807 : (1992) 2 SCALE 642 : (1992) 4 SCC 455 : (1992) 1 SCR 825 Supp : (1993) 2 SLJ 167

Hon'ble Judges : K. Ramaswamy, J;A. M. Ahmadii, J

Bench : Division Bench

Advocate : M.R. Sharma, Anjana Sharma and M.C. Dhingra, for the Appellant; N.M. Ghatate and Yogeshwar Prasad, Bina Gupta, Monika Mohil and Anand, for the Respondent

Final Decision : Allowed

Judgement

A.M. Ahmadi, J.—Respondent No. 5, Durga Shanker Amit, filed a Writ Petition in the High Court of Himachal Pradesh challenging his exclusion from the Select List for IPS officers and the inclusion of the present appellant S.B. Dogra in the said list. His case was that he joined service as Deputy Superintendent of Police against a regular and permanent vacancy of November 22, 1967 in the erstwhile Joint Union Territories Cadre (Delhi, Himachal Pradesh and Andaman and Nicobar Islands Police Service - in short 'DHANI Police Service') on his clearing the all-India Competitive Examination conducted by the Union Public Service Commission in 1965. He was allocated to the State of Himachal Pradesh on January 25, 1971 after the formation of that State. He was confirmed in service on September 24, 1971 and was placed in the selection grade w.e.f. May 4, 1973 on which grade he was confirmed w.e.f. June 24, 1974. He was sent on deputation as Deputy Central Intelligence Officer of the Intelligence Bureau, Government of India, in April 1978 and was later transferred to Delhi where he

served till September 1981. He returned to his parent cadre in September 1981 but soon thereafter in June 1982 he was appointed as Commandant, 1st Armed Police Battalion, Junga, on a cadre post where he served upto November 14, 1982. It may here be mentioned that his name was included by the Selection Committee which met on October 25, 1977 in the Select List of officers found suitable for promotion to the IPS under the Indian Police Service (Appointment by Promotion) Regulations, 1955, (hereafter called 'the 1955 Regulations'). His name remained on the Select List from 1977 to 1981 but in the year 1982 his name came to be removed whereas the names of the other two officers, namely, the present appellant S.B. Dogra and B.C. Negi were included in the Select List.

2. The appellant S.B. Dogra (original respondent No.3) was selected for Emergency Commission in the Indian Army in April 1963 and after successful completion of the training he was commissioned in September 1963. Later in May 1967 he was appointed Deputy Superintendent of Police/Company Commander in the Indo-Tibetan Border Police, a Government of India Class I Post. He was relieved from the Indian Army and was permanently absorbed in the Indo-Tibetan Border Police in November 1967. After the formation of the State of Himachal Pradesh he was allocated to the State Police Service w.e.f. January 25, 1971. In 1974 he appeared but could not clear the Himachal Pradesh State Service Examination. However, he succeeded in the second attempt in 1975 and was appointed against the vacancy reserved for 'Demobilised Armed Forces Personnel' under the Demobilised Armed Forces Personnel (Reservation of Vacancies in the Himachal Pradesh State Non-Technical Services) Rules, 1972 (as amended in 1974), (hereinafter called 'the 1972 Rules') and was given the benefit of his military service under Clause (1) of Rule 5 of the said Rules. The said sub-rule reads as under:

The seniority and pay of the candidates who are appointed against the vacancies reserved under Rule 3 shall be determined on the assumption that they joined the service or the post, as the case may be, under the State Government at the first opportunity they had after they joined the military service or training prior to the commission.

The tentative seniority list of the State Police Officers was circulated in 1977 wherein his name was shown three places above the name of the original petitioner - respondent No.5 D.S. Amit by assigning a deemed notional date of entry in service in the year 1964. Since respondent No.5 had joined the State Service in 1967 he was shown three places below the appellant in the tentative seniority list of March 31, 1977. A final seniority list was prepared and published on February 27, 1979 showing the same position. Thereupon, one S.R. Thakur filed a Writ Petition No. 280 of 1978 in the High Court of Himachal Pradesh challenging the seniority of the appellant. The High Court upheld the seniority assigned to the appellant on interpretation of the 1972 Rules and dismissed the writ petition on April 10, 1981. A letters Patent Appeal No. 18 of 1981 was filed but the same also came to be dismissed on August 9, 1985. Thus the seniority

assigned to the appellant was judicially affirmed by the High Court. After the dismissal of the writ petition by the learned Single Judge but before the decision in LPA No. 18/81, the present respondent No. 5 without seeking impleadment in the said appeal moved a Writ Petition in the High Court in 1983 claiming seniority over the appellant and sought consequential reliefs. That Writ Petition was transferred to the Central Administrative Tribunal u/s 29(2) of the Central Administrative Tribunals Act, 1985 and was numbered T-519 of 1986. The Tribunal allowed that petition by its judgment and order dated March 5, 1987 and hence this appeal by the aggrieved party.

3. The other officer B.C. Negi (Respondent No. 5 in the Tribunal) belonged to a Schedule Tribe. He appeared in the all-India combined competitive examination held by the UPSC in 1965 and was offered appointment to a Grade II post in DHANI Service by letter dated January 9, 1967 which he accepted whereupon he was appointed on probation w.e.f. January 20, 1967. He was confirmed as such w.e.f. September 24, 1971. He then reported for training at the Central Police Training College, Abu, and on successful completion of training he was posted as Deputy Superintendent of Police in which capacity he served till his allocation to H.P. Police Service w.e.f. January 25, 1971. Being a member of the Scheduled Tribe his service was governed by Rule 20 of DHANI Service Rules which provided that such appointments 'shall be subject to orders regarding special representation in subject to order regarding special representation in services for Schedule Tribes issued by the Government of the India from time to time'. Besides, Rules 18(c) of the H.P. Police Rules, 1973 which stipulated that the seniority of officers allocated u/s 40(4) of the Himachal Pradesh Act, 1970, whose seniority had been finalised shall remain unchanged. He, therefore, contended that his seniority which had already been determined by the application of Rule 20 read with Rule 18(c) could not be altered or changed and, therefore, his inclusion in the Select List prepared by the Selection Committee at its-meeting of December 20, 1982 was unassailable.

4. The State of Himachal Pradesh was established under the provisions of the State of Himachal Pradesh Act, 1970, w.e.f. January 25, 1971. The H.P. Police Service was constituted u/s 40(1) of the said Act by drawing personnel from the erstwhile DHANI police service. Sub-section (6) of Section 40 next provided that the rules and regulations applicable to the members of the erstwhile DHANI police services as in force immediately before January 25, 1971, shall, so far as may be, apply to the members of the H.P. Police Service, until altered, repealed or amended by the competent authority. Subsequently the H.P. Police Rules, 1973 (hereinafter called 'the 1973 Rules') came to be framed and were promulgated w.e.f. March 13, 1973. The appellant S.B. Dogra, an ex-commissioned officer of the Indian Army was appointed to the H.P. Police Service with effect from September 8, 1975. As pointed out earlier he was given national seniority treating him as having joined in 1964. This notional year of entry has given him an edge over D.S. Amit, which is the subject matter of controversy in this case. Thus the H.P. Police Service comprised of (i) those member who were

allocated to this service by the Central Government u/s 40(4), (ii) those members of the erstwhile DHANI service who were inducted in this service after January 25, 1971 and before the 1953 Rules were promulgated on March 13, 1973 and (iii) those members who came to be inducted in the service after the 1953 Rules came into force. In Writ Petition No. 280 of 1978 the contention that the appellant-S.B. Dogra was not entitled to the benefit of the 1972 Rules since he had already availed himself of the benefit of Army Service when he joined the Indo-Tibetan Border Police was rejected as devoid of merit on the ground that Rule 5(1) of the 1972 Rules was unambiguous and admitted of only one contention, namely, that in the case of a person appointed to any post or service under the State Govt. against a vacancy reserved under Rule 3, it has to be assumed for the purpose of his pay and seniority that he joined such post or service at the first opportunity available to him for joining such service after he had joined the military service or training prior to the commission. The learned Single Judge felt that the sub-rule assumes that in case such a person had not joined the military service or training prior to commission, he would have joined the service under the State Government earlier in point of time as and when the opportunity presented itself. The learned Judge illustrates: 'For example, if a person joined the military service in October 1963 and thereafter recruitment to service took place in January 1964 for the first time, such person in case he is appointed against the reserved vacancy to that service/post shall be assumed to have joined the State Government in January 1964. In this view of the matter the contention challenging Dogra's seniority was rejected. The Division Bench did not interfere with the Judgment of the learned Single Judge. This is the background of the previous litigation to which the present D.S. Amit and B.C. Negi were admittedly not parties.

5. The decision of the Tribunal was challenged by B.C. Negi in Civil Appeal No. 2015 of 1987 but that appeal was withdrawn and has since been dismissed as such. Therefore, so far as B.C. Negi is concerned he has not seen it necessary to assail the Tribunal's decision in view of the subsequent developments.

6. Now so far as the case of S.B. Dogra is concerned, the facts stated earlier clearly show that he was selected for emergency commission in the Indian Army in-1963 and after successfully completing the training he was commissioned and was appointed as Deputy Superintendent of Police/ Company Commander in Indo-Tibetan Border Police in 1967 before his absorption in the latter cadre. He joined the DHANI Service on November 22, 1967 and after the formation of the State of Himachal Pradesh he was appointed against a reserved vacancy for Demobilised armed forces personnel under the 1972 Rules (as amended in 1974) w.e.f. September 8, 1975. By virtue of Sub-rule (1) of Rule 5 of the 1972 Rules he was assigned a notional date of entry into service w.e.f. 1964 and this was reflected in the tentative seniority list circulated in March, 1977 wherein he was shown three places above D.S. Amit. The final seniority list published in February, 1979 also reflected the same position. Neither B.C. Negi nor D.S. Amit challenged the notional date of entry assigned to him but some of his juniors

S.R. Thakur and others filed a Writ Petition No. 280/78 in the High Court of Himachal Pradesh challenging the seniority. A learned Single Judge of the High Court after considering the relevant rules affirmed the seniority assigned to him. A Letters Patent Appeal No. 18/81 was filed by the original petitioners who were aggrieved by the decision of the learned Single Judge. While that appeal was pending, without seeking impleadment in that appeal D.S. Amit filed a substantive Writ Petition in the High Court in the year 1983 claiming seniority over both S.B. Dogra and B.C. Negi. Whilst this Writ Petition was pending in the High Court, the Letters Patent Appeal No. 18/81 was dismissed by the Division Bench of the High Court. The Writ Petition would perhaps have met the same fate had it continued to remain on the file of the High Court but on the enactment of the Central Administrative Tribunals Act, 1985, by virtue of Section 29(2) thereof, the Writ Petition stood transferred to the Central Administrative Tribunal constituted under that Act. The Central Administrative Tribunal while dealing with the case of S.B. Dogra placed strong reliance on the decision in the case of Ex-Capt. A.S. Parmar and Others Vs. State of Haryana and Others, which is also reported in Ex-Capt. K.C. Arora and Another Vs. State of Haryana and Others, and concluded that an ex-serviceman can be given seniority in the civil post only for the actual period of service rendered in armed forces during the period of emergency i.e. between October 26, 1962 and January 10, 1968. Following the above view of this Court the Tribunal held that S.B. Dogra could not be given benefit of seniority for more than the period of his actual service in the Army during the emergency. Even if he is given that benefit of four years service, he cannot be assigned seniority over D.S. Amit. On this line of reasoning the Tribunal negated the contention put forward by S.B. Dogra on the language of Rule 5(1) of the 1972 Rules.

7. The facts of A.S. Parmar's case show that following the imposition of emergency in 1962 certain circulars were issued with regard to the concession to be given to civilian employees who joined military service. Acting on the assurances given several civilian employees had joined the Army during emergency as Commissioned officers. Subsequently the instructions so issued were incorporated into rules framed under Article 309 of the Constitution. The Haryana Government in the year 1969 advertised 16 posts of temporary Assistant Engineers in PWD, B & R Branch. Out of these 16 posts 8 were reserved for ex-emergency Commissioned Officers and servicemen. Although the advertisement was for 16 posts, 55 persons were selected out of which 20 posts belonged to the reserved category of ex-emergency Commissioned Officers. However, out of 20 posts so reserved only 7 appointments could be made. The requisite qualifications prescribed for ex-emergency Commissioned Officers and servicemen were (i) Diploma in Civil Engineering (ii) 5 years' continuous service with distinguished record and (iii) adequate knowledge of Hindi. The footnote stated "for purposes of counting 5 year's continuing service, the period commencing from October 26, 1962 will only be taken into consideration". Again in November 1970, 38 posts were advertised of which 18 were reserved for ex-

emergency Commissioned Officers and servicemen. However, at the time of appointment, 99 persons were selected even though 90 posts belonged to the reserved category for which only 7 were appointed. The second advertisement also contained the same qualifications as were included in the first advertisement.

8. The two petitioners in that case had served the Indian Army for more than five years before they joined the Haryana Government as Assistant Engineers against posts reserved for ex-emergency Commissioned Officers. The Government of Punjab had before the formation of the State of Haryana made statutory rules under Article 309 of the Constitution called the Punjab National Emergency (Concession) Rules, 1965. Rule 2 defined 'military service' to inter alia mean enrolled or commission service in any of the three wings of the Indian Armed Forces rendered by a person 'during the period of operation of the proclamation of emergency' made by the President on October 26, 1962. Rule 3 provided for the relaxation of the requirements of age and qualification with which we are not concerned in the present case. Rule 4(ii) which is relevant for our purpose provided thus:

4(ii). Seniority: The period of military service mentioned in Clause (1) shall be taken into consideration for the purpose of determining the seniority of a person who was rendered military service.

This concession was, however, admissible on first appointment only. Rule 5 further provided that the period spent on military service shall count for seniority, promotion, increment and pension in the service or post held by him immediately before his joining military service. Thus the two petitioner became entitled to have their seniority fixed according to the above rules on their appointment as Assistant Engineers. However, the gradation list prepared by the Government did not reflect the benefit of military service weightage as per these rules. The two petitioners alleged that the State of Haryana with a view to deny the benefit to them amended the rules retrospectively and added a proviso as under:

Provided that a person who has availed of concession under Sub-rule (3) of Rule 3 shall not be entitled to the concession under this clause.

By notification dated August 9, 1976, the definition of 'military service' was amended which amendment was challenged along with other grievances in the High Court. However, both the writ petitions were dismissed which gave rise to the appeal, the judgment in which case was relied on by the Tribunal. The core question which arose for consideration by this Court was whether the amended rule was constitutionally valid even though it was made applicable retrospectively which had the effect of taking away vested rights. This Court struck down the amended Rule 4(ii) as well as the notification by which the definition of the expression 'military service' was altered. It will thus be seen that the essential question was not regarding the actual fixation of seniority. The note below the advertisement and the language of the unamended definition the expression

'military service' read with Rule 4(ii) made it clear that the service referred to was the one rendered during the period of operation of the proclamation of emergency made by the President under Article 352 of the Constitution on October 26, 1962. It will become immediately apparent on a mere comparison of the 1965 Punjab Rules, particularly the definition clause read with Rule 4(ii), with Rule 5(1) of the 1972 Rules that the language of the two rules is not identical and while the former limits its scope to 'during the period of operation of the proclamation of emergency', there are no such words of limitation to be found in Rule 5(1) of the 1972 Rules nor has such an inference been attempted to be drawn from other provision in the 1972 Rules. The Tribunal was, therefore, in error in resting its decision on the ratio of A.S. Parmar's case which turned on the language of the Punjab rules applicable to Haryana which are not shown to be in pan materia with the Himachal Pradesh rules. The Tribunal was, therefore, wrong in confining the benefit under Rule 5(1) to the period of Dogra's actual service in the Army during the emergency.

9. Reference was made to Narendra Nath Pandey and Others Vs. State of U.P. and Others, which was also a case concerning the seniority of emergency commissioned officers or short service commissioned officers of the armed forces. The case involved the interpretation of the 1973 and 1980 rules framed under Article 309 of the Constitution for such demobilised officers. Rule 6 of the 1973 Rules and Rule 5 of the 1980 Rules, which were in identical terms fell for construction. We must point out that the said rules were not in the same language as Rule 5(1) of our rules. The validity of these rules was challenged and negatived. The only modification this Court made was that the period for taking the examination under Rule 6 of the 1973 Rules or Rule 5 of the 1980 Rules should be restricted to 3 years, which was considered a reasonable period, so that the long gaps between the date of demobilisation and the date of appointment do not result in injustice to others and do not distort the seniority arrangement to the detriment of others. It is, therefore, obvious that the even this case turned on the language of the rules and the peculiar fact situation.

10. On the other hand Rule 5(1) of the 1972 Rules states that the seniority of candidates appointed against the vacancies reserved under Rule 3 shall be determined 'on the assumption' that they joined service and the post under the State Government 'at the first opportunity' they had 'after' they joined military service or training prior to commission. The language of this rule is, therefore, altogether different from the language of the Haryana rules on which A.S. Parmar's case was decided. Now on the construction of this Rule 5(1), the seniority assigned to Dogra was three places above Amit in the tentative seniority list circulated in March 1977 which came to be finalised in February 1979. No objection was raised by Amit regarding the placement given to Dogra in the seniority list. Some other junior officers had challenged it in the High Court but without success. Amit challenged it for the first time in 1983 after his name was dropped from the Select List of 1982. Had the writ petition been disposed of before the Central Administrative Tribunals Act, 1985, came into force, it would

perhaps have met the same fate of dismissal as Writ Petition No. 280/78 and L.P.A. No.18/81. But that apart, the Tribunal ought not to have disturbed the seniority after such a long lapse of time when Amit had not challenged it before the same was finalised in February 1979. Amit should have challenged Dogra's placement in the seniority list which was circulated in March 1977 inviting objections before it was finalised. If he had no objection then it is obvious that he challenged it in 1983 only because his name was dropped from the Select List of 1982. In the circumstances, the Tribunal should have been slow in interfering the seniority which was holding the field for the last several years. That is the view expressed by this Court in AIR 1976 214 (SC) In that case the seniority was fixed according to the length of service in regard to the classified officers and the grades held by those officers. No objection was, filed by the respondent to the provisional gradation list so prepared. He filed an objection only after the final gradation list was published. Contending that the services rendered by the Madhya Bharat and Vindhya Pradesh officers prior to the coming into force of the Sales Tax Acts in the respective states should not have been counted for the purpose of determining the seniority of the respondent. The High Court allowed the belated representation and hence the matter was brought before this Court in appeal. This Court held that after the reorganisation of the States it was obligatory to prepare a common gradation list of the officers of the various departments so that the officers who were allocated to the new State did not suffer any prejudice. For that a tentative or provisional gradation list was directed to be prepared with a view to giving an opportunity to the officers whose seniority was determined in the list to make their representations in order to satisfy the Government regarding any mistake or error that may have crept in. If the employee concerned did not file his representation within the period prescribed after the date of the publication of the provisional gradation list, then his representation should have been rejected outright. It is erroneous to contend that the employee concerned should have waited for filing his representation or objection until the final gradation list was published. Therefore, the representation filed by the respondent long after the expiry of the time mentioned in the Gazette publishing the provisional gradation list was rejected as belated. The observations made in this judgment apply with all force to the fact situation in the case before us.

11. For the reasons stated above this appeal by special leave filed by S.B. Dogra must be allowed with costs. We allow the said appeal and set aside the impugned order of the Tribunal insofar as it relates to the seniority of the appellant S.B. Dogra and restore the position as was obtaining before his seniority came to be disturbed by the impugned order of the Tribunal. Consequential orders, if made by the respondents Nos. 1 and/or 2 i.e. the State of Himachal Pradesh and the Union of India, pursuant to the Tribunal's directives, in relation to the appellant S.B. Dogra shall also be revised in the light of the findings recorded in this behalf hereinbefore. Liberty to the parties to seek further directions, if need be, from the Tribunal in regard to the full implementation of this Judgment.