
(2010) 07 DEL CK 0368

In the Delhi High Court

Case No : Writ Petition (C) No. 3845 of 2010

Union of India (UOI) and Another

APPELLANT

Vs

Pankaj Agnihotri

RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 20, 28, 5, 5A
Central Health Services Rules, 1996 — Rule 7, 8, 9, 9(2)
Constitution of India, 1950 — Article 14, 16, 311
Delhi Police (Appointment and Recruitment) Rules, 1980 — Rule 17, 5

Citation : (2010) 07 DEL CK 0368

Hon'ble Judges : Pradeep Nandrajog, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : A.K. Bhardwaj, for the Appellant; S.K. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The above captioned petitions are directed against the judgment and order dated 22.04.2009 passed by Central Administrative Tribunal (hereinafter referred to as the "CAT") whereby the review petition(s) filed by the petitioner, Union of India, against the earlier judgment and order dated 04.03.2008 passed by the CAT was dismissed. As a result the three respondents who had filed three petitions before the CAT succeeded in obtaining relief which they have prayed for which has resulted in the petitioners being required to give due weightage to the service rendered by the respondents as senior medical officers in the parent department for purposes of their eligibility for further promotion.

2. The factual backdrop leading to the filing of the present petitions are that on 29.05.1986 Department of Personnel and Training, Government of India, issued an Office Memorandum No. 200020/7/80-Esst.(D) pertaining to the fixation of seniority of the deputationists who are absorbed in the cadre to which they came on deputation. The relevant portion of the OM reads as under:

Subject: - Seniority of persons absorbed after being on deputation.

1.

2. Even in the type of cases mentioned above, that is, where an officer initially comes on deputation and is subsequently absorbed, the normal principles that the seniority should be counted from the date of such absorption, should mainly apply. Where, however, the officer has already been holding on the date of absorption in the same or equivalent grade on regular basis in his parent department, it would be equitable and appropriate that such regular service in the grade should also be taken into account in determining his seniority subject only to the condition that at the most it would be only from the date of deputation to the grade in which absorption is being made. It has also to be ensured that the fixation of seniority of a transferee in accordance with the above principle will not effect any regular promotions made prior to the date of absorption. Accordingly it has been decided to add the following sub-para (iv) to para 7 of general principles communicated vide OM dated 22-12-1959:

(iv) 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 of absorption. If he has so ever been holding already (on the date of absorption) the same or equivalent grade on 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 on deputation, or

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

3. The validity of the aforesaid Office Memorandum was assailed before the Supreme Court and it resulted in the decision reported as S.I. Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi and Others, After holding that the effect of expression "whichever is later" occurring in the aforesaid Office Memorandum is violative of Articles 14 and 16 of the Constitution of India, as it had the effect of wiping out the services rendered by a deputationist in an equivalent cadre in his parent department while determining his seniority in the deputed post, the Supreme Court quashed the said expression from the text of the aforesaid memorandum.

4. Pursuant to the judgment of Supreme Court in SI Rooplal's case (supra), Department of Personnel and Training, Government of India, issued Office Memorandum No. 20011/1/2000-Estt (D) dated 27.03.2001, the relevant portion whereof reads as under:

1.

2. The Supreme Court has in its judgment dated December 14, 1999 in the case of S.I. Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi and Others, 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.

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

5. Respondents, Dr. Pankaj Agnihotri, Dr. Sandhya Ranjan and Dr. Snehal Bhawe, who were employed as Senior Medical Officers in the Health Department of various State Governments were appointed as Senior Medical Officers on deputation basis in the Central Health Services (hereinafter referred to as the "CHS") for a period of three years with effect from 15.07.1999, 17.05.2000 and 10.09.2001 respectively. On 29.09.2003, they were absorbed permanently in the Central Health Scheme (CHS) as Senior Medical Officers in General Duty Sub-Cadre. The next avenue of promotion from the post of Senior Medical Officer is the post of Chief Medical Officer in CHS.

6. At this juncture, it would be most apposite to note the method of recruitment for promotion to the post of Senior Medical Officer and Chief Medical Officer as prescribed under Schedule III appended to Central Health Services Rules 1996, the relevant portion whereof reads as under:

SCHEDULE III

The method of recruitment, field of selection for promotion and the minimum qualifying service in the immediate lower grade or lower grades for appointment or promotion to Group "A" duty posts in the Central Health Service.

S. No Name of post

Method of Field of Selection and

Recruitment minimum qualifying

for promotion service

....

General Duty Sub-cadre posts

....

(b) Medical Officer Grade

....

.... (2) Chief By promotion Senior Medical Medical on the basis of Officer in the Officer Seniority-cum General Duty fitness without sub-cadre with linkage to six years" vacancies regular service failing which by in the grade or direct on completion recruitment of 10 years combined regular service as Medical Officer and Senior Medical Officer of which at least 2 years shall be as Senior Medical Officer (3) Senior By promotion Medical Officer Medical on the basis of in the General Officer Seniority-cum Duty Sub-cadre fitness without with four years linkage to regular grade vacancies failing which by direct recruitment

7. Relevant also would it be to note Rule 8 of Central Health Services Rules 1996, which reads as under:

8. Filling of Duty Posts by Transfer on Deputation (including short term contract):

(1) Notwithstanding anything contained in Rule 7, where the Government is of the opinion that it is necessary or expedient so to do, it may for reasons to be recorded in writing and in consultation with the Commission, fill not more than twenty duty posts in all, in the grades of Medical Officer/Senior Medical Officer in General Duty Sub-Cadre and Specialist Grade II (Junior Scale) in the Non-Teaching Specialist Sub-Cadre and Public Health Sub-Cadre by transfer on deputation of suitable officers holding analogous posts under the Central Government (including Ministries of Railway and Defence)/State Governments/Union Territories and by Short Term Contract of suitable officers holding analogous posts under the statutory bodies, autonomous bodies, semi-government organisations, universities or recognised Research Institutions.

(2) The period of deputation/contract shall be for a period not exceeding three years, which may, in special circumstances be extended upto 5 years, as the Government may think fit.

8. Vide notification dated 30.07.2001, Government of India amended Rule 8 of Central Health Services Rules, 1996 in following terms:

8. Filling of Duty Posts by Transfer on Deputation (including short term contract):

(1) Notwithstanding anything contained in Rule 7, where the Government is of the opinion that it is necessary or expedient so to do, it may for reasons to be recorded in writing and in consultation with the Commission, fill not more than one hundred duty posts in all, in the grades of Medical Officer/Senior Medical Officer in General Duty Sub-Cadre and Specialist Grade II (Junior and Senior Scale) or Specialist Grade I in the Non-Teaching and Public Health Sub-Cadre and Assistant Professor or Associate Professor or Professor in the Teaching Sub-Cadre by transfer on deputation of suitable officers holding analogous posts under the Central Government (including Ministries of Railway and Defence)/State Governments/Union Territories and by Short Term Contract of suitable officers holding analogous posts under the statutory bodies, autonomous bodies, semi-government organisations, universities or recognised Research Institutions.

Provided that one hundred posts earmarked for deputation (including short term contract) in all the four sub-cadres mentioned above, it may be open to the Central Government, in consultation with the Commission, to consider absorption against fifty posts and only officers of Central Government or State Government or Union Territories shall be eligible for being considered for appointment on absorption basis.

(2) The period of deputation/contract shall be for a period not exceeding three years, which may, in special circumstances be extended upto 5 years, as the Government may think fit.

(3) For appointment to duty posts on absorption basis, the officers shall fulfil minimum educational and other qualifications prescribed for the posts in Schedule V to these Rules.

9. We regretfully note that the aforesaid amendment, which is very material for the purposes of adjudication of the present case was neither brought to the notice of CAT nor was it pointed out to us by the counsel appearing for the parties. CHS Rules 1996 have been annexed along with the present petition(s) but the same are unamended. We expect the counsel to be more vigilant in future regarding the amendments made in the Recruitment Rules.

10. On 29.08.2006, the Ministry of Health and Family Welfare, Government of India, issued Office Order No. A23024/01/04-CHS.II wherein seniority of the respondents in CHS was fixed after taking into consideration the services rendered by the respondents on the post of Senior Medical Officers in their respective parent departments. The said Officer Order further provided that the minimum qualifying service required by the respondents for being eligible to be considered for the promotion to the post of Chief Medical Officer shall be reckoned from the date of their absorption in CHS i.e. 29.09.2003. In sum and substance, the effect of the said Office Order was that the service rendered by the respondents as Senior Medical Officer in their respective parent departments was taken into consideration while fixing their seniority but the same i.e. the past service was not considered as service rendered to acquire the requisite qualifying service.

11. Since the aforesaid Office Order dated 29.08.2006 adversely affected the promotional prospects of the respondents, they filed application(s) u/s 19 of Administrative Tribunals Act, 1985 challenging the direction contained in the said order that the minimum qualifying service required by the respondents for being eligible to be considered for promotion to the post of Chief Medical Officer shall be reckoned from the date of their absorption in CHS, primarily on the ground that the said condition violates the dictum of law laid down by Supreme Court in *SI Rooplal's case* (Supra) as also the instructions contained in the Office Memorandum dated 27.03.2001 issued by Government of India.

12. After noting that there is a difference of opinion between various Benches of CAT in regard to determination of seniority and period of service spent by the

deputationist in the transferred department and the interpretation of the decisions of Supreme Court reported as S.I. Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi and Others, and Indu Shekhar Singh and Others Vs. State of U.P. and Others, a Division Bench of CAT referred the application(s) filed by the respondents to the Full Bench. Following questions were referred for the consideration of the Full Bench:

- (1) Is it a universal rule that deputationists are to be given seniority taking into full account the equivalent service rendered by them in the parent department?
- (2) Whether such recognition will infringe upon the settled rights of existing personnel, including their career prospects?
- (3) In the light of later decisions what could be the nature and extent of rights available to deputationists who ultimately come to be regularized in the new department?
- (4) Is it mandatory that the special rules as applicable also are to be taken notice of?

13. After placing reliance upon the decision of Supreme Court in Indu Shekhar Singh's case (supra) and noticing the scheme of Central Health Service Rules 1996, particularly the fact that deputation is not the source of appointment to the posts of Senior Medical Officer and Chief Medical Officer under Schedule III appended to the said Rules and that there is no provision under the said Rules for absorption of deputationists in CHS, vide judgment dated 04.03.2008 the Full Bench held as under:

25. We do not think the apprehension as above may be real. The position cannot be forgotten that whatever service rendered by the applicants from the date on which they are deemed as occupying the grade of Rs. 10,000-15,200 which alone is relevant here requires to be recognized as service rendered under the CHS. They are not to have any probationary period de novo; they would be qualified to press the benefit to their whole past service for promotion to the immediate next grade, viz. that of Chief Medical Officer. Additional incumbency of actual service in the CHS is, therefore, not postulated or to be insisted on. The DPC will have to consider the person eligible, even from the very next date of his absorption.

26. In the result, we answer the reference as following:

- (1) It may not be a universal rule that deputationists are to be given seniority taking into full account the equivalence service rendered by them in the parent department. Such rights could be conferred on them, only subject to the service rules, that the operational in respect of the Institution;
- (2) The recognition of service of a transferred employee may infringe rights of existing personnel or may affect their career prospects but if the situation is postulated and permitted by the governing rules, it will definitely have operation,

since seniority or promotions cannot be recognized and fundamental rights but only rights conferred by statute;

(3) In view of the decision *Prabha Devi and Indu Shekhar Singh* (supra), the rights available to deputationists, who ultimately come to be regularized in the new employment, will have to abide by the rules that are in vogue. It is mandatory that special rules as are applicable are to be duly taken notice of. However, the benefit of service that they can carry for reckoning them eligible for the next promotional post when the claims are considered, should always be with them;

(4) In the matter of further promotions, deputationists who get absorbed will not be able to weightage on the basis of the seniority that is carried by them. In respect of DPC clearance, minimum incumbency and other restrictions, they will have to be governed by the rules in force and it may not be possible for any such persons to assert that conferment of seniority brings with it all the other rights, including that of promotion.

27. As arising out of the decisions and conclusions made above, we do not think that applicants have made out a case for interference. The impugned order dated 29.8.2006 whereby they have been advised that for the purpose of promotion to the next grade, the required qualifying service would be counted only from the date of absorption, is a reasonable stipulation and goes well with the conditions that were incorporated in the order of their appointment viz. that they have been absorbed on regular basis only with effect from the date specified in the respective orders, but subject to the observations made by us earlier in Paragraph 25.

14. In view of the apparent contradiction between paras 25 and 27 of the judgment and order dated 4.3.2008, for on one hand the Full Bench directed that the condition contained in the Office Order dated 29.08.2006 that the minimum qualifying service required by the respondents for being eligible to be considered for promotion to the post of Chief Medical Officer shall be reckoned from the date of their absorption in CHS is valid and legal, on the other hand, it was directed that the respondents shall be entitled to include the service rendered by them in their parent departments towards minimum qualifying service required by them for being eligible to be considered for promotion to the post of Chief Medical Officer, the petitioner filed a review petition before the Full Bench of CAT seeking review of the said judgment and order dated 4.3.2008.

15. Vide judgment and order dated 22.04.2009, the Tribunal disposed of the Review Petition and held that the judgment of the Supreme Court in *SI Rooplal's* case (supra) postulates that the service rendered by a deputationist on an equivalent post in his parent department is required to be taken into consideration for the purposes of fixation of his seniority in the transferred department; that the consequential benefits which flows to a deputationist due to fixation of such seniority including promotional benefits can be denied only when

there is an express provision in the recruitment rules of the transferred department permitting said denial and that since there is no provision in Central Health Services Rules, 1996 permitting the non-consideration of service of a deputationist in his parent department while determining the period of service spent by him in CHS for being eligible to be considered for promotion to a higher post, the condition contained in Office Order dated 29.08.2006 that the minimum qualifying service required by the respondents for being eligible to be considered for promotion to the post of Chief Medical Officer shall be reckoned from the date of their absorption in CHS is arbitrary, unreasonable and thus liable to be struck down. The questions referred to the Full Bench were answered in following terms:

24. Resultantly and as a fall out of our discussions hereinabove made, we answer the reference as following:

As per the interpretation given by the Supreme Court in SI Roop Lal's case (supra) deputation's are to be given seniority taking into full account the equivalent service rendered by them in the parent department.

The recognition of service of a transferred employee may infringe rights of existing personnel or may affect their career prospects but if the situation is postulated and permitted by the governing rules, it definitely requires obedience, since seniority or promotions cannot be recognized as fundamental rights but only rights conferred by statute;

In the matter of promotions, as far as the present case is concerned, deputationists who got absorbed will be able to claim weightage on the basis of the seniority that is carried by them. As general rule, in respect of DPC clearance and minimum incumbency, the position will be governed by the respective special rules as are in force.

16. It is after chartering the aforesaid route that the instant petitions have come up before us.

17. During the hearing of the petition(s), learned Counsel for the petitioner contended: (i) the Full Bench of the Tribunal has committed an illegality by applying the ratio in SI Rooplal's case (supra), for therein the Supreme Court was not concerned with the issue involved in the present case i.e. eligibility of the deputationists for promotion but was concerned with the fixation of seniority of the deputationists; (ii) the Full Bench failed to appreciate that the ratio laid down in SI Rooplal's case (supra) had been deviated to by the Supreme Court, in the decisions reported as Indu Shekhar Singh and Others Vs. State of U.P. and Others, Union of India and Another Vs. G.R.K. Sharma, and T.K. Ponnuswamy and others Vs. Government of Tamil Nadu and others, ; and (iii) the Full Bench did not appreciate the dictum of law laid down in the decision reported as R. Prabha Devi and Others Vs. Government of India, through Secretary, Ministry of Personnel and Training, Administrative Reforms and Others, that seniority in a particular cadre does not entitle a public servant for promotion to higher post unless he fulfils the eligibility condition prescribed under relevant recruitment

rules.

18. Per contra, learned Counsel for the respondents contended that the conclusion drawn by the Full Bench in the impugned judgment that the services rendered by the respondents on the post of Senior Medical Officer in their parent departments should be included towards the qualifying service required by them for being eligible to be considered for promotion to the post of Chief Medical Officer is legal and valid in view of the decisions of Supreme Court reported as K. Madhavan v. Union of India (1987) 4 SCC 576, K. Anjaiah and Others Vs. K. Chandraiah and Others, and S.I. Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi and Others,

19. As noted by us herein above, unfortunately neither party drew attention of the Tribunal to the amendment incorporated to Rule 8 of the Central Health Services Rules 1996 as per the notification dated 30.7.2001, the rule as amended being as noted by us in para 8 above.

20. Every person holding a post in a cadre in a government department has a legitimate expectation of being considered for promotion as per his seniority in the cadre. He can also legitimately expect that no person from outside his cadre will join the cadre in such a way so as to disturb his seniority in the cadre. Thus, prima facie, being a matter of a legitimate expectancy of a government servant for being promoted, it can be said as a starting point that where the recruitment rules do not provide for absorption in the cadre by a deputationist walking in but a deputationist walks in, he must do so at the cost of his experience in the same post in the parent department being excluded while reckoning his eligibility for promotion in the department where he is absorbed permanently but after making initial entry as a deputationist. But, where the recruitment rules provide as a manner of absorption on permanent basis, persons coming on deputation, the existing employees in the cadre would be expected to know that anyone from outside can walk into the cadre and thus the question of their legitimate expectation being affected does not arise.

21. Are we correct in observing as in para 20 above. Let us have a look to the case law on the subject.

22. In the decision reported as K. Madhavan and Another Vs. Union of India (UOI) and Others, , two writ petitions were decided by the Supreme Court by a common order. In one writ petition, the petitioners were directly recruited as Deputy Superintendent of Police (DSP) in Delhi Special Police Establishment in CBI in the year 1963. Respondent No. 5 therein who was appointed as DSP in Rajasthan State Police in the year 1962 was sent on deputation to CBI as DSP in the year 1967. Under the Special Police Establishment (Executive Staff) Recruitment Rules 1963 (herein after referred to as the "1963 Rules"), the source of appointment to the post of SP was promotion and transfer by deputation and the minimum qualification required for being eligible to be considered for appointment to the post of SP was DSP in Special Police

Establishment with at least eight years" service in the grade, out of which two years should be probationary period in CBI. Under the Central Bureau of Investigation (Deputy Inspector General of Police/Deputy Director) Recruitment Rules 1975 (herein after referred to as the "1975 Rules") the minimum qualification required for being considered for appointment to the post of DIG was Superintendent of Police (including Assistant Inspector General of Police/Assistant Director) in Central Bureau of Investigation with eight years" service in the grade rendered after appointment thereto on a regular basis. Respondent No. 5 therein was first promoted as SP and thereafter as DIG. For determining the seniority and eligibility of respondent No. 5 therein for said promotions, the period of service of respondent No. 5 therein as DSP in Rajasthan State Police was included towards his period of service in CBI. The first contention advanced by the petitioners therein was that the service rendered by respondent No. 5 therein in his parent department could not have been included towards period of service spent by respondent No. 5 therein on the post of DSP in CBI. In support of the said contention, it was submitted that the expression "in the grade" occurring in Recruitment Rules 1963 should be understood to have meant grade of DSP in CBI, meaning thereby that, respondent No. 5 therein should have spent eight years in CBI as DSP before he could have been considered eligible for promotion to the post of SP. The aforesaid contention of the petitioners was repelled in the following terms:

6....We are, however, unable to accept the contention. "Eight years" service in the grade" would mean "eight years" service in the grade of DSP". The 1963 Rules do not provide that the period of eight years should be computed from the date of deputation to the CBI as DSP. In the absence of any such expression, it must be held that the period during which one held the post of DSP in the State Police Service should also be taken into account for computing the period of eight years. The 1963 Rules provide that two years must be spent on probation as DSP in the CBI. The position, therefore, comes to this that of the total period of eight years, two years must be on probation basis in the CBI. An officer may have been in the State Police as DSP for a period of six years and, thereafter, if he joins the CBI on deputation and spends two years on probation, he would be eligible for consideration for appointment to the post of SP. If this view is not taken, no officer would be available to join the CBI on deputation....

23. The second contention advanced by the petitioners therein was that Respondent No. 5 therein was not eligible for being promoted to the post of DIG. In support of said contention, it was submitted by the petitioners therein that the expression "on a regular basis" occurring in 1975 Rules implies that qualifying service required by a deputationist for being considered eligible for promotion to the post of DIG should be reckoned after date of absorption of the deputationist as SP in CBI. The aforesaid contention was repelled by Supreme Court in following terms:

10. The 1975 Rules which are relevant for the purpose do not explain what is

meant by the expression "on a regular basis". The expression has created some ambiguity in the eligibility clause giving rise to this controversy. There can be no doubt that when a person is appointed to a post against a permanent vacancy on probation, his appointment is on a regular basis, but when a person is appointed to a post on a purely temporary or on an ad hoc basis, the appointment is not on a regular basis. The expression "on a regular basis" in the 1975 Rules cannot, in our opinion, be interpreted to mean as on absorption in the CBI as SP. The general principle is that in the absence of any specific provision to the contrary, the length of service from the date of appointment to a post should be taken into consideration for the purpose of either seniority in that post or eligibility for the higher post. As no explanation has been given in the 1975 Rules of the said expression, we do not think it desirable to deviate from the established principle of computing the length of service for the purpose of seniority or eligibility for the higher post from the date of appointment. In our view, therefore, the expression "on a regular basis" would mean the appointment to the post on a regular basis in contradistinction to appointment on ad hoc or stopgap or purely temporary basis. Respondent 5, in our opinion, satisfied the eligibility test of the 1975 Rules for consideration for the post of DIG....

(Emphasis Supplied)

24. In the other writ petition, the petitioner therein was promoted to the post of Deputy Commandant in BSF on 14 June 1976, which post was equivalent to the grade of SP in Central Bureau of Investigation. The petitioner therein joined CBI on deputation as SP on September 29, 1979 and was permanently absorbed in the rank of SP on October 28, 1983. The question which arose for consideration before Supreme Court was whether the service rendered by the petitioner therein in BSF can be taken into account for the purpose of fixing his seniority in CBI, which question was answered in affirmative by the court in following terms:

21. We may examine the question from a different point of view. There is not much difference between deputation and transfer. Indeed, when a deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words, deputation may be regarded as a transfer from one government department to another. It will be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service in the post from which he has been transferred. It has been observed by this Court that it is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new service that their pre-existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre. See *R.S. Makashi v. I.M. Menon*; *Wing Commander J. Kumar v. Union of India*

25. In the decision reported as K. Anjaiah and Others Vs. K. Chandraiah and Others, the Service Commission in Andhra Pradesh was formed under the Provisions of the Andhra Pradesh College Service Commission Act, 1985 (hereinafter referred to as "the Act"). The employees of the Commission came on deputation from the State Government in different batches and such deputationists were managing the affairs of the Commission. It is relevant to note that one of the sources for appointment in Service Commission was deputation. Section 20 of the Act conferred power upon the Commission to make Regulations with the previous approval of the Government. In exercise of the power conferred upon the Commission u/s 20 read with Section 7(3) of the Act a set of Regulations were framed by the Commission. Regulation 9 of the said Regulations reads as under:

9.(1) The persons drawn from other departments will carry on their service and they will be treated as on other duty for a tenure period to be specified by the Commission or until they are permanently absorbed in the Commission whichever is earlier.

(2) The services of those staff members working in the Commission on deputation basis and who opted for their absorption in the Commission, shall be appointed regularly as the staff in the Commission, in the cadre to which they belong, as per the orders of Government approving their appointments batch by batch and to determine the seniority accordingly. For this purpose the Commission may review the promotions already affected.

26. The deputed employees in the Commission assailed the validity of aforesaid Rule 9(2) before Supreme Court. It was held by the Court that seniority of the deputationists in the Commission shall be determined on the basis of service of deputationist in his parent department. The relevant observations of the Court are being noted herein under:

7. We find considerable force in this argument and reading down the provision of Regulation 9(2) we hold that while determining the inter se seniority of the deputationists in the new cadre under the Commission after they are finally absorbed, their past services rendered in the Government have to be taken into account. In other words the total length of service of each of the employees would be the determinative factor for reckoning their seniority in the new services under the Commission. Mr. Ram Kumar, learned Counsel appearing for the appellants, vehemently urged that length of service under the Commission should be the criteria for determining the inter se seniority but we are unable to persuade ourselves to agree with the aforesaid submission of the learned Counsel. It is not known that when the persons were brought over to the Commission from the Government on deputation whether their option had been asked for or not. Further such a principle if accepted then the inter se seniority would be dependent upon the whim of the Government, and we see no rationale behind the aforesaid principle. The two decisions on which Mr. Ram Kumar, learned Counsel placed reliance in support of his contention in fact do not lay

down the aforesaid proposition. We have, therefore, no hesitation to reject the submission of Mr Ram Kumar.

27. In the decision reported as S.I. Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi and Others, , the petitioners, who were employed as Sub-Inspectors in Border Security Force and were sent on deputation to Delhi Police in the cadre of Sub-Inspector (Executive) and were permanently absorbed by Delhi Police in the said cadre, challenged the validity of the office memorandum dated 29.05.1986, contents whereof have been noted in para 2 above. Delhi Police (Appointment and Recruitment) Rules 1980 provide for mode of recruitment in Delhi Police. It is relevant to note that Rule 5(h) of the said Rules provides that if the Commissioner is of the opinion that it is necessary or expedient in the interest of work to do so, he may make appointment(s) to all non-gazetted categories of both executive and ministerial cadres of the Delhi Police on deputation basis by drawing suitable persons from any other State, Union Territory, Central police organisation or any other force. Rule 17 of the said Rules empowered the Commissioner of Police, Delhi to sanction permanent absorption of persons sent on deputation with the consent of the deputed official in the Delhi Police of upper and lower subordinates and with the concurrence of the Head of Police Force from which said official is deputed. While quashing the expression "whichever is later" occurring in the said office memorandum, Supreme Court observed as under:

15. We will now take up the question whether the appellants are entitled to count their service rendered by them as Sub-Inspectors in BSF for the purpose of their seniority after absorption as Sub-Inspectors (Executive) in the Delhi Police or not. We have already noticed the fact that it is pursuant to the needs of the Delhi Police that these officials were deputed to the Delhi Police from BSF following the procedure laid down in Rule 5(h) of the rules and subsequently absorbed as contemplated under the said rules. It is also not in dispute that at some point of time in BSF, the appellants' services were regularised in the post of Sub-Inspector and they were transferred as regularly appointed Sub-Inspectors to the Delhi Police Force. Therefore, on being absorbed in an equivalent cadre in the transferred post, we find no reason why these transferred officials should not be permitted to count their service in the parent department. At any rate, this question is not res integra and is squarely covered by the ratio of judgments of this Court in more than one case. Since the earlier Bench of the Tribunal relied upon Madhavan¹ case to give relief to the deputationists, we will first consider the law laid down by this Court in Madhavan's case this Court in that case while considering a similar question, came to the following conclusion: (SCC p. 580, para 21)

....

16. Similar is the view taken by this Court in the cases 67 of R.S. Makashi and Wing Commander J. Kumar which judgments have been followed by this Court in Madhavan¹ case. Hence, we do not think it is necessary for us to deal in detail

with the view taken by this Court in those judgments. Applying the principles laid down in the above-referred cases, we hold the appellants are entitled to count the substantive service rendered by them in the post of Sub-Inspector in BSF while counting their service in the post of Sub-Inspector (Executive) in the Delhi Police Force.

....

19. This leaves us to consider the validity of the office memorandum which was relied upon by the Tribunal in the impugned judgment.

20. A perusal of Clause (iv) of the memorandum shows that the author of this memorandum has taken inconsistent views in regard to the right of a deputationist to count his seniority in the parent department. While in the beginning part of clause (iv) in clear terms he says that if a deputationist holds an equivalent grade on regular basis in the parent department, such regular service in the grade shall also be taken into account in fixing the seniority. In the latter part the author proceeds to say--

....subject to the condition that he will be given seniority from the date he has been holding the post or the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department, whichever is later.

The use of the words "whichever is later" negatives the right which was otherwise sought to be conferred under the previous paragraph of clause (iv) of the memorandum. We are unable to see the logic behind this. The use of the words "whichever is later" being unreasonable, it offends Article 14 of the Constitution. It is also argued on behalf of the appellants that this memorandum is further violative of Articles 14 and 16 of the Constitution inasmuch as it arbitrarily takes away the service rendered by the deputationist when he is absorbed in the Delhi Police which right of a civil servant cannot be taken away without the authority of law. We have noticed earlier that the petitioners, who are the appellants in the civil appeals, were regularly appointed as Sub-Inspectors in BSF on the date of their deputation. We have also accepted the fact that the post of Sub-Inspector held by them in BSF is equivalent to the post of Sub-Inspector (Executive) in the Delhi Police to which they stood deputed. That being the case, in view of the judgment in the cases of R.S. Makashi, Wing Commander J. Kumar⁷ and Madhavan it is clear that they are entitled to count the service rendered by them in the post of Sub-Inspector in BSF for the purpose of seniority in the cadre of Sub-Inspector (Executive) in the Delhi Police. Therefore, such a right of the appellant-petitioners could not have been taken away in the garb of an office memorandum which is impugned in the above writ petition. This view of ours finds support from a judgment of this Court in the case of K. Anjaiah v. K. Chandraiah

....

23. It is clear from the ratio laid down in the above case that any rule, regulation or executive instruction which has the effect of taking away the service rendered by a deputationist in an equivalent cadre in the parent department while counting his seniority in the deputed post would be violative of Articles 14 and 16 of the Constitution. Hence, liable to be struck down. Since the impugned memorandum in its entirety does not take away the above right of the deputationists and by striking down the offending part of the memorandum, as has been prayed in the writ petition, the rights of the appellants could be preserved, we agree with the prayer of the appellant-petitioners and the offending words in the memorandum "whichever is later" are held to be violative of Articles 14 and 16 of the Constitution, hence, those words are quashed from the text of the impugned memorandum. Consequently, the right of the appellant-petitioners to count their service from the date of their regular appointment in the post of Sub-Inspector in BSF, while computing their seniority in the cadre of Sub-Inspector (Executive) in the Delhi Police, is restored....

28. In the decision reported as *Indu Shekhar Singh and Others Vs. State of U.P. and Others*, respondents Nos. 2, 3, 4 and 6 therein were appointed in U.P. Jal Nigam on diverse dates. State of U.P. created Ghaziabad Development Authority in exercise of its power under UP Urban Planning and Development Act, 1973 (herein after referred to as the "Act"). On 25.06.1985 State of U.P. notified UP Development Authorities Centralised Service Rules 1966 (herein after referred to as the "Rules") in exercise of its power under the Act. Respondents Nos. 2, 3, 4 and 6 were deputed to Ghaziabad Development Authority on diverse dates. Rule 5-A of the Rules provided for absorption only of the employees deputed from Development Authorities in Centralised Service. Notwithstanding the fact that UP Jal Nigam was not a development authority, vide letters dated 27.08.1987 and 28.11.1991 issued to respondents Nos. 2 and 4 therein they were asked to communicate their acceptance for absorption in Centralised Service subject to the conditions specified in the said letter. One of the conditions specified therein was that service of the respondents in UP Jal Nigam would not be taken into consideration for determination of their seniority in Centralised Service and that they would be placed below the employees appointed on regular basis in the seniority list. The offer contained in the aforesaid letters was accepted by the respondents Nos. 2 and 4 therein. Respondents Nos. 3 and 6 therein opted on their own for absorption in Centralised Service. An office order was issued by the Government of UP wherein the employees who had joined the Centralised Service on a regular basis were placed above respondents Nos. 2, 3, 4 and 6 therein in the seniority list, which order was impugned by respondents Nos. 2 and 4 therein by filing a writ petition before the Allahabad High Court. The principal grievance raised by the said respondents was that the government has erred in not taking into account service rendered by them under UP Jal Nigam while fixing their seniority in the Centralised Service. Relying upon the ratio laid down by the Supreme Court in *K. Madhavan's case* (supra), the High Court allowed the writ petition filed by the respondents therein. In appeal, the

Supreme Court set aside the judgment passed by the High Court. The relevant observations of the Supreme Court are as under:-

19. The terms and conditions of recruitment/appointment to the post, seniority and other terms and conditions of service are governed by statutory rules. The statute provides that only those, who were in the employment of different development authorities, shall be borne to the cadre of the Central services. The U.P. Jal Nigam was not a development authority. It was constituted under a different statute. It was an autonomous body. The employees working with the Jal Nigam might have been deputed to the services of the development authorities, but only by reason thereof they did not derive any right to be absorbed in the services. Ordinarily, an employee has no legal right to be deputed to another organisation. He has also no right to be permanently absorbed excepting in certain situation as was held by this Court in *Union of India v. V. Ramakrishnan*.

20. Respondents 2 to 4 were deputed to the Ghaziabad Development Authority on their own. They were presumed to be aware that they were not borne in the cadre of centralised services. The Rules do not provide for appointment by way of transfer. Appointment by way of absorption of a deputed employee would amount to fresh appointment which may be subject to the offer given by the Authority. The Development Authority is a statutory authority. So is the Jal Nigam. The Schedules appended to the Rules provide for posts to be filled up by promotion or by direct recruitment or by both. Schedule IV provides for the posts which are outside the purview of the Public Service Commission and are required to be filled up by promotion only, whereas Schedule V specifies those posts which are outside the purview of the Public Service Commission, but are to be filled up through direct recruitment only. It is not disputed that the State of U.P. has since issued a notification on 9-12-2002 whereby and whereunder Rule 7(1) of the 1985 Rules stood substituted, in terms whereof the past services of only those officers and employees were to be counted who would finally be absorbed in the services in terms of Section 5-A(2) of the Act on the criterion of continuous length of service, including the services rendered in a Development Authority, Nagar Mahapalika, Nagar Palika or Improvement Trust on similar posts. Respondents 2 to 4 were not and could not have been absorbed u/s 5-A(2) of the Act and thus evidently Rule 7(1) is not attracted. The only rule, which provides for seniority, is Rule 28. Rules 7 and 28, as noticed hereinbefore, occur in different chapters providing for different situations.

21. Respondents 2 to 4, therefore, were not entitled to the benefits of Rule 7. In terms of the Rules, there is no provision for appointment by way of transfer. There is also no provision for appointment on permanent absorption of the deputed employees. The only provision which in the fact situation obtaining in the present case would apply and that too in the event the State intended to absorb the employees of the Jal Nigam, would be Section 7(1) of the Act and Sub-rule (2) of Rule 37 of the 1985 Rules.

22. Seniority, as is well settled, is not a fundamental right. It is merely a civil right. (See *Bimlesh Tanwar v. State of Haryana* SCC para 49 and also *Prafulla Kumar Das v. State of Orissa*.)

....

24. The question which arises is as to whether the terms and conditions imposed by the State in the matter of absorption of Respondents 2 to 4 in the permanent service of the Ghaziabad Development Authority is ultra vires Article 14 of the Constitution of India.

25. The State was making an offer to the respondents not in terms of any specific power under the Rules, but in exercise of its residuary power (assuming that the same was available). The State, therefore, was within its right to impose conditions. The respondents exercised their right of election. They could have accepted the said offer or rejected the same. While making the said offer, the State categorically stated that for the purpose of fixation of seniority, they would not be obtaining the benefits of services rendered in the U.P. Jal Nigam and would be placed below in the cadre till the date of absorption. The submission of Mr Verma that the period for which they were with the Authority by way of deputation, should have been considered towards seniority cannot be accepted simply for the reason that till they were absorbed, they continued to be in the employment of the Jal Nigam. Furthermore, the said condition imposed is backed by another condition that the deputed employee who is seeking for absorption shall be placed below the officers appointed in the cadre till the date of absorption. Respondents 2 to 4 accepted the said offer without any demur on 3-9-1987, 28-11-1991 and 6-4-1987 respectively.

26. They, therefore, exercised their right of option. Once they obtained entry on the basis of election, they cannot be allowed to turn round and contend that the conditions are illegal. (See *R.N. Gosain v. Yashpal Dhir*, *Ramankutty Guptan v. Avaraand Bank of India v. O.P. Swarnakar*.) Furthermore, there is no fundamental right in regard to the counting of the services rendered in an autonomous body. The past services can be taken into consideration only when the Rules permit the same or where a special situation exists, which would entitle the employee to obtain such benefit of past service....

29. With regard to its earlier decisions in *K. Madhavan*, *K. Chandraiah* and *SI Rooplal*'s cases (*supra*), the Supreme Court observed as under:

38. In *K. Madhavan v. Union of India* where upon Mr. Verma placed strong reliance, this Court was considering a case where deputation was made to CBI. The said decision was rendered in a situation wherein the original Rule 5 of the 1963 Rules providing for 85% of the recruitment by way of transfer or deputation was altered to 75%. In that case, the earlier services rendered by the appellants therein were directed to be considered having regard to the statutory rules governing the field. Therein no question of a person joining the services after resigning from his old post arose. It is only in that situation, the Court opined

that there was not much difference between deputation and transfer.

39. A difference between transfer and deputation would be immaterial where an appointment by transfer is permissible, particularly in an organisation like CBI where personnel are drawn from different sources by way of deputation. It is one thing to say that a deputationist may be regarded as having been appointed on transfer when the deputation is from one department of the Government to another department, but it would be another thing to say that employees are recruited by different statutory authorities in terms of different statutory rules. In a given case, the source of recruitment, the qualification, etc., may be different in different organisations. The statutory authorities, it is trite, are not and cannot be treated to be the departments of the Government. Their employees are governed by the rules applicable to them. Their services are not protected under Article 311 of the Constitution.

40. The State can (sic cannot) compel an employee to go on deputation from its parent department to another public sector undertaking unless a statutory rule exists in this behalf. In absence of such a rule, no employer can force an employee to join the services of another employer. Thus, K. Madhavan, in our opinion, has no application in the instant case.

41. K. Anjaiah v. K. Chandraiah was again a case where this Court was concerned with multi-source recruitment....

42. Therein, thus, existed a provision for appointment by way of absorption of the deputationist. The said regulation was declared unconstitutional by the Tribunal....

Such a finding was, thus, arrived at by way of reading down the Rules so as to uphold the constitutionality of the said provision and not by laying any law in that behalf upon interpreting Rule 9(2).

43. Having noticed the aforementioned decisions of this Court, we may now notice Sub-Inspector Rooplal which is the sheet anchor of the judgment rendered by the High Court.

....

47. The decisions referred to hereinbefore, therefore, lay down a law that past services would only be directed to be counted towards seniority in two situations: (1) when there exists a rule directing consideration of seniority; and (2) where recruitments are made from various sources, it would be reasonable to frame a rule considering the past services of the employees concerned.

48. The said decisions, in our considered view, have no application in this case, having regard to the provisions of Section 5-A of the Act, in terms whereof no provision exists for recruitment of deputationists. Recruitment of deputationists, in fact, is excluded therefrom....

(Emphasis Supplied)

30. In the decisions reported as Union of India (UOI) and Others Vs. K. Savitri and Others, and Union of India and Another Vs. G.R.K. Sharma, the issue before the Supreme Court was whether the surplus employees, having been rendered surplus in the parent department, on being redeployed under the provisions of the Central Civil Services (Redeployment of Surplus Staff) Rules, 1990 (hereinafter referred to as "the Rules") can claim the benefit of past services rendered by them for the purposes of seniority or experience in the redeployed organisation. Rule 9 of the said rules specifically provided that benefit of past services in the parent department cannot be claimed by surplus employees on being redeployed. In view of the specific provision contained in the Rules, it was held by the court that surplus employees cannot claim benefit of past services in the parent department on being redeployed.

31. Having analyzed the decisions afore-noted it is apparent that the various Benches of the CAT misinterpreted the ratio of the decisions of the Supreme Court in K. Madhavan, K. Chandraiah and SI Rooplal's case (supra) and Indu Shekhar Singhi's case (supra).

32. A close perusal of the aforesaid decisions, particularly the portions underlined by us in the paragraphs quoted from Indu Shekhar's case (supra) succinctly brings out that the decisions of Supreme Court in K. Madhavan, K. Chandraiah and SI Rooplal's cases and Indu Shekhar's cases (supra) operate in different fields. Whereas K. Madhavan, K. Chandraiah and SI Rooplal's cases deal with a situation where one of the sources for appointment to a cadre in the transferred department is deputation, Indu Shekhar's case deals with a situation where the deputation was not provided as a source of appointment to a cadre under the Recruitment Rules of the transferred department and the government had permanently appointed the deputationist in the transferred department in exercise of its residuary powers.

33. Incidentally, we may note that Indu Shekhar's case (supra) also brings out that there is considerable difference between the situations where both parent and transferred departments are government departments and where either of the parent or transferred department or both of the departments are statutory organizations. The reason behind this is obvious. Every statutory organization may or may not be a government department. A government department has to be an organization which is not only completely controlled and financed by the government but has also no identity of its own.

34. From the afore-noted decisions, the legal principle which can be deduced is: (i) where one of the sources of appointment to a post in a cadre is deputation, service rendered by a deputationist on an equivalent post in his parent department shall be taken into consideration while computing his period of service in the deputed post for the purposes of determination of his seniority and eligibility for promotion in the transferred department; (ii) in cases where deputation is not the source of appointment in a cadre under the recruitment rules and a deputationist is absorbed in the transferred department by the

government in exercise of its residuary powers, whether service rendered by a deputationist in his parent department shall be taken into consideration while computing his period of service in deputed post for the purposes of determination of his seniority and eligibility for promotion in transferred department would be dependent upon terms and conditions of deputation or absorption of deputationists in transferred department.

35. No strait jacket formula of universal application can be evolved in respect of said cases. Each case would have to be examined independently on its own facts and the statutory framework.

36. The reason behind the aforesaid principle is obvious. Where one of the source of appointment in a cadre in the transferred department is deputation, no employee in said cadre can have any legitimate expectation of non-disturbance of his seniority and promotional prospects by deputationists, for they are well cognizant of the fact that a deputationist can be appointed in the cadre at any time and that said appointment would have an effect on their seniority and promotional prospects.

37. Thus, for reasons different than the reasons advanced by the Tribunal, which unfortunately did not have the benefit of considering the effect of the amendment to Rule 8 of the Central Health Services Rules 1996 with effect from 30.7.2001, we concur with the final directions issued by the Tribunal.

38. For guidance in future when a similar issue arises, we may only state that it would be better for the Tribunal or a Court to see the relevant service rule and whether or not deputation as a source of recruitment is provided or whether the absorption of a deputationist is an exercise of a residual power by the Government for, as noted herein above the root distinction lies therein.

39. We dismiss the writ petitions, but in the facts and circumstances of the cases direct that each party shall bear the respective cost.