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**(2008) 05 AHC CK 0194**  
**In the Allahabad High Court**

Virendra Kumar Singh

APPELLANT

Vs

State of U.P., Audhaugic Vikas Anubhag, Director, Mudran  
Evam Lekhan Samigri, Om Prakash, Deputy Director, Govt.  
Press and Sayeed Jargam Haider Zaidi, Deputy Director,  
Govt. Press Hazaratganj Branch

RESPONDENT

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**Date of Decision :** 21-05-2008

**Acts Referred:**

**Citation :** (2008) 1 UPLBEC 662

**Hon'ble Judges :** Yatindra Singh, J; Shashi Kant Gupta, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Yatindra Singh, J.—Seniority, the bane of Indian Service Jurisprudence, is subject matter of dispute in the present writ petition.

### THE FACTS

2. The petitioner as well as respondents 3 and 4 (parties to the WP) are in the Government Press and Allied Establishments (Gazetted Officers) Service (the Service). This service is governed by the UP Government Press and Allied Establishments (Gazetted Officers) Service Rules, 1981 (the 1981 Rules).

3. The petitioner is a direct recruit in the Service. He was appointed on 11.10.1988 on the post of Assistant Director after selection from the Public Service Commission (the Commission). He joined the post on 14.10.1988 and was confirmed on 26.3.1991 with effect from 14.10.1990.

4. Respondents No. 3 and 4 are promotees. They were promoted adhoc as Assistant Director on 7.7.1980 and 7.1.1983 respectively. It appears that persons in different services were appointed/promoted on adhoc basis in the State. The State has framed the following rules in order to regularise their services:

? UP Regularisation of Ad-hoc Appointments (On post within the Purview of the Public Service Commission) Rules, 1979 (the 1979 Rules); and

? UP Regularisation of Adhoc Promotion (On Posts within the Purview of the Public Service Commission) Rules, 1988 (the 1988 Rules).

Similar rules, for the posts outside the purview of the Commission, have been also framed in the same years. Respondents No. 3 and 4 were regularised and confirmed on 13.2.1990 under the 1988 Rules.

5. A provisional seniority list of Assistant Directors was published on 30.3.1993. In this list, names of respondents 3 and 4 were not shown as they were promoted to the post of Deputy Director on 3.12.1991 but the name of one Sri SS Kathuria was shown as senior than the petitioner.

6. The petitioner filed objection against the aforesaid provisional seniority list claiming that he is senior than Sri Kathuria. It was allowed on 26.7.1997 and the petitioner was treated as senior than Sri Kathuria.

7. During pendency of the aforesaid objection, the petitioner was also promoted to the post of Deputy Director on 12.9.1994. The final seniority list was published on 5.6.1998. As the parties to the WP had been promoted to the post of Deputy Director, their names (including that of respondents 3 and 4) were also included in the seniority list. In this list, the petitioner was shown junior than respondents 3 and 4. The petitioner filed his objection against this seniority list. However, it was rejected on 2.8.2000.

8. In the meantime respondents 3 and 4 were confirmed on the post of Deputy Director on 6.1.2000 with effect from 3.12.1993 whereas the petitioner was also confirmed on the post of Deputy Director by the order dated 10.8.2000 with effect from 13.9.1996.

9. Subsequently, another seniority list for the post of Deputy Directors was published. In this list also, the petitioner was shown as junior to the respondents 3 and 4. The petitioner again filed his objection. It was rejected on 27.8.2001 on the ground that respondents 3 and 4 were shown senior in the list dated 5.6.1998. Hence the present writ petition.

#### POINTS FOR DETERMINATION

10. We have heard Sri Ashok Khare, Sri RK Tripathi for the petitioner and Standing Counsel for the respondents. The following points arise for determination in the case:

(i) Which rule/principle governs the seniority of the parties?

(ii) Whether the substantive appointment of respondents 3 and 4 is prior to the substantive appointment of the petitioner?

#### 1ST POINT: STATUTORY RULE GOVERNING SENIORITY

11. The counsel for the petitioner brought to our notice paragraph 41 of the full bench decision reported in *Farhat Hussain Azad v. State of UP and Ors.* 2005 (1) UPLBEC 474 (the Farhat case) and submitted that a person can not claim benefit of the period rendered by him on adhoc basis.

12. The standing counsel submitted that:

(i) The observations in paragraph 41 of the Farhat case are of general nature (obiter) and are not binding {See *Indian Ceramic House, Agra Vs. Sales Tax Officer, II Sector, Agra, , Hardwari Lal v. Divisional Engineer, Telegrphas, Allahabad Division and Ors.* 1972 ALJ 1453}.

(ii) The observations in the Farhat case are of general nature as the court has held that the writ petitions are not maintainable on the following grounds:

(a) The petitioners had earlier filed writ petitions that were dismissed (paragraphs 68 to 75).

(b) None of the persons likely to be affected were impleaded i.e. necessary parties were not impleaded (paragraph 76 of the judgement).

13. It is not necessary to consider the submission of the Standing counsel as in our opinion, seniority depends on the statutory provision applicable to the parties. It is only in absence of the rules or if the rules are challenged as ultravires or discriminatory that general principles regarding seniority are to be looked into. In the present case, there is statutory rule that governs the seniority of the parties.

14. The petitioner was appointed on 11.10.1988 and was confirmed by the order dated 26.3.1991 with effect from 14.10.1990. Respondents 3 and 4 were appointed on adhoc basis on 7.7.1980 and 7.1.1983. They were regularised and confirmed on 13.2.1990. The appointment of these persons is prior to framing of UP Government Service Seniority Rules, 1991 (the 1991 Rules): these Rules are not applicable.

15. The parties are governed by the 1981 Rules; Part VI of the 1981 Rules deals with the appointment, probation and confirmation. Rule 22 specifically deals with the seniority (see Appendix 1). Respondents 3 and 4 were regularised under the 1988 Rules and Rule 7 (see Appendix -2) deals with the seniority of the persons regularised under these rules. The seniority of the parties to the WP has to be determined in the light of Rule 22 of 1981 Rules read with Rule 7 of the 1988 Rules.

**IIIND POINT: RESPONDENT 3 AND 4 ARE SENIOR**

**Seniority is From the Date of Substantive Appointment**

16. The 1988 Rules deal with regularisation in the promotion. The 1979 Rules deal with regularisation of the initial appointment and not for promotions.

17. Rule 7 of the 1979 Rules and the 1988 Rules deal with seniority of the

persons regularised under these rules. Rule 7 of the 1979 Rules (which was also involved in the Farhat case) (See Appendix-II) is different than Rule 7 of the 1988 Rules. Rule 7 of 1979 Rules specifically provides that the person appointed under the 1979 Rules is,

? Entitled to seniority from the date of order of appointment; and

? To be placed below the previously regularly appointed persons.

18. We are not concerned with Rule 7 of the 1979 Rules but with Rule 7 of the 1988 Rules. This rule is different. There is no such condition as is there in the 1979 Rules. On the contrary, it provides that the persons appointed shall be:

(i) Entitled to the seniority in accordance with relevant service rules

(ii) Selection under these rules shall be deemed to be selection under the service rules. This refers the question of seniority to the relevant service rules applicable to the parties, which is Rule 22 of the 1981 Rules.

19. The seniority under Rule 22 is to be determined from the date of substantive appointment but is substantive appointment of the petitioner prior to that of respondents 3 and 4?

Substantive Appointment Of Respondents 3 and 4 Is Prior

20. The counsel for the petitioner submitted that:

? The date of substantive appointment of the petitioner is 11.10.1988 and that of respondents 3 and 4 is 13.2.1990;

? The petitioner is senior than respondents 3 and 4.

21. The first proviso to Rule 22(1) of 1981 Rules says that if the appointment order specifies a particular back date with effect of which a person is substantively appointed, then that date will be the date of substantive appointment.

22. The order dated 13.2.1990 does not specifically provide a back date of appointment of respondents 3 and 4. However, the order dated 13.2.1990 does not appoint them but it regularises and confirms the appointment of respondents 3 and 4 on 13.2.1990. The confirmation can take place only if they were substantively appointed on some prior date. What is that date?

23. The standing counsel submitted that:

? Respondents 3 and 4 were not substantively appointed on 13.2.1990 but were confirmed on that date;

? They were promoted adhoc after selection by the selection committee and after confirmation shall be deemed to have been substantively appointed on the date when they were promoted on adhoc basis: and

? In any case, there is two years probation period for confirmation and they will be deemed to be substantively appointed atleast on 14.2.1990.

24. Under Rule 20 of the 1981 Rules, the period for probation is two years. Respondents 3 and 4 were not substantively appointed on 13.2.1990. They were confirmed on that date. Their substantive appointment has to refer back to some earlier date. Will it be,

? The date of their initial appointment that is 7.7.1980 and 7.1.1983: or

? Two years prior to 13.2.1990 that is 14.2.1988.

It is not necessary for us to decide it, as in either case, it will be prior to substantive appoint of the petitioner that is 11.10.1988. It is also relevant to point out that the petitioner has been confirmed with effect from 19.10.1990 which is also subsequent to the date of confirmation of respondents 3 and 4 namely 13.2.1990.

25. The counsel for the petitioner submitted that the principles of seniority have been laid down in the order dated 26.7.1997 in Sri Kathuria's case (paragraph 5 to 7 of this judgement) It should be followed in the case of respondents 3 and 4 also.

26. In the counter affidavit it has been stated that:

? The case of SS Kathuria is different than the case of respondents 3 and 4; and

? Sri Kathuria's case was not covered by the 1988 Rules.

Even if the case of Sri Kathuria is similar and is governed by the 1988 Rules, it will not estop the government from taking the correct view in the present case. There can not be any estoppel against the statutory provision.

## CONCLUSIONS

27. Our conclusions are as follows:

(i) The seniority amongst the parties is to be determined under Rule 7 of the Uttar Pradesh Regularisation of Ad-hoc Promotion (On Posts within the Purview of the Public Service Commission) Rules, 1988 Rules read with Rule 22 of the Uttar Pradesh Government Press and Allied Establishments (Gazetted Officers) Service Rules. 1981 Rules.

(ii) The substantive appointment of the petitioner is of a date later than that of respondents 3 and 4. He is junior than respondents 3 and 4.

In view of our conclusions, the writ petition has no merit and is dismissed.