

## **Om Prakash Shrivastava vs State Of M.P. & Anr on 19 April, 2005**

**Equivalent citations: AIR 2005 SUPREME COURT 2453, 2005 (11) SCC 488, 2005 AIR SCW 2397, 2005 LAB. I. C. 1926, 1 (1) SERVLJ 55 SC, (2005) 3 LAB LN 38, (2005) 31 ALLINDCAS 751 (SC), 2005 (31) ALLINDCAS 751, 2005 (5) SRJ 567, (2005) 4 JT 602 (SC), 2005 (4) JT 602, (2006) 1 SERVLJ 55, 2005 (4) SLT 52, 2005 (4) SCALE 358, (2006) 1 JAB LJ 363, (2005) 2 SCT 665, (2005) 4 SCJ 323, (2005) 4 SUPREME 169, (2005) 4 SCALE 358, (2005) 2 ESC 284, (2005) 3 SERVLR 850**

**Author: Arijit Pasayat**

**Bench: Arijit Pasayat, S.H. Kapadia**

CASE NO.:

Appeal (civil) 2698-2699 of 2005

PETITIONER:

Om Prakash Shrivastava

RESPONDENT:

State of M.P. & Anr

DATE OF JUDGMENT: 19/04/2005

BENCH:

ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:

**J U D G M E N T** (Arising out of SLP(C) Nos.8327-8328 of 2004) ARIJIT PASAYAT, J.

Leave granted.

Appellant calls in question legality of the judgment rendered by a Division Bench of the Madhya Pradesh High Court at Jabalpur affirming the order passed by Central Administrative Tribunal (in short 'CAT') holding that the appellant's claim of seniority vis-à-vis that of one Ram Rao Bhosley was untenable.

Factual position is undisputed and relates to appellant's seniority vis-à-vis others. Though grievance was made in the Original Application before the CAT and the High Court that his seniority was affected by placing juniors above him, no such junior was impleaded either before CAT or the High Court and in the present appeal. By way of illustration, it has been pointed out that the aforesaid

Ram Rao Bhosley was one such instance. It was appellant's stand that when he passed the departmental examination, the Government should have decided the date from which he was to be confirmed. As no such decision has been taken and no order has been passed his placement in the Gradation list is without any rational basis.

Appellant was appointed on 1.1.1989 on probation and original probation period ended on 1.5.1991. There was extension of the period of probation by one year which ended on 1.5.1992. Even during the extended period of probation the appellant did not succeed in the departmental examination and only on 22.7.1992 he passed the departmental examination. The date of confirmation was accordingly taken to be 23.7.1992. The appellant made a grievance that those persons who had passed the departmental examination within the extended period of one year were placed higher in the seniority list of 2002 by fixing their notional date of confirmation on the day the original period of probation was over. According to the appellant such fixation of seniority was contrary to law. The CAT did not accept the plea by placing reliance on judgment of this Court in *M.P. Chandoria v. State of M.P. and Ors.* (1996 (11) SCC 173) and *State of M.P. v. Ramkinkar Gupta and Ors.* (2000(10) SCC 77). The CAT held that these decisions did not support the stand taken by the appellant and, in fact, substantiated State's case that only from the date an employee passes the departmental examination (if it is after probation period), the confirmation takes places.

In support of the appeal, Mr. Vivek Tankha, learned senior counsel submitted that the view taken by the CAT and the High Court was not correct in view of what has been stated by this Court in *M.P. Chandoria* and *Ramkinkar Gupta* cases (supra). With reference to the factual details of Ram Rao Bhosley, it was submitted that though he passed the departmental examination on 29.1.1993 after his initial appointment on 7.5.1990, he was placed senior to the appellant in the Gradation list. This was submitted to be not justified both in fact and in law.

Learned counsel for the respondent-State on the other hand supported the judgment of CAT and the High Court.

We shall first take note of the factual details so far as the appellant and Ram Rao Bhosley, though he is not a party to test acceptability of appellant's stand.

Name of the officer Om Prakash Shrivastava Ram Rao Bhosley Date of appointment 01.05.1989 07.05.1990 Date of completion of 2- years (original Probation Period) 01.05.1991 07.05.1992 Date of completion of extended period of 1(one) year 01.05.1992 07.05.1993 Date of passing the departmental exams.

22.07.1992 29.01.1993 Date of confirmation 23.07.1992 08.05.1992(Notional) Sr.No. in Gradation List of 2002 Rules 8 and 12 of the Madhya Pradesh Civil Services (General Conditions of Service) Rules, 1963 (in short the 'Rules') throw considerable light on the present controversy. They read, so far as relevant as follows:

"8. Probation - (1) A person appointed to a service or post by direct recruitment shall ordinarily be placed on probation for such period as may be prescribed.

(2) The appointing authority may, for sufficient reasons, extend the period of probation by a further period not exceeding one year.

\* \* \* (3) A probationer shall undergo such training and pass such departmental examinations during the period of his probation as may be prescribed. (4) The service of a probationer may be terminated during the period of probation if in the opinion of the appointing authority he is not likely to shape into a suitable government servant. (5) The services of a probationer who has not passed the departmental examinations or who is found unsuitable for the service or post may be terminated at the end of the period of his probation. (6) On the successful completion of probation and passing of the prescribed departmental examination, if any, the probationer shall if there is a permanent post available, be confirmed in the service or post to which he has been appointed, otherwise a certificate shall be issued in his favour by the appointing authority to the effect that the probationer would have been confirmed but for the non-availability of the permanent post and that as soon as a permanent post becomes available he will be confirmed.

(7) A probationer, who has neither been confirmed, nor a certificate issued in his favour under sub-rule (6), nor discharged from service under sub-rule (4), shall be deemed to have been appointed as a temporary government servant with effect from the date of expiry of probation and his conditions of service shall be governed by the Madhya Pradesh Government Servants (Temporary and Quasi-Permanent Service) Rules, 1960."

"12. Seniority - The seniority of the members of service of a district branch or group of posts of that service shall be determined in accordance with the following principles, viz. -

(a) Direct recruits: (i) The seniority of a directly recruited government servant appointed on probation shall count during his probation from the date of appointment, viz. :

\* \* \*

(ii) the same order of inter se seniority shall be maintained on the confirmation of such direct recruits if the confirmation is ordered at the end of the normal period of probation. If, however, the period of probation of any direct recruits is extended, the appointing authority shall determine whether he should be assigned the same seniority as would be assigned to him if he had been confirmed on the expiry of the normal period of probation or whether he should be assigned a lower seniority."

Rule 13 of Madhya Pradesh Civil Services (Executive) Classification, Recruitment and Conditions of Services Rules, 1975 (in short 'Executive Rules') reads as follows:

"13. Probation- (1) Every person directly recruited to the service shall be appointed on probation for a period of two years.

(2) The appointing authority may, for sufficient reasons, extend the period of probation by a further period not exceeding one year.

(3) The probationer shall undergo the prescribed training and pass the prescribed departmental examination by the higher standard during the period of his probation.

(4) The services of the probationer may be terminated during the period of probation, if in the opinion of the appointing authority, he is not likely to shape into suitable government servant.

(5) The services of a probationer who does not pass the prescribed departmental examination or who is found unsuitable for the service also be terminated at the end of the period of probation.

(6) On successful completion of probation and the passing of the prescribed departmental examinations, the probationer shall be confirmed in the service provided permanent vacancies exist for him otherwise a certificate shall be issued in his favour by the appointing authority to the effect that the probationer would have been confirmed but for the non-availability of the permanent post and as soon as permanent post becomes available he will be confirmed. The probationer shall not draw any increments until he is confirmed. On confirmation his pay will be fixed with reference to the total length of service. If the probationary period is extended, government will decide at the time of confirmation whether arrears of increments shall be paid or not.

Such arrears shall ordinarily be paid when the extension of the probationary period is due to no fault of the probationer.

(7) A probationer who has neither been confirmed, nor a certificate issued in his favour under sub-rule (6) above, nor discharged from service under sub- rules (4) and (5) above, shall be deemed to have been appointed as a temporary government servant with effect from the date of expiry of probation and his conditions of service shall be governed by the Madhya Pradesh (Temporary and Quasi-Permanent Service) Rules, 1960."

A bare reading of sub-clause (ii) of Clause (a) of Rule 12 makes the position clear that the appointing authority has to decide as to from what date the direct recruit is to be assigned. It has to be decided whether seniority as assigned to him if he had been confirmed on the expiry of the normal period of probation or whether he should be assigned a lower seniority. The original probation period is two years. Therefore, a combined reading of Rules 8, 12 of the Rules and 13 of Executive Rules makes the position clear that seniority can be assigned by taking the relevant date to be the date of expiry of normal period of probation. In the case of Ram Rao Bhosley, it was 8.5.1992. So far as the appellant

is concerned, the appointing authority has been given power to determine the date from which the candidate should be assigned seniority if the period of probation of any direct recruit is extended depending on the date of his passing the departmental examination. As was noted in M.P. Chandoria's case (supra), until the probation period is completed, and he is confirmed in the post, the employee does not become a member of the service on successful completion of the probation and passing of the prescribed tests or conditions precedent to declaration of completion of the probation period. Mere completion of one year period does not entitle the person to be a member of the service. He continues to be in temporary service on the completion of probation period. The appointing authority is to confirm him in a pending post available or grant him a quasi-permanent status. Unless he passes departmental examination, there is no question of completion of probation and for all practical purposes the employee continues to be in temporary service.

Reiterating the principles in M.P. Chadoria's case (supra), it was held in Ramkinkar Gupta's case (supra) that if a person does not pass the test then the appointing authority is empowered to assign seniority in a lower level than one which has been assigned by the Public Service Commission. A person who has neither been confirmed, nor had a certificate in his favour in terms of sub-rule (6), nor discharged from service under sub-rule (4) would fall within the category of those officers referred to in sub-rule (7) of Rule 8 of the Rules. In other words, he is to be deemed to be a temporary government servant with effect from the date of expiry of probation. The position is different in case of an officer, who passes the departmental examination within extended period of probation.

In view of the principles indicated, CAT and High Court were justified in rejecting the appellant's claim. The conclusions do not warrant any interference.

The appeals are dismissed with no order as to costs.