

Keshav Chandra Joshi And Ors. Etc vs Union Of India And Ors on 6 November, 1990

Equivalent citations: 1991 AIR 284, 1990 SCR SUPL. (2) 573, AIR 1991 SUPREME COURT 284, 1991 LAB. I. C. 216, (1991) 2 SERV LJ 42, (1991) 1 APLJ 45.2, 1992 (1) SCC(SUPP) 272, 1992 SCC (SUPP) 1 272, 1993 SCC (L&S) 694, (1991) 1 PAT LJR 80, (1992) 8 SERV LR 636, (1993) 24 ATC 545

Author: K. Ramaswamy

Bench: K. Ramaswamy, Rangnath Misra, M.M. Punchhi

PETITIONER:

KESHAV CHANDRA JOSHI AND ORS. ETC.

Vs.

RESPONDENT:

UNION OF INDIA AND ORS.

DATE OF JUDGMENT 06/11/1990 BENCH:

RAMASWAMY, K. BENCH:

RAMASWAMY, K. MISRA, RANGNATH (CJ) PUNCHHI, M.M. CITATION:

1991 AIR 284 1990 SCR Supl. (2) 573
1992 SCC Supl. (1) 272 1990 SCALE (2) 951

ACT:

U.P. Forest Service Rules, 1952: Rules 3(h), 5(a)(b)--Appendix 'A' & 'B'--6, 24 and 27. Service Law--Seniority--Assistant Conservators of Forest--Direct recruits and promotees--Fixation of seniority--Appointment of promotees on ad hoc basis as a stop gap arrangement and dehors the rules--Promotees holding posts continuously for a long period--Continuous length of ad hoc service from the date of initial appointment--Whether should be counted towards seniority. Rules relating to 'Conditions of service'--Power of Governor to relax--Consultation by Governor with public Service Commission is mandatory--Word 'may' in Rule 27 has been used in the context of discharge of duty--It must be read as 'shall'.

'Rules of recruitment' and 'Conditions of service'--Distinction between--Rule 5(a)(b) and Appendix 'A' & 'B' are basic rules of recruitment and not subject to Rule

27.

Promotees appointed on ad hoc basis and dehors the Rules--Allowing the promotees to officiate for a long period--Whether appointment should be deemed to have been made in relaxation of the Rules.

HEADNOTE:

Under U.P. Forest Service Rules, 1952 recruitment to the posts of Assistant conservators of Forest was made from two sources, namely, by direct recruitment, under Rule 5(a) read with Appendix 'A', and by promotion of permanent Forest Rangers, under Rule 5(b) read with Appendix 'B'. Rule 6 of the rules provided that not more than 25% of the total number of posts shall be filled by promotion. The petitioners (promotees) were appointed to the posts of Forest Rangers. Due to pendency of legal proceedings there was no direct recruitment to the posts of Assistant Conservators of Forest under Rule 5(a) till 1974 and even thereafter. The petitioners-promotees were appointed on the posts of Assistant Conservators of Forest on ad hoc basis, between March 13, 1974 and November 21, 1981 subject to direct recruitment and they were continuing temporarily on ad hoc basis for varying period of 5 to 12 years. With effect from 1st May, 1975 the ratio of 25% recruitment of promotees under Rule 6 was increased to 33 1/3%. In the meanwhile the direct recruits under Rule 5(a) were appointed on probation to substantive vacancies.

When their claim was ripe for consideration as Deputy Conservators of forest, the petitioners claiming seniority over them filed Writ Petitions in this Court contending (i) that though the promotees were appointed on ad hoc basis due to non-availability of direct recruits yet they were continuing for well over 5 to 12 years discharging the same duties, drawing the same scale of pay without any reversion; their posts were not fortuitous, nor stop gap. Consequently their entire continuous length of service from the dates of their initial promotion should be counted towards their seniority;

(ii) since the promotees were allowed to officiate for a long period they must be deemed to have been appointed in relaxation of the rules of recruitment under Rule 27 of the rules by the Governor.

On behalf of the direct recruits it was contended (i) since the appointment of the promotees was on ad hoc basis and not on the basis of merit as per rules they have no right to the posts. Consequently the service rendered by them from the dates of initial promotion till date of substantive appointment being fortuitous cannot be counted towards seniority; (ii) since the promotees were appointed in excess of the prescribed quota in Rule 6, they should be pushed down to the vacancies that had arisen in each year above the direct recruits as per the ratio as the promotees were not entitled to claim seniority from the initial dates of their respective promotions; (iii) that the power of relaxation in Rule 27 was only in respect of conditions of service and not relating to recruitment or

promotion. Disposing the petitions, this Court, HELD: 1. Under rule 5 read with Rule 3(h) of the U.P. Forest Service Rules, 1952 a member of the service means a person, be it direct recruit under rule 5(a) or promotee under Rule 5(b), appointed in a substantive capacity to the service as per the provisions of the rules. In order to become a member of the service he must satisfy two conditions, namely, the appointment must be in substantive capacity and the appointment has to be to the post in the service according to rules and within the quota to the substantive vacancy. There exists marked distinction between appointment in a substantive capacity and appointment to the substantive post. Therefore, the membership to the service must be preceded by an order of appointment to the post validly made by the Governor. Then only he becomes member of the service. Any other construction would be violation of the rules.

2. Employees appointed purely on ad hoc or officiating basis due to administrative exigencies, even though continued for a long spell, do not become the members of the service unless the Governor appoints them in accordance with the rules and so they are not entitled to count the entire length of their continuous officiating or fortuitous service towards their seniority. Reckoning continuous officiating of ad hoc promotion would enable the less privileged to excel their latent capabilities in the cadre post. *Narendra Chadha v. Union of India*, [1986] 1 S.C.R. 211; *Baleshwardas v. State of U.P.*, [1981] 1 S.C.R. 449; *N.K. Chauhan v. State of Gujarat*, [1977] 1 S.C.R. 1037 and *Direct Recruits Class 11 Engg. Officers' Association v. State of Maharashtra*, [1990] 2 S.C.C. 715; *A.J. Patel & Ors. v. State of Gujarat & Ors.*, A.I.R. 1965 Guj. 23 (FB): referred to. *Masoor Akhtar Khan & Ors. v. State of M.P. & Ors.*, J.T. 1990 3S.C. 295; followed.

A.K. Kraipak & Ors. etc. v. Union of India & Ors., [1970] 1 S.C.R. 457; cited.

2.1 In the instant case due to exigencies of service temporary promotions against substantive vacancies were made. It is undoubted that preceding their promotion, an ad hoc Committee had considered the cases of the promotees. Admittedly seniority subject to rejection of unfit was the criteria, followed in the selection. The selection was, therefore, in defiance of and dehors Rule 5(b) read with Appendix 'B'. The promotions were on ad hoc basis pending direct recruitment and were in excess of the quota prescribed under rule 6. By no stretch of imagination it could be said that the promotions were made to a substantive post in accordance with the rules. Therefore, the promotees do not hold the post in substantive capacity. Accordingly their continuous length of ad hoc service from the date of initial appointment cannot be counted towards seniority.

3. The pre-requisite of the right to inclusion in a common list of seniority is that all those who claim that right must broadly bear the same characteristics. Fortuitous circumstances of theft holding the grade post carrying the same designation or scale of pay or discharging the same duty would not justify the conclusion that they being to the same cadre.

4. An officer appointed by promotion in accordance with Rules and within quota and on declaration of probation is entitled to reckon his seniority from the date of promotion and the entire length of service, though initially temporary, shall be counted for seniority. Ad hoc or fortuitous appointments on a temporary or stop gap basis cannot be taken into account for the purpose of seniority, even if the appointee was subsequently qualified to hold the post on a regular basis. To

give benefit of such service would be contrary to equality enshrined in Article 14 read with Article 16(1) of the Constitution as unequals would be treated as equals. When promotion is out side the quota, the seniority would be reckoned from the date of the vacancy within the quota, rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotees it would not be proper to do injustice to the direct recruits. The rule of quota being a statutory one must be strictly implemented and it is impermissible for the authorities concerned to deviate from the rule due to administrative exigencies or expediency. The result of pushing down the promotees appointed in excess of the quota any work out hardship but it is unavoidable and any construction otherwise would be illegal, nullifying the force of statutory rules and would offend Articles 14 and 16(1).

5. Since the rules are legislative in character, they must harmoniously be interpreted as a connected whole giving life and force to each word, phrase and rule and no part thereof should be rendered nugatory or a surplusage. Resort to iron out the creases could be had only when the construction of the relevant rule, phrase or word would lead to unintended absurd results.

5.1 In an appropriate case if the court finds that wanton or deliberate deviation from the rules was made by the implementing authority the court should call upon them to explain the reasons therefore and in the absence of proper explanation forthcoming castigate the authority and pass structures condemning the actions which would discipline the authorities to adhere to the rules. Undue latitude and acquiesce thereto would not only defeat the due enforcement of the rules but also create disorder and frustration among the members of the service.

Rule 27 of the U.P. Forest Service Rules, 1952 gives power to the Governor that if he is satisfied that the operation of any rule regarding conditions of service of the members caused undue hardship in a particular case; he may consult the Public Service Commission; notwithstanding anything contained in the Rules and dispense with or relax the requirement the conditions of service and extend the necessary benefit as is expedient so as to relieve hardship and to cause just and equitable results. The word "may" consult the Commission has been used in the context of discharge of statutory duty. The Governor is obligated to consult the Public Service Commission. Therefore, the word "may" must be construed as to mean "shall" and it is mandatory on the part of the Governor to consult the Public Service Commission before exempting or relaxing the operation of rule regarding conditions of the service of a member to relieve him from undue hardship and to cause just and equitable results.

5.3 There is a distinction between "rules of recruitment" and "conditions of service". The rules relating to recruitment to the service either under rule 5(a) or 5(b) or the manner of recruitment to service as per Appendix 'A' or 'B' are basic rules of recruitment to service. They are not subject to rule 27.

Narendra Chadha v. Union of India & Ors., [1986] 1 S.C.R. 211; referred to.