

# **Narendra Nath Pandey & Ors vs State Of U.P. & Ors on 21 July, 1988**

**Equivalent citations: 1988 AIR 1648, 1988 SCR SUPL. (1) 574, AIR 1988 SUPREME COURT 1648, (1988) 2 LAB LN 547, (1988) 3 JT 101 (SC), 1988 SCC (L&S) 841, 1988 (3) SCC 527**

**Author: Misra Rangnath**

**Bench: Misra Rangnath, M.M. Dutt**

PETITIONER:

NARENDRA NATH PANDEY & ORS.

Vs.

RESPONDENT:

STATE OF U.P. & ORS.

DATE OF JUDGMENT 21/07/1988

BENCH:

MISRA RANGNATH

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MISRA RANGNATH

DUTT, M.M. (J)

CITATION:

1988 AIR 1648

1988 SCR Supl. (1) 574

1988 SCC (3) 527

JT 1988 (3) 101

1988 SCALE (2) 37

ACT:

Civil Services: Uttar Pradesh Non-Technical (class II) Services (Reservation of vacancies for demobilised officers) Rules 1973/U.P. Non-Technical (class II/Group B) Services (Appointment of Demobilised officers) Rules, 1980-Rules 1, 3 and 6/Rule 5-Demobilised officers from armed forces recruited in Civil Service-Seniority-Period between demobilisation and recruitment to Civil Service-Computation of.

HEADNOTE:

The appellants have been appointed in the U.P. Civil Service as direct recruits on the basis of competitive examination held by the U.P. Service Commission. They are

governed by the U.P. Civil Service (Executive Branch) Rules, 1941. The respondents were recruited under the U.P. Non-Technical (Class-II) Services (Reservation of Vacancies for Demobilised officers) Rules, 1973 and/or U.P. Non-Technical (Class-II/Group 'B') Services (Appointment of Demobilised officers) Rules, 1980. They were either Emergency Commissioned officers or Short Service Commissioned Officers of the armed forces. They were demobilised from the armed forces in or about 1968. In order to rehabilitate such persons who rendered services to the country during the operation of the emergency when the nation's security was in peril due to aggression, the 1973 Rules were framed under the proviso to Art. 309 of the Constitution of India.

In 1976, a seniority list was prepared showing the respondents as seniors to the appellants on the basis of their service in the armed forces and the gaps between their discharge and recruitment in civil service. Similar list was prepared in 1980 as well. Aggrieved by this, the appellants moved two writ petitions before the High Court challenging the validity of the 1973 Rules as also the 1980 Rules. The High Court held that these Rules were legal and valid and upheld the validity of the impugned seniority list. These two appeals by special leave are against the High Court judgment.

On behalf of the appellants, it was contended that the High

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Court's interpretation of Rule 6 of the 1973 Rules relating to seniority and pay was in excess of the relief intended to be granted by the rule. It was also urged that when a candidate who was in the armed forces joined civil service, the assumption should be that he had entered the civil service at the second opportunity of competing for the recruitment, but no other period including that between the discharge and recruitment would be taken into account for the purpose of computing his seniority.

The contention of the Respondents was that since only ten per cent of the vacancies were reserved for war service candidates, it was difficult for them to get a chance within a reasonable time after their discharge from war service and it would be quite consistent with rules of natural justice to take into account the interregnum between the date of discharge and the date of recruitment in civil service.

Allowing the appeals, this Court,

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HELD: 1.1. The High Court was right in holding that the 1973 Rules as also the 1980 Rules are quite legal and valid. However, under Rule 6 of the 1973 Rules or Rule 5 of the 1980 Rules, only a reasonable period of three years for taking the examination and the time taken for recruitment or posting would be taken into consideration for the purpose of computing seniority and pay. [582D-E]

1.2. Under Rule 6 of the 1973 Rules, the recruitment of

a war service candidate will be assumed to have been made in the year in which he had the second opportunity of competing for such recruitment, the first being on attaining the minimum age to compete. It does not provide for the period between demobilisation and recruitment of a war service candidate in the civil service. Nor does it forbid consideration of such period. It cannot, however, be denied that after the discharge from war service, there will be some lapse of time for the recruitment of a candidate in the Provincial Civil Service. There is a question of competing in the examination. Though Rule 6 does not provide for any gap to be taken into consideration, it is apparent that some reasonable period has to be allowed to a candidate to enable him to avail himself of the opportunity of appearing at the competitive examination for recruitment in the Provincial Civil Service. Competitive examinations are generally difficult and at least two years' time should be allowed to a candidate, after his discharge, for his preparation for the competitive examination and that will be his first opportunity. The second opportunity will arise in the next year, that is, in the third year

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of his discharge from the armed forces. In other words, he should be allowed three years for competing in the relevant examination for recruitment in the civil service. Apart from the three years, the period of time taken for recruitment or posting will also be taken into consideration for the purpose of computing the seniority of a war service candidate. [580H; 581C-H]

1.3. If, however, a candidate does not avail himself of the opportunity within three years of his discharge from war service or takes the examination but becomes unsuccessful, the period between his discharge and subsequent recruitment will not be taken into account for the purpose of computing the seniority. [582C]

[This Court set aside the judgment of the High Court relating to the interpretation of Rule 6 of the 1973 Rules, quashed the seniority lists of 1976 and 1980, and directed the State of U.P. to prepare the seniority list within six months in the light of this judgment.] [582F-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 973-74 of 1985.

From the Judgment and order dated 15.7.1983 of the Allahabad High Court in Writ Petition Nos. 3532 of 1979 & 357 of 1981.

Dr. L.M. Singhvi, K.R. Nagaraja, R.S. Hegde and C. Mukhopadhyay for the Appellants.

A.D. Singh, Mrs. S. Dikshit, A.K. Gupta, Raju Ramachandaran and B.S. Chauhan for the Respondents.

Subhash Chandra, Respondent No. 34 in person. The Judgment of the Court was delivered by DUTT, J. These two appeals by special leave involve the interpretation of the Uttar Pradesh Non-Technical (Class-II) Services (Reservation of Vacancies for Demobilised officers) Rules, 1973, hereinafter referred to as 'the 1973 Rules', and the Uttar Pradesh Non-Technical (Class-II/Group 'B') Services (Appointment of Demobilised officers) Rules, 1980, hereinafter referred to as 'the 1980 Rules', relating to the seniority of the appellants vis-a-vis the private respondents.

The appellants have all been appointed in the Provincial Civil Service of the State of Uttar Pradesh as direct recruits on the basis of competitive examinations held by the Uttar Pradesh Public Service Commission. The appointments of the appellants were made under the U.P. Civil Service (Executive Branch) Rules, 1941 framed under section 241(1)(b) of the Government of India Act, 1935, hereinafter referred to as 'the Service Rules'.

The respondents were recruited under the 1973 Rules and/or the 1980 Rules. The respondents were either Emergency Commissioned officers or the Short Service Commissioned officers of the armed forces of the Union of India and were commissioned on or before November 1, 1962 during the Indo-Chinese war. They were demobilised from armed forces in or about 1968. These respondents, therefore, rendered services to the country during the operation of the emergency when the nation's security was in peril due to external aggression. In order to rehabilitate such persons and to ensure them that in civil life, after the cessation of emergency, they were not to suffer for rendering services to the nation and with a view to putting the respondents at par with other persons, the 1973 Rules were framed by the Governor of U.P. in exercise of his powers under the proviso to Article 309 of the Constitution of India.

Rule 1(3) of the 1973 Rules provide that they shall remain in force for a period of five years from the date of their commencement. Rule 3, inter alia, provides for the reservation of ten per cent of the permanent vacancies in all Non-Technical (Class-II) Services to be filled substantively by direct recruitment through competitive examination in any year. Rule 6 relating to seniority and pay, which is important for the purpose of these appeals, is extracted below:

"R.6. Seniority and pay-

(1) Seniority and pay of candidates appointed against the vacancies reserved under sub-rule (1) of rule 3, shall be determined on the assumption that they entered the service concerned at their second opportunity, of competing for recruitment, and they shall be assigned the same year of allotment as successful candidates of the relevant competitive examination:

Provided that any such candidate who had two opportunities before the date of his joining the training prior to his commission whether he actually availed any A such opportunity or not, shall be assigned the same year of allotment as successful

candidates of the first competitive examination held after the said date.

Explanation-The year of a candidate's second opportunity will be determined by the date of his birth in relation to the prescribed minimum age for competing for recruitment to the service.

(2) Seniority inter se of candidates who are appointed against vacancies reserved under sub-

rule (1) of rule 3 and allotted to a particular year shall be determined according to the merit list prepared by the Ayog on the basis of the results of their performance at the examination.

(3) All candidates appointed against vacancies reserved under sub-rule (1) of rule 3 and allotted to any particular year shall rank below the candidates who were successful at the competitive examination held for recruitment to the service in that year.

(4) The pay of candidates appointed against vacancies referred to in sub-rule (3) of rule 3 shall also be determined in the same manner as indicated in sub-rule (1) of this rule but their seniority shall be determined in accordance with the foregoing sub-rules only if and at the point of time when they are appointed substantively against permanent vacancies."

For the purpose of seniority and pay, rule 6 takes into account the period of war service rendered by a candidate who, after his demobilisation from such service, successfully competes in the relevant examination which is in the present case, the Provincial Civil Service Examination. Under Rule 6, when such a candidate is recruited after his successfully competing in the relevant examination, it will be assumed that he had entered service with retrospective effect from the year in which he had the second opportunity of taking the relevant examination for his recruitment, which he could not take on account of his having joined the service of the armed forces of the Union of India.

So far as the actual period rendered by the respondents in the armed forces during the emergency is concerned, there is no dispute that such period shall be taken into consideration for the purpose of computing the seniority and pay. The grievance of the appellants is that although there were long gaps between the dates of demobilisation and the dates of recruitment of the respondents, the State of Uttar Pradesh had, in computing the seniority of the respondents, taken into consideration not only the period during which the respondents were in the services of the armed forces, but also such long gaps. It is pointed out by the appellants that in the cases of one or two respondents, the gaps were even of about 11 years and these long gaps had been taken into account in computing their seniority. As a result of such computation, the respondents after their appointments were placed above the appellants, although the appellants were recruited to the Provincial Civil Service under the Service Rules long before the respondents were recruited. If such gaps are excluded from consideration, the appellants will be seniors to the respondents.

It is also alleged by the appellants that several of the respondents, after coming back from the army, joined various services, both Government and private services, and had spent 3 to 10 years or more

in those services before they were recruited under the 1973 Rules or 1980 Rules.

In 1976, a seniority list was prepared showing the respondents seniors to the appellants on the basis of the period of their service in the armed forces and the gaps between their discharge and recruitment. In 1980 also, a seniority list was prepared in like manner showing the appellants as juniors to the respondents.

Being aggrieved by the 1976 seniority list, the appellants moved two writ petitions under Article 226 of the Constitution before the Allahabad High Court, inter alia, challenging the validity of the 1973 Rules and also 1980 Rules. The High Court overruled the contention of the appellants that the 1973 Rules and 1980 Rules were invalid being violative of Article 14 of the Constitution of India and held that both these Rules were legal and valid. It, however, took the view that under rule 6 of the 1973 Rules or rule 5 of 1980 Rules, which are verbatim the same, the period during which the respondents had no employment or were employed elsewhere till recruitment in the Provincial Civil Service after competing in the relevant examination, will be taken into account along with the period during which they were in the services of the armed forces for the purpose of computing their seniority in the Provincial Civil Service. Accordingly, the High Court upheld the vali-

dity of the impugned seniority list. Hence this appeal.

It is urged by Dr. Singhvi, learned Counsel appearing on behalf of the appellants, that the interpretation given by the High Court of rule 6 of the 1973 Rules relating to seniority and pay is in excess of the relief intended to be granted by that rule. It is submitted that rule 6 was framed for the purpose of taking into consideration the period of service in the armed forces in computing the seniority of a candidate appointed in the Provincial Civil Service after competing in the relevant examination, so that he does not suffer because of joining the armed forces. Rule 6 does not provide for taking into consideration the gap between the date of demobilisation of a candidate and the date on which he is appointed in the Provincial Civil Service after competing in the relevant examination. If such gaps are also taken into consideration, it would be doing injustice to the appellants who have been appointed long before the respondents. Accordingly, Dr. Singhvi submits that when a candidate who was in the armed forces of the Union joined the Provincial Civil Service after his discharge from the armed forces, it would be assumed that he had entered the Provincial Civil Service at the second opportunity of competing for the recruitment, but no other period including that between the discharge and recruitment will be taken into account for the purpose of computing the seniority of such a candidate.

on the other hand, it is submitted by Mr. Anil Dev Singh and Mr. Gupta, learned Counsel for the respondents, and Mr. Subhash Chandra, respondent No. 34, appearing in person, that rule 6 does not prohibit, either expressly or by necessary implication, the taking into account of the period between demobilisation and recruitment in the Provincial Civil Service. It is submitted that not only the length of the war service but also such gaps should be considered for the purpose of computation of seniority. They submit that as only ten per cent of the vacancies were reserved for war service candidates, it was difficult for such candidates to get a chance within a reasonable time after their discharge from war service and it would be quite consistent with rules of natural justice to take into

account the interregnum between the date of discharge and the date of recruitment.

Rule 6 only provides that after the discharge of a candidate from the armed forces and his subsequent appointment in civil service on the basis of competitive examination, it will be assumed that he had joined the service at the second opportunity of competing for the recruitment. The second opportunity has been explained in the Expla-

nation to rule 6. It provides that the year of a candidate's second opportunity will be determined by the date of his birth in relation to the prescribed minimum age for competing for recruitment to the service. For example, if the minimum age for taking the competitive examination for recruitment is 21 years, the first opportunity of a candidate will be in the year he attains that age and the second opportunity will be in the next year, that is, at the age of 22 years. Under rule 6, the recruitment of a war service candidate will be assumed to have been made in the year in which he had the second opportunity of competing for such recruitment. In other words, the seniority of such a candidate will be computed on the basis that he had joined the civil service in the year of his second opportunity of competing for the recruitment.

It is true that rule 6 does not provide for the period between demobilisation and recruitment of a war service candidate in the civil service. Nor does it forbid consideration of such period. It cannot, however, be deemed that after the discharge from war service, there will be some lapse of time for the recruitment of a candidate in the Provincial Civil Service. Immediately after discharge, one cannot get himself recruited in the Provincial Civil Service. There is a question of competing in the examination. Rule 6 does not provide for any gap to be taken into consideration, yet it is apparent that some reasonable period has to be allowed to a candidate so as to enable him to avail himself of the opportunity of appearing at the competitive examination for his recruitment in the Provincial Civil Service. It cannot be gainsaid that to compete in the examination, a candidate has to make preparation for that. Competitive examinations are generally difficult and, in our opinion, at least two years' time should be allowed to a candidate, after his discharge, for his preparation for the competitive examination and that will be his first opportunity. The second opportunity will arise in the next year, that is, in the third year of his discharge from the armed forces. In other words, he should be allowed three years for competing in the relevant examination for recruitment in the civil service.

Even after he becomes successful, he is not recruited immediately. There is the question of availability of vacancies and posting. It is common knowledge that some time is taken for posting. On a proper construction of rule 6, the period spent by a candidate for competing in the examination which, in our opinion, will not be more than three years, and the period of time taken for his recruitment or posting will also be taken into consideration for the purpose of computing the seniority of a war service candidate. Thus, if a candidate is discharged in the year 1968, he should be given three years' time to avail himself of the opportunity of competing in the examination. Suppose, he is successful in the examination held in 1971 and posted in 1973. In view of rule 6, he would be deemed to have entered service at the second opportunity of competing for recruitment and the entire period from the date of assumed entry in the service up to his recruitment in 1973 shall be taken into account for the purpose of computing seniority and pay. If, however, a candidate does not

avail himself of the opportunity within three years of his discharge from war service or takes the examination but becomes unsuccessful, the period between his discharge and subsequent recruitment will not be taken into account for the purpose of computing the seniority. Rule 6 should be given a reasonable interpretation. We do not find any reason to interpret rule 6 in a way which will be doing injustice to the appellants who have been recruited under the Service rules after competing successfully in the examination.

We agree with the High Court that the 1973 Rules as also the 1980 Rules are quite legal and valid. We are, however, of the view that under rule 6 of the 1973 Rules or rule 5 of the 1980 Rules only a reasonable period, namely, the period of three years, required for taking the examination and the time taken for recruitment or posting, as discussed above, along with the period of war service, but no other period, will be taken into consideration for the purpose of computing the seniority and pay. The impugned seniority list prepared in 1976 and also that prepared subsequently in the year 1980 cannot be sustained, as they have been prepared by taking into consideration the entire period between the discharge and the recruitment without any reservation for computing the seniority.

For the reasons aforesaid, we set aside the judgment of the High Court relating to the interpretation of rule 6 of the 1973 Rules. The impugned seniority lists of 1976 and 1980 are also quashed. The State of Uttar Pradesh is directed to prepare the seniority list in the light of the observations made hereinabove within a period of six months from date.

The appeals are allowed to the extent indicated above. There will, however, be no order as to costs in either of these appeals.

G.N.

Appeals allowed.