

H.V. Pardasani, Etc vs Union Of India & Ors on 12 March, 1985

Equivalent citations: 1985 AIR 781, 1985 SCR (3) 286

Author: Misra Rangnath

Bench: Misra Rangnath, P.N. Bhagwati, Amarendra Nath Sen

PETITIONER:

H.V. PARDASANI, ETC.

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT 12/03/1985

BENCH:

MISRA RANGNATH

BENCH:

MISRA RANGNATH

BHAGWATI, P.N.

SEN, AMARENDRA NATH (J)

CITATION:

1985 AIR 781 1985 SCR (3) 286

1985 SCC (2) 468 1985 SCALE (1) 556

CITATOR INFO :

RF 1988 SC 902 (10,13)

ACT:

Central Secretariat Service Rules-Rules 12 and 13 (5)-
Central Secretariat Service (Promotion to Grade I and
Selection Grade) Regulations 1964, Regulation 5(2)(c).

Secretariat Service-Section Officers-Promotion to Under
Secretary- Drawing of Select List of Section Officers-
fixation of seniority between promotees and direct recruits-
How determined-Service scheme - Whether ultra -Vires
Articles 14 and 16.

Constitution of India 1950, Articles 14 & 16

Central Secretariat Service Scheme-whether ultra vires.

HEADNOTE:

The Central Secretariat service is composed of four
grades . (i) Selection Grade (Deputy Secretary); (ii) Grade
I (Under Secretary); (iii) Section Officers' grade; and (iv)
Assistants' grade. Rule 12(2) of the Central Secretariat

Service Rules provides that promotions to the grade of Under Secretary be made from amongst members belonging to the grade of Section Officers and Grade 'A' Officers of the Central Secretariat Stenographers' Service. Under rule 12(4) the Central Government framed the Central Secretariat Service (Promotion to Grade I and Selection Grade) Regulations, 1964. Regulation 5 (2) (c) provided that the names of officers appointed to Section Officers' Grade before the appointed day and included in the Select List of Section Officers at the initial Constitution shall be arranged in the order of their seniority as determined before that day. Additions to this List shall be made by including officers appointed to the Section Officers' Grade after the appointed day through the select List for the Grade, officers appointed on the basis of an earlier select list being placed above those officers appointed on the basis of a later select list. This Select List was contemplated to cover the entire Secretariat and was, therefore, required to reflect all the select lists of the cadre of Section Officers. In this single list of eligible Section Officers the names of the directly recruited Section Officers on the basis of the combined

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Competitive examinations and arranged in the order of merit in such examinations had to be interpolated according to the quota of vacancies reserved for direct recruits at the time of their recruitment.

In the writ petitions to this Court, the petitioners who belonged to the cadre of Sections Officers in the Central Secretariat Service challenged the combined seniority list of all the Section Officers belonging to the Service and sought a direction that the select list in Grade I of the Service be recast, that some of the direct recruits included in the eligibility list of Section Officers should be omitted, and that a direction be issued to appoint promotees to Grade I with effect from the date on which junior directly recruited Section Officers have been appointed to Grade I. The vires of the note below Rule 12, Rule 13(5) and Regulation 3(3) of the Fourth Schedule were also assailed as being ultra vires Articles 14 and 16. It was further contended that the seniority between the direct recruits and promotees in the grade of Section Officers has to be fixed on the basis of length of service in the grade and not by the process envisaged under the Rules and Regulations.

The respondents contested the petitions alleging that the provision for fixing seniority has been made by the statutory Rules and that the combined seniority list as also the eligibility list were in accordance with the statutory scheme.

Dismissing the Writ Petitions.

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HELD: 1. In the absence of any special provisions

regulating determination of seniority, length of continuous service in any particular grade would be the basis for determining seniority in that grade. If a rule prescribes a method of fixation of inter se seniority, the normal practice would not apply and the rule shall prevail. [291H; 292A]

2. The scheme does not appear to be arbitrary. The Rules and the Regulations intended to give effect to the scheme are not ultra vires of either Article 14 or Article 16 of the Constitution. [294A]

3. The scheme constituting a Service to be manned both by direct recruits as also promotee is unexceptionable. Prescription of quota becomes necessary to work out such scheme and rota is a well accepted method for giving effect thereto. Seniority based upon rota is not open to attack. [293G]

4. Under rule 13(1) dealing with recruitment to the grade of Section Officers a quota has been fixed and provision has been made for manning of the cadre both by direct recruitment as also by promotion. Seniority in the cadre of Section Officers is the basis on which selection to the higher grade in respect of promotees has to be made. [292 B-C]

5. Regulation 3(3) of the Fourth Schedule provides that inter se seniority of direct recruits and promotees shall be according to the quota of

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substantive vacancies in the grade reserved for direct recruits and promotees respectively. The Rules make detailed provision for given effect to the quota rule and since officers are drawn from two different sources, provision has also been made for fixing their inter se seniority. The inter se seniority of the direct recruits and promotees in each of the cadres of Section Officers has not been challenged in the instant case. Such fixation has been made years back. In the absence of challenge, the consequential process of drawing up of select list depending upon such seniority for promotion to Grade I (post of Under Secretary) would not be open to challenge. [293H; 294A; D]

6. If there is a quota rule to implement, the question of length of services becomes an irrelevant consideration. Once the quota rule fails, the rota can no longer be enforced without causing prejudice to officers with longer periods of service in the cadre. The quota rule itself has not been questioned in the instant case. [294F-G]

Mervyn Coutindo & Ors. v. Collector of Customs, Bombay
JUDGMENT:

Gujarat & Ors. [1971] I S.C.R. 1037. P.S. Mahal & Ors. v. Union of India & Ors. AIR 1984 S.C.R. 1291, A. Janardhana [1983] 2 S.C.R. 936 and P.C. Sethi v. union of India [1975] 3 S.C.R. 200 referred to.

& ORIGINAL JURISDICTION : Writ Petition Nos. 10618-10628 of (Under Article 32 of the Constitution of India) U.R. Lalit and Randhir Jain, for the Petitioners. Kapil Sibal and KR. Nagaraja, for the Respondents. S.N. Appley, S.S. Jouhar, R.N. Poddar, K.M. Sharma, Randhir Jain, J.D. Jain and Mrs. K. Kocher, for the Intervener. The Judgment of the Court was delivered by RANGANATH MISRA, J. Petitioners in these applications under Article 32 of the Constitution belong to the cadre of Section Officers in the Central Secretariat Service ('Service' for short). They challenge the combined seniority list of all the Section Officers belonging to the Service and have asked for a direction that the select list in Grade I of the Service be recast. They have also asked for a further direction that some of the direct recruits included in the eligibility list of Section Officers shown in Annexure P-1 should be omitted from it and a direction should issue from the Court to appoint promotees to Grade I with effect from the date on which junior directly recruited Section Officers have been appointed to Grade I. They have further assailed the vires of the note below Rule 12, rule 13(5) and Regulation (3) of the Fourth Schedule as being ultra vires Articles 14 and 16 of the Constitution. According to the petitioners the seniority between the direct recruits and promotees in the grade of Section Officers has to be fixed on the basis of length of service in the grade and not by the process envisaged under the Rules and the relevant Regulations.

The respondents have taken the stand that the provision for fixing seniority has been made by the statutory Rules and the combined seniority list as also the eligibility list are in accordance with the statutory scheme.

These applications were heard along with a batch of other writ petitions filed by Assistants belonging to the Service, the judgment whereof is being simultaneously delivered.

It is appropriate that we refer to the provisions of the relevant Rules and Regulations before we proceed to examine the submissions. The composition of the Service is covered by rule 3 which provides for four grades being:-

- (i) Selection Grade (Deputy Secretary to the Government of India or equivalent);
- (ii) Grade I (Under Secretary to the Government of India or equivalent);
- (iii) Section Officers' grade;
- (iv) Assistants' grade.

The first two grades have been combinedly classified as Central Civil Service Grade 'A' while the other two have similarly been classified together as Central Civil Service Group 'B'-Ministerial. In this bunch of writ applications we are concerned with the claim of Section Officers belonging to the third grade in the classification seeking promotion to Grade I which is covered by the second Grade. Rule 12 makes provision for recruitment to the Selection Grade as also Grade I. Sub-rule (2) thereof provides: "Vacancies in Grade I shall be filled by promotion of permanent officers of the Section Officers' Grade who have rendered not less than eight years' approved service in that Grade and of permanent officers of the Grade 'A' of the Central Secretariat Stenographers' Service who have

rendered not less than eight years' approved service in that Grade and have worked as Section Officers for at least a period of two years in accordance with the proviso to rule 10 and are included in the Select List for Grade I of the Service prepared under sub rule (4)." There are four provisos to this sub-rule. The second and third provisos which are relevant are to the following effect:

"Provided further that no person included in a later Select List shall be eligible to be appointed to the Grade until all officers included in an earlier Select List have been appointed.

Provided further that if any person appointed to the Section Officers' grade is considered for promotion to Grade I under this sub-rule, all persons senior to him in Section Officers Grade who have rendered not less than six years' approved service in that Grade, shall also be considered notwithstanding that they may not have rendered eight years' approved service in that Grade; provided that the aforesaid condition of six years' approved service shall not apply to a person belonging to the Scheduled Caste or the Scheduled Tribes."

Sub-rule (4) provides that for purposes of sub-rules (1) and (2) a Select List for the Selection Grade and Grade I shall be prepared and may be revised from time to time. In Note 2 to sub-rule (5) it has been indicated that "in the case of persons included in the Select List for the Section Officers' Grade 'approved service' for the purpose of this rule shall count from the 1st July of the year in which the names of the officers are included in the Select List." In the case of the direct recruits to the Section Officers' Grade, such service shall count from the 1st July of the year following the year of the competitive examination on the results of which they have been recruited provided that where there is a delay of more than three months in the appointment of any candidate, such delay is not due to any fault on his part.

Since seniority in the cadre of Section Officers is relevant for the disposal of the present applications, we have to refer to the method of recruitment of Section Officers in sub-rule (I) of Rule 13. That sub-rule prescribes:

"One sixth of the substantive vacancies in the Section Officers' Grade in any cadre shall be filled by direct recruitment on the results of the competitive examinations held by the Commission for this purpose from time to time. The remaining vacancies shall be filled by the substantive appointment of persons included in the Select List for the Section Officers' Grade in that cadre.. ." B Sub-rule (5) of rule 13 prescribes:

"For the purpose of sub-rules (1) and (2) a Select List for the Section Officers' Grade shall be prepared and may be revised from time to time. The procedure for preparing and revising the Select List shall be as set out in the Fourth Schedule."

Rule 18(3)(c) dealing with seniority provides:

"The relative seniority of direct recruits to a Grade and persons substantively appointed to the Grade from the Select List for the Grade shall be regulated in accordance with the provisions made in this behalf in the Fourth Schedule."

Regulation 2 dealing with the maintenance of Select List requires:

"Additions to the Select List for the Section Officers' Grade in any cadre shall be made in such numbers as the cadre authority may determine from time to time keeping in view the existing and anticipated vacancies so as to ensure that one person each by rotation is included from out of the categories of persons specified below.... "

Regulation 3 deals with seniority and clause (3) thereof says:

"Direct recruits to a grade and persons substantively appointed to the Grade from the Select List for the Grade shall be assigned seniority inter se according to the quotas of substantive vacancies in the Grade reserved for direct recruitment and the appointment of persons included in the Select List, respectively."

There is no dispute that in the absence of any special provision regulating determination of seniority, length of continuous service in any particular grade would be the basis for determining seniority in that grade. The legal position is equally settled that if a rule prescribes a method of fixation of inter se seniority, the normal practice would not apply and the rule shall prevail, obviously subject to its constitutionality. There is no dispute that under rule 13(1) dealing with recruitment to the grade of Section Officers a quota has been fixed and provision has been made for manning of the cadre both by direct recruitment as also by promotion. At the time when the Service was constituted in 1962 the quota of direct recruits had been fixed at 1/4th, and after five years from the appointed day it was made 1/3rd. Later it has been reduced to 1/6th. The manning of the Section Officers' Grade, therefore, has to be by @ direct recruitment to the extent of 1/6th and by promotion out of the Select List to the extent of the remaining 5/6th.

The Select List referred to in sub-rule (1) of rule 13 is drawn up by following the procedure specified in Regulation 2 of the Fourth Schedule which provides that additions to the Select List for the Section Officers' Grade in any cadre shall be made keeping in view the existing and anticipated vacancies so as to ensure that one person each by rotation is included from out of the category of persons, namely, (a) officers of the Assistants' Grade belonging to that cadre who have rendered not less than eight years' approved service in that grade and are within the range of seniority in order of their seniority subject to the rejection of the unfit, the range of seniority being defined in rule 2(oo), and (b) persons selected on the basis of the result of the limited departmental competitive examination held by the Commission, from time to time, in the order of their merit.

Inter se seniority of direct recruits and promotees in the grade of Section Officers is fixed in accordance with the provisions contained in Regulation 3(3) of the Fourth Schedule. The requirement of the Regulation is that inter se seniority of the direct recruits and persons substantively appointed to the grade from the select list should be determined in accordance with

the quota on the basis of substantive vacancies in the grade reserved for the two categories of officers.

As already indicated, seniority in the cadre of Section Officers is the basis on which selection to the higher grade in respect of promotees has to be made. If the petitioners are not able to establish that the determination of their seniority is wrong and they have been prejudiced by such adverse determination, their ultimate claim to promotion would indeed not succeed.

Promotion to the grade of Under Secretary is made from amongst the members belonging to the grade of Section Officers and rule 12 is the relevant rule. In exercise of powers under rule 12(4), the Central Government has framed the Central Secretariat Service (Promotion to Grade I and Selection Grade) Regulations, 1964. Regulation 5(2)(c) provides: "Officers other than those included in clauses (a) and (b) shall be arranged in the manner specified below:

(i) The names of officers appointed to the Section Officers' Grade before the appointed day and included in the Select Lists of Section Officers at the initial constitution under paragraph I of the Fourth Schedule to the Rules shall be arranged in the order of their seniority as determined before that day. Additions to this list shall be made by including officers appointed to the Section Officers' Grade after the appointed day through the Select List for the Grade, Officers appointed on the basis of an earlier select list being placed above those appointed on the basis of a later select list. The order of names shall be in the same order as in all the Secretariat Select Lists issued by the Department of Personnel and Administrative Reforms." This Select List is contemplated to cover the entire Secretariat and is, therefore required to reflect all the select lists of the cadres of Section Officers. In this single list of eligible Section Officers the names of the directly recruited Section Officers on the basis of the combined competitive examinations and arranged in the order of merit in such examinations as the scheme provides have to be interpolated according to the quota of vacancies reserved for direct recruits at the time of their recruitment.

In our judgment in the connected writ petition Nos. 9323-9333 of 1982 delivered today, we have already held that the scheme constituting a Service to be manned both by direct recruits as also promotees is unexceptionable. Prescription of quota becomes necessary to work out such scheme and rota is a well accepted method for giving effect thereto. Seniority based upon rota, therefore, is also not open to attack.

Regulation 3(3) of the Fourth Schedule provides that inter se seniority of direct recruits and promotees shall be according to the quota of substantive vacancies in the grade reserved for direct recruits and promotees respectively. The Rules make detailed provision for giving effect to the quota rule and since officers are drawn from two different sources, provision has also been made for fixing their inter se seniority. The scheme does not appear to be arbitrary and we are, therefore, of the view that the Rules and the Regulations intended to give effect to the scheme are not ultra vires of either Article 14 or Article 16 of the Constitution. We may reiterate that the petitioners have not questioned the quota rule itself and if they had, for the reasons we have indicated both here and in

the judgment of the connected matters, the objection would have been of no avail.

Considerable argument was advanced in support of the petitioners' stand that in giving effect to the scheme prejudice has been caused to the petitioners. It is appropriate to take note here of the fact that the inter se seniority of the direct recruits and promotees in each of the cadres of Section Officers has not been challenged before us. Such fixation has been made years back. In the absence of challenge to such fixation, the consequential process of drawing up of select list depending upon such seniority for promotion to Grade I (post of Under Secretary) would not be open to challenge. The scheme contemplates drawing up of a combined list from out of the cadres of Section Officers and to entertain a challenge at this stage would naturally affect the respective seniority lists in the cadres and would involve many officers who have not been made parties to this proceeding. This Court has taken the view in many decided cases that if there is a quota rule to implement, the question of length of services becomes an irrelevant consideration (see *Mervyn Coutindo & Ors. v. Collector of Customs, Bombay & Ors.*: (1) *N.K. Chauhan & Ors. v. State of Gujarat & Ors.*; (2) and *P.S. Mahal & Ors. v. Union of India & Ors.* (3) A number of decisions were cited on behalf of the petitioners, a reference to all of which we have made in the connected judgment. As pointed out by us therein, both the cases of *A. Janardhana* (4) and *P.S. Mahal* this Court proceeded on the footing that there had been a break-down in the enforcement of the quota rule. Once the quota rule fails, the rota can no longer be enforced without causing prejudice to officers with longer periods of service in the cadre. We do not think that the ratio of those cases can be applied in the case before us where there is no material (1) [1963] 3 S.C.R. 600.

(2) [1971] 1 S.C.R. 1037.

(3) [A.I.R.] 1984 S.C. 1291 (4) [1983] 2 S.C.R. 936.

to support the contention that the vacancies have not been filled up by following the prescribed quota.

In course of arguments, the petitioners' counsel contended by relying on the feature that a bunch of direct recruits has been placed above a group of promotees by operation of the quota rule and that the fixation of seniority was arbitrary. It was pointed out by the learned Additional Solicitor General appearing for the Union of India and Mr. Shanti Bhushan appearing for other respondents that the submission was misconceived. In this list of eligible officers, names of many who had already retired or had been promoted to other grades had not been shown. The working chart placed before us reflected the actual position. On a reference to the chart, we are satisfied that the quota rule has been implemented while drawing up the eligibility list in accordance with Regulation 5(2) (c) (i) and (ii). It was further explained that certain names which were not found in the eligibility list of 1982 appear in the list for the following year on account of the fact that on the completion of six years of service such names have been brought in as those officers became qualified for inclusion.

The next contention raised on behalf of the petitioners was against note No 2 appearing under rule 12 (5) which is to this effect:

"In case of persons included in the Select List for the Section Officers' Grade 'approved service' for the purpose of this rule shall count from the 1st July of the year in which the names of the officers are included in the Select List, in the case of direct recruits to the Section Officers' Grade, p such service shall count from the 1st July of the year following the year of the competitive examination on the results of which they have been recruited provided that where there is a delay of more than three months in the appointment of any candidate, such delay is not due to any fault on his part." G This note initially appeared to be somewhat arbitrary but after hearing counsel at length we are inclined to agree with the submission advanced on behalf of the Union of India that in the process of direct recruitment, there is considerable delay and though the competitive examination is held in one particular year, by the time the selected officer comes to join the post, more than a year is lost. Therefore, a rational view has been taken of the situation and for the computation of length of service the particular provision has been made. This in our view is really not open to challenge as an arbitrary provision. We may reiterate that a very intricate process is involved in giving effect to the scheme and in harmonising the claims of the officers belonging to the different cadres. Mathematical precision cannot be expected in a matter like this and adoption of a test of such accuracy with a view to ascertaining whether Articles 14 and/or 16 of the Constitution are violated would not be appropriate.

Challenge to the scheme in rule 18 in the matter of fixation of seniority had been advanced in the case of P.C. Sethi v. Union of India,(1) and was negated by this Court.

Delay and laches were advanced as contentions on behalf of the Central Government for rejecting the petitions. We do not think it is necessary to go into that question as we have already taken that into consideration while dealing with other contentions, It is, however, relevant to point out that of the 11 petitioners as many as 9 had got into the cadre of Assistants as direct recruits and they had themselves got advantage over promotees who had put in a longer period of service in such cadre. They should not now grudge a similar advantage being obtained by some other direct recruits in the higher cadre. After all as we have already said, in a case of this type a broader perspective has to be maintain J and examination cannot be permitted to be as strict as petitioners have asked us to adopt.

In view of what we have said, each of these petitions must be dismissed but we think it appropriate to suggest to the Central Government to streamline the scheme by a review of the Rules and Regulations so that the rancour and heartburning in the officers may be reduced to the inevitable minimum in the matter of implementation. Parties are directed to bear their own costs.

A.P.J.

Petition dismissed.

(1) [1975] 3 S.C.R. 201.

