

A.N. Pathak And 5 Others vs Secretary To The Government, Ministry ... on 12 February, 1987

Equivalent citations: 1987 AIR 716, 1987 SCR (2) 281, AIR 1987 SUPREME COURT 716, 1987 LAB. I. C. 638, 1987 SCC (SUPP) 763, (1987) 54 FACLR 556, (1987) 2 SCJ 261, (1987) 2 LABLJ 140, (1987) 3 SERVLJ 39, (1987) 2 SCWR 54, (1987) 1 LAB LN 780, (1987) 1 SUPREME 412, 1987 UJ(SC) 1 653, (1987) 1 SERVLR 788, (1987) 1 JT 414 (SC), 1988 SCC (L&S) 370, (1987) 1 CURCC 603, (1987) 1 SUPREME 227, (1987) 1 CURLR 308

Author: V. Khalid

Bench: V. Khalid, O. Chinnappa Reddy

PETITIONER:

A.N. PATHAK AND 5 OTHERS

Vs.

RESPONDENT:

SECRETARY TO THE GOVERNMENT, MINISTRY OF DEFENCE AND ANOTHER

DATE OF JUDGMENT 12/02/1987

BENCH:

KHALID, V. (J)

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KHALID, V. (J)

REDDY, O. CHINNAPPA (J)

CITATION:

1987 AIR 716 1987 SCR (2) 281

1987 SCC Supl. 763 JT 1987 (1) 414

1987 SCALE (1) 307

ACT:

Civil Services--Defence Production (Directorate of Production and Inspection, Naval) Group A and Group B Technical Post Recruitment Rules, 1976, clauses 10 and 11--Delay in filling direct recruitment posts causes hardship to promotees--Seniority List quashed.

Promotees--Come into service because they form part of a regular cadre-- Entitled to benefit of length of service-- Authorities to be prompt in making direct recruitment--Any delay should not visit promotees with adverse consequences.

HEADNOTE:

The petitioners who are working in the Ministry of Defence, Department of Production, challenged the validity of The Defence Production (Directorate of Production and Inspection, Naval) Group A and Group B Technical Post Recruitment Rules, 1976, on the grounds: (i) that the Rules discriminate between promotees and direct recruits; (ii) that their seniority is not taken into consideration while the seniority list is prepared and that the direct recruits are given seniority over them undeservedly by virtue of the operation of the method of recruitment contained in the rules; (iii) that the seniority lists dated 25.7.77, 3.9.77 and 7.9.77 prepared according to rules are purely arbitrary and ignore their length of service. On the other hand, counsel for the respondents contended that the principle of fixing seniority on the basis of length of service and dates of confirmation is not an inflexible rule and it is possible in law that a direct recruit who is appointed later in point of time is senior to a promotee because of the working out of the quota rule and that in certain given cases, seniority based on length of service can be ignored. Allowing the writ petition, this Court,

HELD: 1.1 The grievance of the petitioners is justified in law. The rules enabling the authorities to fill in vacancies for direct recruits as and when recruitment is made and thereby destroying the chance of promotion to those who are already in service cannot but be viewed with
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disfavour. If the authorities want to adhere to the rules strictly all that is necessary is to be prompt in making the direct recruitment. [287D-E]

1.2 The respondents are directed to redraw the seniority lists dated 25.7.77, 3.9.77 and 7.9.77 appended as Annexures C, D and E to the writ petition and prepare the list afresh giving the petitioners the positions they would have been entitled to, but for the offending portions of clauses 10 and 11 in the Schedule to the Rules. [287H; 288A-B]

2. The manner in which the provision contained in columns 10 and 11 of the Schedule to the Rules works to the detriment of the promotees is as follows. The person who is working as a Senior Technical Officer must have a minimum service of five years in that grade for promotion to the higher post. A direct recruit who joins service much later and who does not have the requisite five years service will be placed above him for promotion. The posts to be filled in by direct recruitment are kept vacant and as when recruitment is made, the names of direct recruits are inserted at the places reserved for them regardless of the fact that there are many others who had put in more years of service than they. This method works an additional hardship to the promotees in that they will not be confirmed though the required probation period has been completed by them, only

to allow the direct recruits to complete their period of probation. The combined operation of clause 10 and 11 of the Schedule to the Rules causes a double damage to the petitioners the promotees and the direct recruits consequently have double advantage. [286C-F]

3. Delay in making appointments by direct recruitment should not visit the promotees with adverse consequences, denying them the benefit of their service. [287E]

A. Janardhana v. Union of India & Ors., AIR 1983 SC 769; O.P. Singla and Anr. v. Union of India and others, [1985] 1 SCR 351; G.S. Lamba & Ors. v. Union of India & Ors., AIR 1985 SC 1019; Narender Chadha v. Union of India, AIR 1986 SC 638 and G.K. Dudani and Ors. v. S.D. Sharma and Ors., AIR 1986 SC 1455, relied upon.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 1889 Of 1978. (Under Article 32 of the Constitution of India) A. Subba Rao for the Petitioners.

Govind Das, C.V. Subba Rao G.D. Gupta and J.P. Sharma-in-person for the Respondents.

The Judgment of the Court was delivered by, KHALID, J. The petitioners, six in number, are working in the Ministry of Defence, Department of Production. They joined their service on different dates ranging from 1963 to 1969. The 1st, 2nd, 3rd and 5th petitioners joined service as Senior Technical Assistant while 4th and 6th petitioners joined as Technical Assistant. The 1st and 2nd petitioners are now working as Senior Technical Officer (officiating), 3rd and 4th petitioners are working as Technical Officer (officiating) and 5th & 6th are working as Junior Technical Officer. None of the petitioner have been confirmed in their respective posts to which they have been promoted. The first respondent is the Secretary to the Government, Ministry of Defence and the second respondent, Director, Directorate of Production and Inspection, Naval. The appointment and promotion of persons like the petitioners were governed by the department of Defence Production (Directorate of Production and Inspection, Naval) Group A and Group B Technical Post Recruitment Rules, 1976, for short 'the Rules'. Prior to these rules, they were governed by the Rules framed in 1965 and revised in 1972. The grievance of the petitioner is that the Rules discriminate between them and the direct recruits, that their seniority is not taken into consideration while the seniority list is prepared and that the direct recruits are given seniority over them undeservedly by virtue of the operation of the method of recruitment contained in the rules. The petitioners complain that the list so prepared is purely arbitrary and ignores their length of service. They made representations to the first respondent complaining against the injustice done to them and for redressal of their grievances. There were no favourable orders. Hence this writ petition.

The prayer in the petition is for a mandamus declaring the rules and the seniority list dated 25.7.1977, 3.9.1977 and 7.9.1977, prepared according to rules, as bad as violative of Articles 14 & 16.

In the counter affidavit filed by the respondents two preliminary objections were taken--(1) that the joint petition filed by the petitioners is not maintainable inasmuch as it involves determination of different questions of facts based on separate causes of action and (2) that the petitioners have not arrayed as respondents all the officers who would be adversely affected by any order to be passed by this Court. The rules in question are justified on the ground that they were validly passed. It is stated that the offending clause cannot be faulted as violative of Article 14 and Article 16 of the Constitution. The rules were framed in consultation with the Department of Personnel and Administrative Reforms, Cabinet Secretariat, in the light of the past experience. It is stated that the rules, far from causing any discrimination, seek to fix rationally (i) inter-seniority, (ii) quotas for recruitment and (iii) norms whereby the cases of all senior persons are to be considered. The preparation of the offending lists is justified on the plea that the principle of fixing seniority on the basis of length of service and dates of confirmation is not an inflexible rule and that it is possible in law that a direct recruit who is appointed later in point of time is senior to a promotee because of the working out of the quota rule. The Counter Affidavit continues with the usual plea that in certain given cases seniority based on length of service can be ignored. Before dealing with the merits of this case we will dispose of the preliminary objections. We are not impressed with the preliminary objections. The petitioners have clearly given the details about the dates of appointment, promotion etc. The dates do differ. But nothing prevents this court from modulating the relief and giving directions to the respondents to re-consider the offending lists with reference to each of the petitioners in the light of what follows.

The second objection has been met by the petitioners by impleading those who will be affected as respondent Nos. 3 to 8, as per orders of this Court dated 11.8.1983. The method of recruitment under challenge is contained in columns 10 and 11 of the schedule to the rules which is given below:

Method of recruitment In case of recruitment whether by direct by promotion/deputation recruitment or by transfer grades from promotion or by which promotion/deputation deputation/transfer transfer to be made. and percentage of the vacancies to be filled by various methods.

10 11 Senior Technical Officer Promotion:

(i) 50% by promotion Technical Officer with failing which by 5 years service in the direct recruitment grade rendered after appointment thereto on

(ii) 50% by direct recruitment a regular basis:

(iii) Failing (i) and (ii) provided that if an officer above, by re-employment is considered for promotion. in accordance with the provisions of these Rules/ all persons senior to him

(iv) Failing (iii) above in that grade shall also be by promotion. considered notwithstanding that they may not have rendered the prescribed number of years of regular service in that grade.

Technical Officers: Promotion:

(i) 50% by promotion Junior Technical Officer with failing which by 3 years service in the grade direct recruitment. rendered after appointment thereto on a regular basis:

(ii) 50% by direct recruit- Provided that if an Officer ment is considered for promotion in accordance with the

(iii) Failing (i) and provisions of these rules,

(ii) above, by all persons senior to him re-employment in that grade shall also be considered notwithstanding

(iv) Failing (iii) by that they may not have ren-

promotion	dered the prescribed number
	of years of regular service
	in that grade.

Note: All eligible candidates have to qualify in a written departmental examination of a degree standard.

Re-employment:

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The manner in which the above provision works to the detriment of the promotees is as follows. A person who is working as a Senior Technical Officer must have a minimum service of five years in that grade for promotion to the higher post. A direct recruit who joins service much later and who does not have the requisite five years service will be placed above him for promotion.

The posts to be filled in by direct recruitment are kept vacant and as and when recruitment is made, the names of direct recruits are inserted at the places reserved for them regardless of the fact that there are many others who had put in more years of service than they. This method works an additional hardship to the promotees in that they will not be confirmed though the required probation period has been completed by them, only to allow the direct recruits to complete their period of probation. The combined operation of clause 10 and 11, according to the petitioner causes a double damage to them and the direct recruits consequently have double advantage.

Annexure 'C' to the writ petition is the seniority list relating to the Senior Technical Officers. In this list, places 4, 6, 8, 10, 12 and 14 are kept vacant. These places will be filled in when direct recruits come. They will steal a march over those who have entered service earlier. The latter will be pushed down in the list.

We do not think it necessary to refer to the various decisions rendered by this Court on this question. In the case of *A. Janardhana v. Union of India and others*, AIR 1983 SC 769; *O.P. Singla and Anr. v. Union of India and others*, [1985] 1 SCR 351 and in *G.S. Lamba & Ors. v. Union of India & Ors.*, AIR 1985 SC 1019, length of service was given due importance in dealing with promotions and seniority. In the case of *Narender Chadha v. Union of India*, AIR 1986 SC 638 to which one of us was a party, it was held that to treat continuous officiation of one officer as temporary would be arbitrary and violative of Articles 14 and 16, In *G.K. Dudani and Ors. v.S.D. Sharma and Ors.*, AIR 1986 SC 1455 a three Judge Bench of this Court, Madon J, speaking for the Bench,, approved the settled principle noted above. The promotees come into service, not by any fortuitous circumstances but they form an integral part of the regular cadre entitled to all benefits by the length of their service.

The learned counsel for the respondent found it difficult to justify the validity of the rules and the lists in the light of the various decisions of this Court which have consistently leaned in favour of the promotees based on their length of service and seniority, in cases where there was inordinate delay in making direct recruitment. He tried to justify the inequity saying that the new rules have tried to rectify it. We are not satisfied with this explanation since that is little consolation to the petitioners. We are of the view that the grievance of the petitioners is justified in law. The rules enabling the authorities to fill in vacancies for direct recruits as and when recruitment is made and thereby destroying the chances of promotion to those who are already in service cannot but be viewed with disfavour. If the authorities want to adhere to the rules strictly all that is necessary is to be prompt in making the direct recruitment. Delay in making appointments by direct recruitment should not visit the promotees with adverse consequences, denying them the benefit of their service. The learned counsel for the respondent Nos. 1 and 2 made a fervent plea that, being a sensitive department, relief may be granted to the petitioners by way of monetary compensation and requested us to desist from upsetting the list. We cannot accede to this request.

The petitioners had sought stay of operation of the list. This Court by its order dated 4.9.1978 declined to grant stay, but ordered: "any action taken in the matter in regard to the grievances of the petitioners in this case will be subject to the final result of this writ petition." In our Judgment, the petitioners are entitled to succeed. We allow this writ petition and direct the authorities to re-draw the seniority list dated 25.7.1977, 3.9.1977 and 7.9.1977, appended as Anne-

xures 'C', 'D' and 'E' the writ petition and prepare the list afresh giving the petitioners the positions they would have been entitled to, but for the offending portions of clauses 10 and 11 in the schedule to the rules.

There will be no order as to costs.

M.L.A.
allowed.

Petition