

M. Ramachandran vs Govind Ballabh And Ors on 21 September, 1999

Equivalent citations: AIR 1999 SUPREME COURT 3601, 1999 (8) SCC 592, 1999 AIR SCW 3613, (1999) 7 JT 271 (SC), 1999 (8) ADSC 263, 1999 (6) SCALE 82, 2000 (2) LRI 197, 1999 (7) JT 271, 1999 (3) UPLBEC 2441, (1999) 3 UPLBEC 2441, (1999) 83 FACLR 559, (2000) 1 LAB LN 59, (1999) 4 SCT 263, (2000) 1 SCJ 76, (1999) 5 SERVLR 318, (1999) 8 SUPREME 342, (1999) 6 SCALE 82, (1999) 3 ANDHWR 114, 2000 SCC (L&S) 88

Bench: S.P. Kurdukar, R.P. Sethi

CASE NO.:

Appeal (civil) 2704 of 1997

PETITIONER:

M. RAMACHANDRAN

RESPONDENT:

GOVIND BALLABH AND ORS.

DATE OF JUDGMENT: 21/09/1999

BENCH:

S.P. KURDUKAR & R.P. SETHI

JUDGMENT:

JUDGMENT 1999 Supp(3) SCR 38 The Judgment of the Court was delivered by SETHI, J. The dispute sought to be resolved in this appeal is regarding Inter se seniority of the employees of the Central Administrative Tribunal (hereinafter referred to as "the CAT") who were recruited from time to time as per requirement but came to be absorbed on the same day in terms of Section 5(1) of the Central Administrative Tribunal (Group B and C Miscellaneous Posts) Recruitment Rules, 1989 (hereinafter referred to as "the Rules"). One set of employees claim their seniority from the date of their deputation to the aforesaid service of the CAT and the other set of employees pray for counting of the period of their service to the equivalent post held by them in their parent department, before their deputation and absorption in the service. On the application filed by respondent no. 1, the CAT accepted the former plea and directed the determination of the seniority of the employees of the CAT from the date of their deputation. Such directions were issued on the basis of the official memoranda and departmental instructions after holding that there did not exist any provision in the Rules for the purposes of determination of the seniority of persons recruited to the service by absorption on the same day Not satisfied with the findings of the Tribunal, the appellant herein has preferred this appeal.

Most of the facts in the case are admitted. The controversy revolves upon the interpretation of the Rules. The appellant contends that Rule 5(2) and its proviso governs the method for determining the seniority but the respondent no. 1 who has appeared in person and learned counsel appearing for the Union of India have contended that the inter se seniority of the employees of the CAT has to be determined on the basis of the official memoranda on the subject which were consolidated by the Government of India on 3rd July, 1986. Necessary admitted facts are that the Central Administrative Tribunal was constituted on 1.11.1985. The CAT (Staff) (Conditions of Service) Rules, 1985 came into effect on 31 October, 1985. Rule 4 of the said Rules prescribed that the condition of service of the officers and other employees of the CAT in matters of pay, allowances leave, provident fund, age of superannuation, pension and retirement benefits, medical facilities and other conditions of service were to be regulated in accordance with such rules and regulations as were, for the time being, applicable to the officers and employees belonging to Group A, B, C and D. as the case may be. of corresponding scales of pay stationed at those places. The respondent no. 1 was in the service of Delhi High Court and sent on deputation to the CAT, Principal Bench as Court Officer on 8.1.1986. The terms of his deputation were extended from time to time in public interest. The appellant, who was holding the post of Section Officer in his parent department with effect from 3] December, 1982, joined the CAT on deputation as Section Officer on 1.6.1987. The respondent no. 1 is alleged to have become entitled to hold equivalent post in his parent department on 1.8.1986. The Rules for the post of Section officer/Court Officer in CAT were notified, for the first time, on 20th September, 1989. All willing and fit deputationists including all private parties in this appeal were absorbed in the service on 1.11.1989. The draft seniority list of Section Officers/Court Officers/Private Secretaries in the CAT was published on 16.11.1990. Final seniority list as on 1.11.1989 is admitted to have been published on 17.5.1994. Respondent no. 1 filed Original Application before the Principal Bench of Central Administrative Tribunal on 2.6.1995 seeking the following reliefs :

"(i) to quash erroneous guidelines (Ann.A- 6 collectively) issued by respondent No. 2 being contrary to statutory rules and D.O.P.T's instructions/O.Ms;

(ii) to quash letter No. PB/7/12/94-Estt.l dated 24.1.1995 (Ann.A-12) issued by respondent no. 2:

(iii) to direct respondents to take 26.11.85 as the date of regular appointment to the applicant in Delhi High Court as determined by the Chief Justice, Delhi High Court for all purposes;

(iv) to quash all the DPC proceedings held in June. 1994 for appointment/selection to the posts of Deputy Registrar in the CAT;

(v) to direct the respondents to assign the applicant appropriate placement in the final seniority list of SO/CO/PS above respondents No. 4 to 10 circulated vide letter No. 1/55/90-Estt. Dated 17 5.1994 in accordance with Rule 5(2) of CAT Gr.'B', 'C' Misc. Posts) Recruitment Rules, 1989 read with DOPT consolidated OM dated 3.7.1986;

(vi) to direct respondents to hold fresh/review DPCs for appointment to the posts of Deputy Registrar in the Tribunal according to CAT (Gr.'A' posts) Recruitment Rules 1988 on the basis of appropriate placement of the applicant in the final seniority list of SO/CO/PS(s) as on 1.11.1989 as prayed at (v) above;

(vii) to direct the respondents no. 1 and 2 to fill up the 50% post of Deputy Registrar by promotion first as envisaged in the CAT (Gr.'A') Rules, and further absorption of deputationists be taken up only thereafter in consonance with Recruitment Rules;

(viii) Any other or further orders/directions to redress the grievance of the applicant as may be deemed proper in the circumstances of the case with costs."

It was contended on behalf of the respondent no. 1 that by letter dated 9.6.1989 the CAT had called for options for absorption to the post of PAs/Senior PA and Section Officer in the CAT in response to which he consented for absorption along with respondents 4 to 10. The respondent No. 1 and respondent no. 10, namely Shri Govind Ballabh and Shri A.K. Ajmani arc stated to have been absorbed with effect from 1.11.1989 vide order date J 14.12.1989 allegedly on the basis of the first DPC's recommendation while respondents 4 to 9 including the appellant, who are stated to have exercised their option for absorption after the first DPC met in November 1989, were absorbed with effect from 1.11.1989 on the basis of subsequent DPC's recommendation made in February, 1990. He contended that he and respondents 4 to 10 were, in June, 1994, considered for selection to the post of Deputy Registrar and all of them recommended for selection but no orders for their regular appointments were issued till the date he filed the Original Application before the CAT. It was alleged that instead of finalising the tentative seniority list circulated on 16.11.1990, the CAT issued its own guidelines one after another in the years 1991, 1992 and 1993 allowing the deputationists/absorbers the benefit of service rendered by them in their parent department towards seniority allegedly contrary to DOPT's own rules and instructions on the subject which, according to him, adversely affected his rights. The Second seniority list is stated to have been circulated on 25th March, 1992 and the third on 14th June, 1993. The final seniority list, as noted earlier, was circulated on 17th May, 1994.

The Central Administrative Tribunal found that the guidelines issued by it, which were sought to be quashed, were not legal and thus not sustainable. It also noticed that the correctness of the impugned guidelines had been doubted by the CAT itself who withdrew the same vide its letter dated 5.5.1995. No party is aggrieved by such findings of the Central Administrative Tribunal.

Referring to Rule 5 of the Rules, the Central Administrative Tribunal noticed that the rule making authority had visualised a situation where a problem in fixing seniority could arise from the persons recruited from the same source and working in the same parent department. It erroneously interpreted the term "source" to mean the Central/State Govt./High Court/Subordinate Courts and that the proviso to Rule 5(2) lay down that the seniority of officers recruited from such alleged sources in the post held by them in the parent department was not to be disturbed, which according to it, only meant that where two persons were recruited from a single source i.e. Central Government or State Government or High Court or Subordinate Courts and the parent department

was the same, it was then and only then that the seniority which they brought with them would not be disturbed and in all other cases the seniority was to be determined with reference to their date of regular appointment to the post in the CAT. The Tribunal further held :

"22. The question may then arise that if all the existing employees were absorbed on the same date i.e. 1.11.1989 although by different orders, how then is their inter-se seniority to be determined. In the absence of anything in the Recruitment Rules themselves to answer this point, we would necessarily have to fall back on DO & T's OM dated 3.7.1986 extracted in paragraph 8 above and in respect of deputationists (applicant as well as respondents 4 to 10 are deputationists) who were holding the same or equivalent grade on regular basis in their parent department, determined their inter-se-seniority from the date they were holding the post on deputation or the date from which they were appointed on a regular basis to the same or equivalent grade in their parent department whichever is later.

23. In our view this is the only way in which the provisions of Rule 5 of the CAT (Group B and C Misc. Post) Recruitment Rules, 1989 can be harmoniously interpreted with DP & T's instructions dated 3.7.1986 on the subject and CAT's impugned guidelines which serve counter to the same are therefore, not in accordance with law.

24. We would add that it is only this interpretation which can obviate results which would otherwise be quite extraordinary in grant of seniority to persons in CAT from a date even prior to the inception of CAT on 1.11.1985; or two sets of principles for determination of seniority one laid down by DP & T and the other by CAT, or a distinction wholly invidious between employees absorbed on or before 1.11.1989 and those absorbed thereafter."

It has to be noticed that the learned counsel appearing for the Central Administrative Tribunal submitted at the hearing that despite filing of a joint counter it supported the case of the appellant herein.

Learned counsel appearing for the Union of India and the respondent no. 1 who argued the case in person took us through the pleadings and various memoranda issued to persuade us to agree that the rules do not envisage the determination of the inter-se seniority of the persons recruited to the service by absorption in terms of Rule 5(1) of the Rules.

In order to appreciate rival contentions it is necessary to have a glance of Rule 5 which provides :

"5. Absorption/regularisation of existing employees. (1) Notwithstanding anything contained in the provisions of these rules, the persons holding the posts of Court Officers/Section Officers, Hindi Translator, Assistant, Junior Librarian, Caretaker, Upper Division/Receptionist/Store-keeper and Lower Division Clerk on the date of commencement of the rules either on transfer or on deputation basis or as the case

may be, on direct recruitment basis and who fulfil the qualifications and experience laid down in these rules and who are considered suitable by Department Promotion Committee shall be eligible for absorption/Regularisation in the respective grade subject to condition that such persons exercise their option for the absorption and that their parent Departments do not have any objection to their being absorbed in the Tribunal.

(2) The seniority of officers mentioned in sub-rule (1) shall be determined with reference to the dates of their regular appointment to the posts concerned :

Provided that the seniority of officers recruited from the same source and in the posts held by them in the parent Department shall not be disturbed.

(3) The Suitability of persons for absorption may be considered by a Department Promotion Committee."

Rule 4 deals with the method of recruitment and provides that the recruitment to the post, age limit, qualifications and other conditions relating thereto shall be as specified in Column 5 to 14 of the Schedule attached to the Rules, Column No. 11 refers to the method of recruitment and column No. 12 to the source from which the posts are to be filled up. Column No. 12 provides :

"(i) Promotion -

Assistant with 8 years regular service in the scale of pay of Rs. 1400-2600 or equivalent.

(ii) Transfer on deputation/Transfer.

Persons working under Central/State Government/High Court/ Subordinate Courts.

(a)(i) holding analogous post on regular basis; or

(viii) holding posts of Assistant or equivalent in the scale of Rs. 1400-2600 with 8 years regular services and

(b) possessing the educational qualifications prescribed for direct recruits in Column 8.

Note : The period of Deputation including the period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other organisation/department of the (entral Government shall ordinarily not exceed 3 years."

There is no dispute that appointment/recruitment to any service can be made from different sources, i.e., by direct appointment, by promotion or by absorption/transfer. The source of recruitment can either be internal or external. Internal source would relate to cases where the appointments are made by promotion or by transfer and by absorption. External source would

conceive the recruitment of eligible persons who are not already in service in the organisation to which the recruitment is to be made. For the purposes of posts in the service regarding which the dispute has arisen, the source of recruitment for the purposes of sub-rule (1) of Rule 5 are;

(i) promotion, (ii) transfer on deputation/transfer. Persons specified in the aforesaid categories possessing requisite qualification prescribed therein are eligible for appointment. Reference to the persons and the departments cannot be held to mean that such reference was to the 'source' as admittedly the sources are either promotion or by transfer on deputation/transfer. It is not disputed that in the instant case all the contesting parties have been recruited to the service from source (ii). It is also conceded that before their recruitment on deputation they possessed the requisite qualifications as prescribed under Column No. 12(ii)(a)(i)

(ii)(b). The Tribunal was, therefore, not justified in holding that the source of appointment of parties to the dispute was either the Central or the State Government or the High Court or the Subordinate Courts. The proper interpretation of the Rule read with Schedule is that all such parties were recruited from the same source, i.e., Transfer on deputation/Transfer and possessed requisite qualifications for recruitment to the new service.

Referring to the Official Memorandum dated 3rd July, 1986, it has been contended on behalf of the contesting parties that the relative seniority of all the direct recruits has to be determined in terms of para 3.4.1 of the said Memorandum. The aforesaid para prescribes : 3.4.1 In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for "Transfer on deputation/Transfer"), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from--

the date he has been holding the post on deputation.

(or) the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department, whichever is later."

The interpretation put on the said para centres around the words "whichever is later" occurring at its end. It is contended that the seniority must be determined from the date a person is holding the post on deputation or the date from which he had been appointed on a regular basis to the same or equivalent grade in its parent department "whichever is later", meaning thereby if a person gets himself deputed earlier to the service, he would be entitled to seniority notwithstanding the length of service or earlier holding of the equivalent post or grade by a person who incidentally happens to be sent on deputation at a later date. Such a contention, if accepted, would be against the settled principles of service jurisprudence. We also feel that, as the Rules hold the field, the Official Memorandum has to give way in the matter of determination of inter se seniority of the persons recruited to the service on the same date.

Relying upon its earlier decisions in *R.S. Bakshi v. I.M. Menon*, [1982] 1 SCC 379 and *Wing Commander J. Kumar v. Union of India*, [1982] 3 SCR 453, this Court in *K. Madhavan & Anr. v. Union of India & Ors.*, [1987] 4 SCC 566 held :

"It will be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service in the post from which he has been transferred. It has been observed by this Court that it is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new service that their pre-existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre,"

In *K. Anjaiah & Ors. v. K. Chandraiah & Ors.*, [1998] 3 SCC 218 this Court held :

"it is a just and wholesome principle commonly applied to persons coming from different sources and drafted to serve a new service to count their previous length of service for determining their ranking in the new service cadre."

In *M. Hara Bhupal v. Union of India & Ors.*, [1987] 3 SCC 561 this Court considered the scope of Rule 5(1) of the Rules but did not refer to either Rule 5(2) or its proviso for the purposes of deciding the question regarding the principles to be applied in determining the seniority of the persons recruited by absorption from the same date. The general principle, as noticed by the Court, is that if the post held in the parent department and the post held on deputation were analogous, the persons holding such posts would be entitled to the benefits of Official Memorandum dated 3.10.1989. The Court did not distinguish any of its earlier decisions mentioned hereinabove.

The reliance of the respondents on *A.K. Bhatnagar & Ors. v. Union of India & Ors.*, JT (1990) 4 SC 610 is of no help to them in any way. The Court in that case held that:

"The law is clear that seniority is an incidence of service and where the service rules prescribe the method of its computation, it is squarely governed by such rules. In the absence of a provision ordinarily the length of service is taken into account. A dispute of this nature normally arises between recruits from two sources, namely, direct and promotees. In this group of cases, however, we are concerned with the inter se seniority between direct recruits alone. The note to schedule VIII indicated that the inter se seniority of recruits of one year would be on the basis of merit."

To the same effect is the judgment of this Court in *Union of India v. H.R. Patankar & Ors.*, AIR (1984) SC 1587.

We are of the considered opinion that Sub-rule (2) of Rule 5 is the relevant rule relating to the determination of the seniority of the officers recruited to the service under Sub-rule (1) of Rule 5. The seniority of such recruited officers is required to be determined with reference to the dates of their regular appointment to the posts. The proviso to Sub-rule (2) shall cover the case of such officers whose seniority cannot be determined under Sub-rule (2) as is the present case of the persons appointed/recruited on the same date. In such a case the seniority of the officers recruited from the same source has to be determined by giving them the benefit of the equivalent post held by them in their parent departments. Sub-rule (2) and its proviso is based upon the general principle of service jurisprudence. It is not correct to say that the rules do not provide any method of determining the seniority of the persons recruited to the service and that in the absence of there being specific rule, resort be had to the Official Memorandum relied upon by the respondents. Seniority is a relevant term having reference to the class, category and the grade to which the reference is made. Length of service is a recognised method of determining the seniority. Such length of service shall have reference to the class, category or grade which the parties were holding at the relevant time. It, therefore, follows that total length of service is not relevant for determining the seniority but length of service to a particular class, category or grade is relevant consideration for the purposes of counting the period with respect to length of service for the purposes of determining the seniority. In other words the period of holding of the equivalent post in the parent department would be the relevant period to be taken note of for the purposes of determining the seniority under Rule 5(2) and its proviso. Any other interpretation would be against the settled rules of service jurisprudence and is likely to create many anomalies resulting in failure of justice and defeating the acquired rights of the civil servants based upon their length of service. A perusal of the Rules does not, in any way, show and rightly so that the rule making authority had ever intended to take away the benefit of the length of service of a person in his parent department before his deputation and absorption in the service.

We are of the opinion that the Tribunal has taken a very casual approach while passing the order impugned in this appeal and completely ignored the basic principles of service jurisprudence as confirmed and applied by this Court by way of pronouncements in various cases, some of which have been noted hereinabove. We are of the view that all the employees recruited in the service under Rule 5(1) are entitled to the benefit of the service on equivalent post in their parent departments.

Under the circumstances, the appeal is allowed and the order impugned is set aside. The official-respondents are directed to finalise the seniority list of all the employees recruited in the service under Rule 5(1) of the Rules strictly applying the provisions of Sub-rule (2) and its proviso keeping in mind the observations made hereinabove. All orders passed consequent upon the order of the Tribunal impugned herein shall be deemed to be non-est and not given effect to. Fresh seniority list be finalised at the earliest and if possible within a period of three months from today. Till the finalisation of the seniority list, the parties shall be permitted to hold the posts presently held by them.

No costs.