

Supreme Court of India

S.K. Mathur & Ors vs Union Of India & Ors on 13 January, 1998

Author: S S Ahmad.

Bench: S. Saghir Ahmad, D.P. Wadhwa

PETITIONER:

S.K. MATHUR & ORS.

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT: 13/01/1998

BENCH:

S. SAGHIR AHMAD, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T S. SAGHIR AHMAD. J.

The Bank Note Press, Dewas (for short, 'the Press'), which is a departmental undertaking of the Government of India and is engaged in the sovereign function of the printing of the Bank Notes, was established in 1972. The job of printing and processing of Bank Notes is said to be a unique job which requires intensive and highly technical training with impeccable integrity. According to the counter affidavit filed before us, the production of Bank Notes is completed in two parts, namely, (i) printing of Bank Note Sheets and (ii) processing of Bank Notes right from cutting of sheets into the sizes of Notes to the final delivery to Reserve Bank of India at their cash-chests. The processing wing is known as Control Wing.

Since at the time of its establishment, the Press did not have its own cadres of various posts, including the post of Inspector (Control), nor were any Recruitment Rules made for these posts, it approached the Government of India for certain posts in the Control Wing being sanctioned 20 posts in the grade of Inspector (Control). Since it was felt that it would not be safe or possible to entrust the responsibilities of processing and final supply of Bank Notes to the Reserve Bank of India. to raw hands, namely the new recruits, the Press, in consultation with the Ministry of Finance decided to fill up 50% posts of Inspector (Control) from qualified and trained persons working in the

sister organisations, namely the India Security Press, Nasik Road, as also the Security Paper Mill. Hoshangabad, and the remaining 50% by direct recruitment. Consequently, the Press issued a requisition letter dated 1.6.1972 to the sister organisations, including the India Security Press, Nasik Road, for sponsoring the names of the candidates willing to take up the appointment as Inspector (Control), for which the eligibility criteria was five years experience as Asstt. Inspector (Control).

The Appellants, who were appointed as Asstt. Inspector (Control) at the India Security Press, Nasik Road, on the following dates, applied for appointment as Inspector (Control) in the Press and were appointed on those posts on deputation on the dates mentioned below :

S.No.	Name (S/Shri)	Date of appointment as Asstt.	Date of initial appointment in
-------	---------------	-------------------------------	--------------------------------

Inspector (Control) Bank Note Press in India Security on deputation Press, Nasik Road.

1.	S.K. Mathur	9.2.1961	9.2.1973
2.	M. Laxminarayan	28.7.1961	9.2.1973
3.	H.R. Sharma	16.1.1962	3.10.1973
4.	V.P. Bhalla	22.7.1965	3.10.1973
5.	S.B. Deshmukh	7.1.1965	3.10.1973
6.	S.B. Khadilkar	7.6.1962	10.1.1974

In the meantime, all the appellants were promoted, though nationally, on the posts of Inspector (Control) in their parent department during the period 1974 - 1975 and confirmed on those posts.

The Central Government, by its notification dated 20.11.1974, promulgated the Bank Note Press (Class III posts) Recruitment Rules, 1974, for the posts of Inspector (Control), made by the President under Article 302 of the Constitution. The mode of recruitment indicated in these Rules was that the posts of Inspector (Control) shall be filled up to the extend of 50% by direct recruitment and remaining 50% by promotion. These Rules were amended by the Notification dated 1st December, 1975. The method of recruitment was altered. It was provided that 26% of the posts would be filled u by direct recruits while the remaining 75% by promotion, failing which, by transfer; failing both, by transfer on deputation and failing all, by direct recruitment.

The promotion quota was indicated as under : PROMOTION

(i) 50% from Head Checkers with 8 years regular service in the grade of Rs. 350-580.

(ii) 25% from Head Clerk, Confidential Secretary, Senior Stenographer and Hindi Translator in the grade of Rs. 425-700 and Dy. Accountant in the grade of Rs. 425-640 with at least 3 years regular

service in the respective grades.

The posts from which appointment on transfer could be made on the post of Inspector (Control) were indicated as under:

TRANSFER

(i) Inspector Control (Rs.550-800) belonging to the Currency Note Press, Nashik Road, failing which.

(ii) Asstt. Inspector Control belonging to the Currency Note Press, Nashik Road, with at least 5 years regular service in the grades of Rs. 425-640.

In 1976. six permanent posts of Inspector (Control) were sanctioned by the Government with effect from 22.1.1976. Respondent Nos. 3 to 10, who are the direct recruits. were initially appointed as Apprentice Inspectors (Control) between October 1973 and January 1975 on a fixed stipend of Rs. 350/- per month. They were appointed in substantive capacity in 1977. The relevant date of their initial appointment as Apprentice Asstt. Inspector (Control), their appointment as Inspector (Control) (on probation) and their appointment in substantive capacity, are indicated below:

----- S. No. Name S/Shri Date of Date of Date of
appointment appointment substantive as Appren- as Inspector appointment ce Asstt. (Control) as
Inspector Inspector (probation) Control Control

-
1. P.R. Sharma 5.10.1973 5.4.1975 1.8.1977
 2. Mohinder Singh 10.10.1973 10.4.1975 1.8.1977
 3. Paresh Joshi 5.10.1973 11.4.1975 1.8.1977
 4. V.H. Chitale 5.10.1973 12.4.1975 1.8.1977
 5. G.L. Damor (ST) 19.10.1973 19.4.1975 1.8.1977
 6. Chhattar Singh 3.8.1974 3.9.1975 3.9.1977
 7. D.D. Mathur 3.8.1974 3.9.1974 3.9.1977
 8. N.L. Mathur 3.8.1974 3.9.1975 3.9.1977
 9. Ramesh Gajbhaiye 20.1.1975 20.1.1976 Left the (SC) deptt

Since, on the date on which the posts of Inspector (Control) were proposed to be filled up on permanent basis, no eligible officer in the feeder line for promotion was available, and the direct recruits being on probation, were also ineligible, the appellants, who were holding the posts of Inspector (Control) on deputation and had already held these posts in their parent department on permanent basis, were considered by the Departmental Promotion Committee convened on 1st and 2nd February, 1976. The DPC recommended that the appellants may be permanently absorbed on the posts of Inspector (Control) in the Press with effect from 22.1.1976, the date on which these permanent posts were created. Consequently, by order dated 22.1.1976. In their order of appointment, it was indicated as under:

"2. Consequent on their acquiring liens on the permanent posts of Inspectors Control to which they have been substantively appointed the liens held by them in the India Security Press, Nasik Road, stand terminated under F.R. 14-A(g) and they have severed all connections with that organisation.

The direct recruits, namely, respondent Nos. 3 to 9 were appointed on the posts of Inspector (Control) in substantive capacity in 1975 on the dates indicated above.

Having regard to the above facts, when the seniority list of Inspectors (Control) was issued by the department, the appellants were shown as senior to the direct recruits, namely, respondent Nos. 3 to 9, specially in the seniority list published on 18.9.1979.

It may be pointed out that two posts of Deputy Control Officer (Group 'B' Gazetted), being the promotional posts for Inspector (Control) became available. The Recruitment Rules for these posts were published by Notification dated 26.12.1975, in which the mode of recruitment was indicated to be 'promotion', failing which, by transfer and failing both these modes the posts were to be filled up by transfer on deputation. Single Inspectors (Control) having requisite length of service were not available nor were candidates for appointment by transfer on deputation available, the eligibility condition in the Recruitment Rules was relaxed by the Government in consultation with the Union Public Service Commission and the appellants S.K. Mathur and M. Laxminarayanan were appointed as Deputy Control Officer on regular basis with effect from 21.8.1978. It may be pointed out that these two appellants, who were the senior most persons and who were the senior most persons and who were inducted on the post of Inspector (Control) in the Press from India Security Press, Nashik Road, had already been given ad hoc promotion on the post of Deputy Control Officer for a short term of one year. S.K. Mathur was appointed on such short term promotion with effect from 9.7.1975 while M. Laxminarayanan was appointed with the effect from 4.7.1976.

Respondent Nos. 3 to 9, feeling aggrieved by the absorption of the appellants on permanent basis on the posts of Inspector (Control) as also by being treated as junior to the appellants, filed a writ petition in the High Court of Madhya Pradesh in November, 1980, which was transferred to the Control Administrative Tribunal, Jabalpur Bench. The relevant claims were :

"a) To declare that the recruitment rules notified by the Ministry of Finance in 1975 (i.e., recruitment rules for the post of Inspector (Control) vide dated 1.12.75 (Annexure R-4) are unconstitutional being violative of Article 14 and 16 of the Constitution.

b) to quash the order of promotion of Shri S.K. Mathur and Shri M. Laxminarayanan to the post of Deputy Control Officer by writ in the nature of certiorari:

c) to quash the seniority list published on 18.9.79 (i.e. seniority of Inspector (Control) :

d) to direct the department to treat the petitioners' seniority over the Respondent No. 3 to 8."

The Tribunal, by the impugned judgment dated 26.4.1990, held that the present appellants could not be treated as senior to respondents Nos. 3 to 9 and the service rendered by them prior to 1.12.1975 could not be reckoned for purposes of determining their seniority as their appointment on deputation on the posts of Inspector (Control) was not in accordance with the rules as they existed prior to 1.12.1975 when there was no provision for appointment being made on those posts by deputation. The Tribunal was of the view that a provision for appointment on deputation on the posts of Inspector (Control) was made for the first time by amendment made in the Rules on 1.12.1975 and since the appellants were absorbed in substantive capacity on those posts with effect from 22.1.1976, they could reckon their seniority with effect from that date, while respondents 3 to 9, who were also appointed as Inspector (Control) would be entitled to reckon their seniority from the date of continuous officiation on that post irrespective of the fact that respondents 3 to 9 had completed their probation period subsequent to the substantive absorption of the appellants. The Tribunal was also of the view that since deputation was not one of the modes of recruitment for appointment on the post of Inspector (Control), the deputationists, namely, the present appellants would not be entitled to carry the benefit of their past service, including the service rendered in the India Security Press, Nashik Road, to the department in which they were ultimately absorbed in substantive capacity. The Tribunal, consequently, quashed the seniority list and directed that a review DPC be convened to consider the cases of promotion from the post of Inspector (Control) with reference to the respective position of the candidates in the revised seniority list. It was further provided that till this was done, the promotion of S.K. Mathur and M. Laxminarayanan shall be treated as provisional.

After having heard learned counsel for the parties, we are of the opinion that the Tribunal was wholly in error in quashing the seniority list and in coming to the conclusion that a person working on deputation is not entitled to the benefit of service rendered by him in the parent department.

The appellants, who were initially working as Asstt. Inspector (Control) in the India Security Press, Nashik Road, were appointed on the posts of Inspector (Control) in the Press on deputation during the period from 9th February, 1973 to 10th January, 1974, while there were no recruitment rules for regulating the appointments or other conditions of service in the Press, which was established only

in 1972. In the absence of rules made under Article 309 of the Constitution, the authorities decided to fill up the posts of Inspector (Control) by direct recruitment to the extent of 50% and the remaining 50% by bringing in the qualified and trained persons from sister organisations so as to constitute a nucleus of trained and experienced persons in the cadre. This decision was taken in view of the delicacy of the post and the requirements of intensive and highly technical training coupled with unimpeachable integrity required to man those posts. Having taken this administrative decision, the authorities circulated a letter dated 1. 6.1972 to sister organisations, namely the India Security Press, Nashik Road, as also the Security Paper Mill, Hoshangabad, for sponsoring the names of the suitable candidates who were willing to take up the appointment in the Press at Dewas. The appellants, whose names were sponsored and who had also expressed their willingness to work at Dewas, were consequently appointed as Inspector (Control) on deputation. The Rules, namely, the Bank Note Press (Class III Posts) Recruitment Rules, 1974 were promulgated on 20.11.1974 when the appellants had already been appointed. Their appointment on deputation, therefore, could not have been faulted by the Tribunal on the ground that there was no provision for appointment on deputation on the posts of Inspector (Control) under the Recruitment Rules as it is well-settled that in the absence of Statutory Rules made under Article 309 of the Constitution, appointments and other conditions of service can be regulated by administrative order or executive instructions.

The question relating to the inter se seniority of direct recruits, namely, respondents 3 to 9, and the persons brought on deputation, namely, the present appellants who were ultimately absorbed on permanent basis in the Press At Dewas, has also been erroneously decided by the Tribunal by denying them the benefit of their past service.

From the facts given in the beginning of this judgment, it will be seen that the appellants were working on the posts of Asstt, Inspector (Control) in their parent department when they were sent on deputation to the Press at Dewas. In due course, they were promoted to the posts of Inspector (Control) in their parent department and were also given 'permanent' status. They were subsequently absorbed on permanent posts in the Press at Dewas with effect from 22.1.1976. They were already working on the posts Inspector (Control) on deputation, having been appointed during the period between 9th February 1973 to 10th January, 1974, when respondents 3 to 9 joined the Press, having been appointed as Apprentice Asstt. Inspectors (Control) during the period between 5th February, 1973 to 20th January, 1975 to 20th January, 1976 and were subsequently appointed on substantive basis in 1977, five of them on 1.8.1977 and three on 3.9.1977.

Respondents 1 and 2, namely, the Union of India and the General Manager, Bank Note Press, Dewas, contended before the Tribunal that in the absence of any seniority rules, they had assigned seniority with reference to the date of confirmation. Since appellants were confirmed prior to the confirmation of respondents 3 to 9, the Former, namely, the appellants, were treated as senior. The Tribunal after considering their contention held as under :

"However, in the peculiar case of the BNP Dewas where the respondents 3 to 8 have been inducted from other sister organisation at a time when no recruitment rules existed and the subsequent rule provided for deputation but without retrospective effect not much reliance can be placed on the general principle of seniority which the

respondents 1 and 2 have cited in support of arranging the seniority of the petitioners and the respondents 3 to 8 according to the dates of their confirmation. It is also not normal to confirm a person from the date of regular absorption as has been done in the case of the respondents 3 to 8. Confirmation is related to the performance and other criteria and the cases of confirmation have to be referred to the DPC as required by Article 26(51) of the Civil Services Regulations. Although the respondents 3 to 8 may have been initially deputed but only after their absorption they become employees of the new organisation 1.8. in this cast the BNP Dewas. Thus, when they were absorbed on 22.1.76 their cases of confirmation had to be taken up and considered like any other departmental employees. They cannot be automatically confirmed from the same date as the date of absorption. In other words if the DPC has not examined the cases of the confirmation of the respondents 3 to 8 and the respondents 1 and 2 he confirmed them from 22.1.1976, the date of confirmation of the respondents would have to be treated as an arbitrary one resulting in invidious discrimination against the petitioners. Where quotas are provided then confirmation has also to take place against the vacancies in terms of the quotas. The respondents have not produced any DPC record, in regard to the confirmation of the petitioners and the respondents 3 to 8 as Inspector Control. Therefore, the dates of confirmation of the respondents 3 to 8 as well as the petitioners on which the seniority lists of 1977, 1978 and 1979 are based cannot be held to be proper or valid for the reasons discussed above. In any case the date of appointment of the respondents 3 to 8 prior to 1.12.1975 cannot be accepted for purposes of reckoning seniority. For these reasons these seniority lists cannot be upheld and are liable to quashed."

After recording the above finding, the Tribunal proceeded to record the further finding as under :

"In the circumstance of the case, the only valid principle of determining seniority between the petitioners and the respondents 3 to 8 would be the principle of continuous officiation from the dates of the regular absorption as regular Inspector (Control) irrespective of the fact that the petitioners completed their probation period subsequently. The dates of substantive appointments are not necessarily the dates of confirmation but the dates of regularisation. Substantive appointment does not mean that an official has to be confirmed. He hold a substantive appointment if he has been appointed in a regular manner or regularised against a clear civil post. Thus, the dates of continuous officiation on the posts of Inspector (Control) would be reckoned from the dates of their regular absorption. The respondents 1 & 2 should, therefore, revise the seniority list in the respective orders and rearrange them in accordance with the principle indicated above and in the light of our observations. The seniority lists of 1977, 1978 and 1979 are quashed."

In recording the above finding, the Tribunal fell into patent error in overlooking the vital fact that the appellants who were already working as Inspector (Control) in the sister organisation had been appointed as Inspector (Control) in the Press at Dewas in pursuance of the administrative decision taken by respondents 1 and 2 as there were no recruitment rules in existence. The appellants held a

permanent lien in the sister organisation and on their absorption at Dewas, their lien in the parent department was terminated. Under the circumstances, they were entitled to the benefit of service rendered by them in the parent department on identical posts. This benefit cannot be legally denied to them. The Tribunal erred in holding otherwise.

This Court in *S.S. Moghe & Ors. vs. Union of India & Ors.* (1981) 3 SCC 271 has already held that when a new service is proposed to be constituted by the Government, it is fully within the competence of the Government to decide as a matter of policy the sources from which the personnel required for manning the service are to be drawn.

In this decision, it has also laid down that the deputationists, who had already put in a number of years of service in their parent department, were to be given seniority over the direct recruits for purposes of promotion.

Again, in *K. Madhavan & Anr. vs. Union of India & Ors.* (1987) 4 SCC 566, while considering the question of seniority of a deputationist, who was subsequently absorbed on permanent basis in the new department, it was observed as under :

"We may examine the question from a different point of View. There is not much difference between deputation and transfer. Indeed, when a deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words, deputation may be regarded as a transfer from one government department to another.

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 transfer is to be 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."

We are in respectful agreement with the above view. We are of the opinion that where recruitment is made from two different sources and an integrated seniority list is prepared of the persons so recruited, the benefit of service already rendered on a similar post in a similar organisation under the same employer will have to be given to the person appointed on the new post. We are also of the opinion that in the particular facts and circumstances of the present case, benefit of service rendered by the appellants on the post of Inspector (Control) in the parent department could not have been legally denied to them, particularly as there were no rules of seniority made under Article 209 of the Constitution providing specifically that benefit of past service would not be allowed. The Tribunal was not justified in allowing seniority to respondents 3 to 9 on the basis of continuous officiation on the post of Inspector (Control) even though appellants had been appointed earlier. The Tribunal was

in error in treating the appellants to have joined the department only from the date of their substantive absorption. By treating respondents 3 to 9 as senior to the appellants, the Tribunal acted contrary to the basic tenets of service jurisprudence discussed above.

In addition to what has been stated above, respondent Nos. 1 and 9, who had assigned seniority to the appellants on the basis of the respective dates of their confirmation, could not be said to have acted contrary to law, at least in the particular circumstances of the case where respondents 1 and 2 had to balance the equities in the matter of seniority between the appellants and respondents 3 to 9. While respondents 3 to 9 had been directly recruited in the service and after completing their apprenticeship, were placed on probation for the post of Inspector (Control), the appellants had already worked for quite a number of years on this post in their parents department where they were given notional promotion as they were on deputation on the press as Inspector (Control) on which posts they were also confirmed earlier than respondents 3 to 9. In this situation, respondents 1 and 2 were fully justified in adopting 'date of confirmation' as the basis of seniority, particularly as there were no service rules regulating seniority of the persons working in the Press. On this criteria, which, in our opinion, is wholly reasonable in the facts of this case, appellants were rightly treated by respondents 1 and 2 as senior to respondents 3 to 9.

Viewed from any angle, the appellants have to be held as senior to respondents 3 to 9.

In view of the above, the appeal is allowed, the judgment dated 26.4.1990 passed by the Tribunal is set aside and the claim petition filed by respondents 3 to 9 is dismissed, but without any order as to costs. IN THE MATTER OF :-