

Supreme Court of India

A.K. Nigam vs Sunil Misra on 13 May, 1994

Equivalent citations: 1994 SCC, Supl. (2) 245 JT 1994 (4) 31

Author: Y Dayal

Bench: Yogeshwar Dayal (J)

PETITIONER:

A.K. NIGAM

Vs.

RESPONDENT:

SUNIL MISRA

DATE OF JUDGMENT 13/05/1994

BENCH:

YOGESHWAR DAYAL (J)

BENCH:

YOGESHWAR DAYAL (J)

KULDIP SINGH (J)

CITATION:

1994 SCC Supl. (2) 245 JT 1994 (4) 31

1994 SCALE (2) 1030

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by YOGESHWAR DAYAL, J.- This is an appeal on behalf of appellants S/Shri A.K. Nigam, K. Thiagarajan and Suresh Kumar against the judgment dated 5-3-1993 of the Central Administrative Tribunal, Principal Bench, New Delhi, in O.A. No. 1422 of 1987 filed by Respondent 1 Shri Sunil Misra challenging the seniority list of Indian Railways Personnel Service (JS/SS) Officers as on 1-3-1987. By the aforesaid order the Tribunal had accepted the application of Respondent 1 and held that the appellants herein could not be ranked senior to him.

2. For appreciating the controversy it would be necessary to refer to the facts.

3. Appellants 1 and 2 were appointed to the grade of Section Officers (Rs 650-1200) (Group 'B') in the Railway Board Secretariat Service (RBSS) on the basis of IAS, etc. Examination, 1977 and joined the service on 9-7-1979 and 21- 7-1979 respectively. Appellant 3 joined the RBSS as Section Officer

(Rs 650-1200) (Group 'B') on 10-6-1980 based on the IAS etc. Examination, 1978.

4. Shri Sunil Misra, Respondent 1, appeared in the Civil Services Examinations held in 1980 and was selected for Indian Railways Personnel Service (in short TRPS) as direct recruit Class 1 Officer on 12-1-1982.

5. On 25-7-1983 the appellants applied for promotion to Junior Scale, Group 'A' of IRPS from RBSS, when options were called for from them.

6. On 15-2-1984 the appellants were found suitable for appointment to Junior Scale, Group 'A' of IRPS by a duly constituted DPC and as such were promoted to the above grade from RBBS against 50% quota reserved for Class 11 Officers. Appellants 1 and 2 were substantively appointed to the Junior Scale of IRPS on 15-2-1984 and by applying clause (a) of principle (vii) of the Principles for determining the Relative Seniority of Class 1 Officers of All Services on Indian Railways Except Officers of the Medical Department and other Misc. Categories (in short 'Principles'), reckoning the weightage for seniority, their date for increment in time-scale worked out to 15-2-1979. Appellants 1 and 2 were to get Rs 900 in Junior Scale, Grade 1 while appellant 3 Rs 940 and as such were entitled for maximum weightage of 5 years for the purpose of seniority. Taking into account the pay, the appellants were to get in Junior Scale, Grade 'A' of IRPS, the appellants were granted benefit of weightage in seniority to the maximum extent of 5 years and thus, the seniority of the appellants were reckoned from 15-2-1979 so far as appellants 1 and 2 were concerned and 24-12-1980 so far as the appellant 3 was concerned, by going 5 years backward who was substantively appointed to the Junior Scale, Grade 'A' of IRPS on 24-12-1985.

7. Appellants 1 and 2 having completed 5 years' service on 15-2-1984 itself were posted in Senior Scale, Grade 'A' of IRPS as soon as they joined their respective railways viz., Western (appellant 1) South Central (appellant 2). They were also promoted to Junior Administrative Grade with effect from 14-5-1987 by reckoning their services from 15-2-1979, as one who has completed 8 years of service, is eligible for consideration for promotion to Junior Administrative Grade.

8. On 21-5-1987 the Railway Board circulated a seniority list of IRPS Officers to all the zonal railways, vide its letter dated 21-5-1987. The said seniority list did not contain the name of appellant 3 as his date for increment in time-scale was decided only during 1988.

9. Aggrieved by this seniority list, Respondent 1 made a representation to the Chief Personnel Officer, Rail Coach Factory, Kapurthala, Jullundur. However, the same was rejected and Respondent 1 was informed that the seniority to the appellants has been correctly assigned. Against the rejection of his representation by order 20-8-1987, Respondent 1 filed OA No. 1422 of 1987 before the Central Administrative Tribunal, Principal Bench, New Delhi.

10. It will be noticed that the challenge before the Tribunal was to the grant of weightage of 5 years to the appellants for purposes of seniority as per principle (vii). There was no challenge either to grant of increments in timescale to appellants 1 and 2 to 15-2-1979 and to a similar date to appellant 3, who was to get Rs 940 whereas appellants 1 and 2 to get Rs 900 in Junior Scale, Grade 'A'.

11. One thing may be noticed that the seniority in IRPS is not governed by the date of joining. If one looks at the Principles, as approved by the President, principle (i) is - "the seniority of officers, appointed to various Indian Railway Services (Class 1) shall be determined on the basis of the 'date for increment on time-scale' to be specifically determined in each case in accordance with these principles". It is not an invariable rule that seniority should be determined only on the basis of the respective dates of appointment to the post and that any departure from it would be unreasonable and illegal. It is open to the rulemaking authority to take a note of the relevant circumstances obtaining in relation to each department and determine objectively the rules that should govern the inter se seniority and ranking. The dates of increment of the appellants in time-scale having been specifically determined by the authorities before Respondent 1 joined service, he has to rank junior to the appellants. Besides, principle

(vii), which is the relevant principle, may be extracted for understanding its scope:

"Principle (vii) In the case of Class II Officers permanently promoted to Class 1 Services, if two or more than two officers are promoted on the same date their relative seniority will be in the order of selection. Subject to the aforesaid provisions the seniority of officers, permanently promoted from Class 11 to Class 1 services, shall be determined by giving weightage based on-

(a) the year of service connoted by the initial pay on permanent promotion to Class 1 Service; or

(b) half the total number of years of continuous service in Class II, both officiating and permanent; whichever is higher, subject to a maximum weightage of five years."

12. It was in accordance with principle (vii)(a) that the date of increment on time-scale for the appellants was determined. Once this position becomes clear, there is no difficulty in applying principle (vii).

13. The principle of granting seniority on the basis of weightage of past service and lower service to the category of promoting (sic promoted) officers is well known and well recognised in the service jurisprudence.

14. We may mention that the appellants were initially members of RBSS and were thus actively associated in personnel matters and it was because of this that the Railway Board thought it fit to provide avenue for promotion to these officers in IRPS. The nature of working being done by them while working for RBSS was similar to the work which they were required to perform in superior service, viz., IRPS.

15. The principle for conferment of limited benefit or weightage was held to be not unreasonable or illegal by this Court in the case of State of A.P. v. K.S. Muralidhar<sup>1</sup>.

16. Learned counsel for Respondent 1, however, referred us to the decision of this Court in the State of Bihar v. Akhouri Sachindra Nath<sup>2</sup>. It will be noticed that there was no principle like principle (vii) in the service which this Court was dealing with in that matter. Learned counsel then referred us to the decision of this Court in K. C. Vasudeva v. Union of India<sup>3</sup>. It will be noticed that there the dispute was in relation to fixation of seniority between existing employees and those taken over from an autonomous body after its dissolution. Although 1 (1992) 2 SCC 241 : 1992 SCC (L&S) 539 : (1992) 20 ATC 226 2 1991 Supp (1) SCC 334: 1991 SCC (L&S) 1070: (1991) 16 ATC 936: JT (1991) 2 SC 279 3 1980 Supp SCC 341 : 1981 SCC (L&S) 250 employees of the erstwhile body were not recruited on the basis of qualification prescribed for Central Government servants, credit or weightage given to them for their service in that body for the purpose of seniority in the Central Government Department in which they were given fresh appointments. The Bench of this Court, on facts, did not find it reasonable and thus held that it violated Article 16 of the Constitution.

17. It is settled law that the appointing authority or the appropriate Government can frame rules governing seniority which are reasonable keeping in mind the divergent claims that can be put forward by the various categories of the members of the service. It is, however, necessary that there should be no discrimination, that is, persons placed in the same group must be treated similarly and, further, that any principle which is made the basis of determination of seniority should, if applicable to others, be applied to them also. In other words, if seniority is to depend purely upon the date of confirmation or the date of appointment, that rule should be applicable to all; but if the promotees and special recruits are being given weightage, the principles applicable to the members of the service should be kept in mind while determining the weightage to be given or while laying down rules for determination of seniority.

18. In the case of Anand Prakash Saksena v. Union of India<sup>4</sup> this Court considered the rules of seniority contained in the Regulation of Seniority Rules and the Special Recruitment Seniority Regulations, 1960 to be valid not offending Articles 14 and 16 of the Constitution. Under Rule 3(3)(b) of the Regulation of Seniority Rules the year of allotment of a promotee was to be determined by his continuously officiating on a senior scale post included in the Indian Administrative Service. Under Regulation 3(3) of the Special Recruitment Seniority Regulations, 1960, the year of allotment of special recruits was to be determined by the formula. While upholding the validity of these rules and not regarding them to be arbitrary or discriminatory, it was observed that the promotees can claim that total length of service in the Provincial Civil Service be considered for determining seniority. On the other hand, the direct recruits can say that the seniority should depend upon their entry in the Indian Administrative Service. This Court took the view that the rule contained in clauses (b) and (c) of Rule 3(3) was a mean between these extreme views and was regarded to be just and fair. Similarly, the rule contained in Regulation 3(3) of the Special Recruitment Seniority Regulations, 1960 was considered to be fair and equitable.

19. There are similar principles for determination of seniority between promotees and direct recruits to the Indian Police Service. Those rules also contemplate an order of allotment being given to a promotee which may be much earlier to his actual induction in Indian Police Service when he was still in the Provincial Police Service and weightage was given to the year of allotment for purposes of seniority.

20. In the present case the RBSS is in the nature of a lower grade of similar service. The appellants were promoted from Class II Service to Class 1 Service and rules having been framed for determining the seniority based on the grant of 4 AIR 1968 SC 754: (1968) 2 SCR 611 : (1969) 1 LLJ 373 increments. Having once determined the date of increment, rest follows and consequently the conferment of seniority.

21. Learned counsel for respondent 1 submitted that these very appellants had earlier appeared in the present Class 1 Service but had not qualified and were selected only for Class 11 Service and when Respondent 1 was selected for Class 1 Service, the appellants were still in Class 11 Service.

22. We are afraid this argument has no merit once we uphold first the principle of seniority and second the provision for grant of weightage. The principle for determination of seniority had not been challenged before us. Only challenge before us was the grant of weightage for past service as Class II Officers.

23. As we have noticed earlier even the order by which the date of earning increment in time-scale was determined by the appropriate Government for appellants 1 to 3 was never questioned and in any case could not be questioned while challenging the seniority list which was prepared as late as in 1987.

24. For the aforesaid reasons the appeal is allowed and the impugned order of the Central Administrative Tribunal, Principal Bench, New Delhi, dated 5-3-1993 is set aside. Parties are, however, left to bear their own costs.