

PETITIONER:
UNION OF INDIA AND ANOTHER

Vs.

RESPONDENT:
HARISH CHANDER BHATIA AND OTHERS

DATE OF JUDGMENT 08/12/1994

BENCH:
HANSARIA B.L. (J)
BENCH:
HANSARIA B.L. (J)
KULDIP SINGH (J)

CITATION:
1995 SCC (2) 48 JT 1995 (1) 233
1994 SCALE (5)144

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by HANSARIA, J.- The perennial dispute of Service Law-inter se seniority between promotees and direct recruits-has surfaced again in this appeal. This time the parties in dispute are officers belonging to DANI 50

(Delhi and Andaman and Nicobar Islands) Police Service (the Service). To resolve the lis we shall have to first determine as to when the respondents can be said to have become members of the Service and then we have to find out as to how they are to be placed in the seniority list to be prepared as required by Rule 29 of the DANI Police Service Rules, 1971 (for short 'the Rules').

2. While making appointments to the Service, proportion as specified in Rule 5 has to be borne in mind-which, under normal circumstances is 1:1 qua promotees and direct recruits, which, however, for reasons to be recorded, may be varied in the exigency of public service. The respondents herein, who are 4 in number were appointed after they had gone through the procedure of selection mentioned in Rule 24. They admittedly did not come to be appointed as per Rule 16. They came to occupy the promotional post of Assistant Commissioner of Police, by virtue of what has been provided in Rule 25. We would be called upon to determine whether the respondents were appointed under sub-rule (1) or sub-rule (3) of this rule. After having done so, we would be required to see as to how their seniority vis-a-vis the direct recruits has to be determined.

3. Rules 4, 14, 15, 16, 24, 25 and 29 of the Rules are relevant to determine the controversy at hand and they read as below:

"4. Strength of the Service.- (1) The authorised permanent strength of the Service and the posts included therein shall be as specified in the Schedule.

(2) The number of selection grade posts in the Service shall be 13 per cent of the authorised permanent strength of the Service.

(3) The Central Government or the Administrator, subject to such conditions and limitations as may be specified by the Central Government, may, by order, create duty posts for such period as may be specified therein.

14. Conditions of Eligibility and Procedure for Selection.- (1) The Committee shall consider from time to time the cases of officers eligible under clause (b) of sub-rule (1) of Rule 5, who have served in the respective cadre or posts, as the case may be, for not less than two years and prepare a list of officers recommended for appointment after taking into account the actual vacancies at the time of selection and those likely to occur during a year. The selection for inclusion in the list shall be based on merit and suitability in all respects for appointment to the Service with due regard to seniority.

(2) The seniority of the officers eligible for consideration by the Committee under sub-rule (1) shall be determined by the Central Government with due regard to the dates of their appointments on a regular basis to the respective cadre or posts, the pay scales of the posts etc.:

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Provided that the persons belonging to the same parent service or Department shall be ranked inter se in order of their relative seniority in the parent Service or Department, as the case may be:

(3) The names of persons included in the list shall be arranged in order of merit.

(4) The list so prepared shall be forwarded by the Committee to the Central Government.

15. Consultation with the Commission.- (1) The list prepared under Rule 14 together with the relevant records shall be forwarded by the Central Government to the Commission, where consultation with the Commission is necessary or where the Chairman of the Committee desires that a reference be made to the Commission along with the relevant records.

(2) If the Commission considers it necessary to make any change in the list received from the Central Government the Commission shall inform the Central Government of the changes proposed by it.

*(3) The list shall finally be approved by the Central Government after taking into account the changes, if any, proposed by the Commission, and where any changes suggested by the Commission are not accepted, the reasons for such non-acceptance shall be recorded in writing.

(4) The list thus finally approved shall be in force until a fresh list is prepared for the purpose in accordance with these rules. All persons except those under the Himachal Pradesh Administration who immediately before the commencement of these rules were borne on the list approved by the Central Government under sub-rule (4) of Rule 15 of the Delhi, Himachal Pradesh and Andaman and Nicobar Islands Police Service Rules, 1965, shall be deemed to have been included in the same order in a list approved under sub-rule

(4) of this rule.

*Substituted w.e.f. 12.74 vide MHA Notification No. U14012/10/73-UTS, dated 2-12-1974.

16. Appointment to the Service.- Appointment to the Service shall be made in order of merit in the list referred to in sub-rule (4) of Rule 15 with due regard to the proportion specified in Rule 5.

24. Selection for Officiating Appointment.-If at any time the Central Government is of the opinion that the number of officers available in the list referred to in sub-rule (4) of Rule 15 for appointments to duty posts is not adequate having regard to the vacancies in such posts, it may direct the Committee to consider the case of officers who have officiated for a period of not less than three years in any of the cadres mentioned in clause (b) of sub-rule (1) of Rule 5 and prepare a separate list of officers selected. The selection for inclusion in the list shall be based on merit and suitability in all respects for

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officiating appointments to duty posts with due regard to seniority. The provisions of sub-rules (3) and (4) of Rule 14 and Rule 15 shall apply mutatis mutandis in the preparation of the selection list under this rule.

25. Officiating appointment to duty posts of the Service.-

(1) If a member of the Service is not available for holding a duty post, the post may be filled on an officiating basis-

(a) by the appointment of an officer included in the list referred to in sub-rule (4) of Rule 15, or

(b) if no such officer is available, by the appointment of an officer included in the list prepared under Rule 24.

(2) Notwithstanding anything contained in these rules if the exigencies of public service so require, a duty post for which a member of the Service is not available may be filled on an officiating basis by the appointment with prior consultation with the Commission of an officer belonging to a State Police Service on deputation for such period or periods ordinarily not exceeding three years as the Central Government may consider necessary.

(3) Notwithstanding anything contained in these rules, where appointment to a duty post is to be made purely as a local arrangement for a period of not exceeding six months, such appointment may be made by the administrator from persons who are included in the list prepared under sub-rule (4) of Rule 15, or Rule 24 or who are eligible for inclusion in such a list

(4) Any appointment made under sub-rule (3) shall be reported by the Administrator to the Central Government forthwith.

29. Seniority.- The Central Government shall prepare a list of members of the Service arranged in order of seniority as determined in the manner specified below:

(1) Member of the Service appointed at the initial constitution under Rule 17 shall be ranked inter se in the order of their relative seniority in the Delhi, Himachal Pradesh and Andaman and Nicobar Islands Police Service:

Provided that if the seniority of any such officer had not been specifically determined before the commencement of these rules, it shall be as determined by the Central Government.

(2) Seniority of person appointed to the Service under clauses (a) and (b) of sub-rule

(1) of Rule 5 after the initial constitution under Rule 17, shall be determined as follows:
(a) Persons recruited on the results of the competitive examination in any year shall be ranked inter se in the order of merit in which they are placed at the competitive examination on the results of which they are recruited, those recruited on the basis of an earlier examination

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being ranked senior to those recruited on the basis of later examination.

(b) The seniority inter se of persons recruited by selection shall be determined on the basis of the order in which their names are arranged in the list prepared under Rule 14, those recruited on the basis of an earlier selection being ranked senior to those recruited on the basis of a later selection.

(c) The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion under Rule 5."

4. From the above, it is clear that for a person to be appointed under subrule (1) of Rule 25, he has to be an officer whose name is included in the list referred to in sub-rule (4) of Rule 15 or one prepared under Rule 24. Insofar as sub-rule (3) is concerned, this requirement is not to be satisfied, and further, appointment under that sub-rule cannot exceed six months and is made as a local arrangement. The respondents are those whose names found place in the list prepared under Rule 24 and their appointments not having been made purely as a local arrangement for a period not exceeding six months, we have no difficulty in upholding the view of the Central Administrative Tribunal, Principal Bench, whose judgment has been impugned in this appeal, that respondents were appointed under sub-rule (1).

5. There is no serious dispute to this position even by learned Additional Solicitor General, Shri Tulsi, who has appeared for the appellants. His first real contention is that despite the appointments being under sub-rule (1), the respondents cannot be taken to have been appointed to the Service and as such the direction of the Tribunal to treat them as permanent appointees instead of as officiating hands, is not in consonance with what has been provided in the Rules. Shri Tulsi submits that appointment to the Service can be made only as visualised by Rule 16 and this can be of those whose names find place in the list referred in sub-rule (4) of Rule 15. The respondents not being such incumbents, they cannot be treated as permanent appointees to the Service.

6. This submission would not be correct if heart of the matter is looked into. To put it differently, the submission is not correct in substance, but is so only in form. We have taken this view because an examination of Rule 24 shows that the list prepared as required by that rule, has also to satisfy the requirements of provisions of sub-rules (3) and (4) of Rules 14 and 15. This shows that the incumbents whose names find place in the list prepared as contemplated by Rule 24 are also those who have been duly selected and consultation with the Commission has also been

made and the list prepared has been forwarded to the Central Government as well for its doing the needful. There is thus no difference in substance between the list prepared, as

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contemplated by Rule 14 read with Rule 15, and the one visualised by Rule 24. So, there appears to be no justifiable reason to regard Rule 24 selectees as in any way inferior to Rule 14 selectees. According to us, they stand almost at par. It is because of this that clauses (a) and (b) of sub-rule (1) of Rule 25 have virtually made no distinction between these two categories of incumbents.

7. Shri Tulsi, however, contends that Rule 25 visualises officiating appointment and not permanent; and that appointment is required to be made when a member of the Service is not available. Though this is so, but the facts of the present case would show that though the appointments were stated to be officiating these continued for a very long period, which in the case of Respondent 1 was of about 12 years as he came to be appointed under Rule 25 on 6-11-1972 and was fixed permanently in the slot meant for promotees on 28-7-1984. An officiating appointment for over a decade cannot be treated as fleeting appointment with no service benefits to be given. Any other view would very seriously prejudice such a service-holder who, even after having rendered service equal to those of permanent appointees for a long period, and that too for proper functioning of the Service, would be denied the benefit of the same for no cogent reasons. Any other view is bound to have a demoralising effect in the Service as a whole. As the appointments under Rule 25 are also to duty posts, which may form part of the strength of Service because what has been stated in Rule 4(3), we are of the view that justice of the case and the need to preserve the efficient functioning of the Service would require to treat the appointments of the respondents as permanent, despite their having been first appointment on officiating basis.

8. The real hub lies in the placement of the respondents in the seniority list. Shri Tulsi has urged that we may not do anything, because of the long period for which respondents have served, which would be against the principle of seniority embodied in Rule 29. As per clause (c) of sub-rule (2) of this rule inter se seniority has to be determined according to the "rotation of vacancies between direct recruits and promotees", which shall be based on the quotas of vacancies reserved for direct recruitment and promotion under Rule 5, which, as already noted, is in the ratio of 1: 1. The learned counsel, on the strength of recent decision of this Court in Syed Khalid Rizvi v. Union of India contends that present is not a case where seniority can be determined on the basis of continuous officiation. Shri Tulsi earnestly prays that we may not depart for the requirement of Rule 29 as sanctity of law is greater than interest of some individuals. It is also submitted that the present is not a case as to which it can be said that quota rule has broken down, in which case alone, seniority which is required to be determined on the basis of quota can be fixed on the basis of length of service. We are reminded that the quota rule has become an inseparable part of our service jurisprudence, as 1 1993 Supp (3) SCC 575: 1994 SCC (L&S) 84: (1994) 26 ATC 192

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it allows a harmonious combination of fresh blood and old experience, and we may not do anything to cause dent to this

useful principle.

9. The strenuous contention of Shri Gupta, appearing for the respondents, is that the present is a case on all fours with O.P Singla v. Union of India² in which case this Court in a similar situation took the view that seniority was required to be determined on the basis of length of service, despite there being quota in appointment to the Service in that case also, which was taken to have broken down.

10. In our view, a few scattered appointments against the quota rule as have been given here, cannot be taken to be breakdown of the principle of quota. Such appointments are at times made in exigency of service because of non-availability either of direct recruits or suitable incumbents for promotion. In Singla case² breakdown was read because of the language of the service rule concerned and the way appointments had come to be made. The fact situation and provision in the rules are different here. Singla case² cannot, therefore, come to the aid of the respondents.

11. According to us, the just and proper order to be passed would be to direct the appellants to treat the dates of officiating appointments of the respondents as the dates of their regular appointments and then to place them in the seniority list as required by Rule 29 i.e. to interpose a direct recruit in between two promotees as per their respective inter se seniorities; and we direct accordingly. The seniority would, therefore, be refixed of all concerned, not as per length of service alone as ordered by the Tribunal, but as indicated by us.

12. Before closing, it is required to be stated that we have not appreciated the stand taken by the appellants. This is for the reason that employers like the appellants, who are required to be model employers, should not take a stand which is unfair. They have to treat both the wings of the Service fairly, as both are equally important insofar as they are concerned. The need for making this observation has been felt because what we find is that despite an incumbent like Respondent 1 having served for more than a decade following his appointment, the stand taken is that he should be taken to have become a member of the Service from 1984 and not from 1972, being oblivious of the fact that for more than 12 years he had discharged the functions of the higher post to the satisfaction of all concerned. Denial of such long period of service for the purpose of seniority is an unjustified and arbitrary act which a model employer has to eschew.

13. The appeal is disposed of as per direction given earlier. In the facts and circumstances of the case we make no order as to costs. Special Leave Petition (C) No. 22013 of 1994 (CC No. 21852 of 1993)

14. This petition stands disposed of in terms of the judgment in CA No. 2481 of 1993 delivered today.

² (1984) 4 SCC 450: 1984 SCC (L&S) 657: (1985) 1 SCR 351