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A.K. BHATNAGAR AND ORS.

v.

UNION OF INDIA AND ORS.

NOVEMBER 9, 1990

B

[RANGANATH MISRA, CJ, M.M. PUNCHHI AND
K. RAMASWAMY, JJ.]

*Central Information Service Rules, 1959—Rule 5—Direct
Recruits—Inter se seniority—Fixation of.*

C

Respondent no. 1 in the Civil Appeal of 1985, moved the High Court in a writ to consider his case for promotion to Grade II and Grade I of the Central Information Service in the existing vacancies arising subsequent to 1964 by taking into consideration the period of his ad hoc service from the year 1964, and challenging the direction in the Government order requiring the regularised employees to be placed below the regular recruits upto 1970 on the basis of that year's examination. The Union Government opposed the claim.

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The Single Judge held that the officiating service would not be ignored once regularisation was made and directed the period of ad hoc service to be taken into account. The Division Bench affirmed the decision.

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The appellant in the C.A. of 1985 challenged the High Court's decision, and the appellants in the two Civil Appeals challenged the judgments of CAT which followed the High Court's decision. The writ petition under Article 32 was by 29 employees whose services were regularised.

F

Dismissing the Writ Petition and allowing the Civil Appeals, this Court,

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HELD: 1. 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 such nature normally arises between recruits from two sources, namely direct and promotees. [642C-D]

H

2. Reliance on the ratio of cases where disputes of inter se seniority

riety between direct recruits and promotees on the basis of officers of one category manning the posts meant for the other category should not have been relied upon for determining a dispute of the nature that arose in these cases. Since rules are clear and the Government action was within the purview of the rules, judicial interference was not called for. [642 G-H]

3. When there is a definite rule dealing with seniority and they had subjected themselves to that process, their seniority in terms of the rules had to be regulated according to the merits of the respective lists in the years when the examinations were held. [643D]

4. The Union and the State Governments once frame the rules, their action, in respect of matters covered by the rules, should be regulated by the rules. The rules framed in exercise of powers conferred under the proviso to Article 309 of the Constitution are solemn rules having binding effect. Acting in a manner contrary to the rules does create problem and dislocation. Very often Government themselves get trapped on account of their own mistakes or actions in excess of what is provided in the rules. Court takes serious view of these lapses and hopes and trusts that the Government both at the Centre and in the States would take note of this position and refrain from acting in a manner not contemplated by their own rules. [643F-G]

ORIGINAL JURISDICTION: Writ Petition No. 12874 of 1985.

(Under Article 32 of the Constitution of India)

WITH

Civil Appeal Nos. 4232 of 1985 and Special Leave Petition (C) No. 3702 of 1988 and Civil Appeal Nos. 986 and 987 of 1988, C.M.P. No. 14054 of 1989 in Civil Appeal No. 986 of 1988 and I.A. No. 2 and 3.

V.M.Tarkunde, N. Kumar, V.C. Mahajan, M.C. Bhandare, P. Chidambaram, A.S. Nambiar, S. Markandeya, W.A. Nomani, G. Seshagari Rao, Ms.C. Markandeya, Ejaz Maqbool, M.D. Adkar, H.S. Anand, R.P. Srivastava, P. Parmeshwaran, S.C. Patel, Ms. A. Subhashini, A.K. Srivastava, M.S. Ganesh, Mrs. M. Qamaruddin, Ms. Sushma Suri, B.K. Prasad, V.J. Francis, P.K. Manohar, B.S. Charya, V.K. Verma, Qamaruddin and Smt. Shanta Vasudevan for the appearing parties.

A Rajendra Roy and P. Kashyap appeared in person.

The Judgment of the Court was delivered by

B **RANGANATH MISRA, CJ.** The Civil Appeals are by special leave and the writ petition is under Article 32 of the Constitution. The Civil Appeal of 1985 is directed against an affirming Division Bench decision of the Madras High Court dated 16.8.84 in a writ appeal while the two other Civil Appeals are directed against two separate judgments of the Central Administrative Tribunal made in 1987 following the aforesaid Madras decision. The Writ Petition as will be presently indicated is by 29 petitioners. Who had not been regularly recruited to the service but later by amendment of the rules were regularised in service in 1977.

C The service with which we are concerned in this group of cases is known as "Central Information Service" (C.I.S. for short). This service was constituted by the Central Information Service Rules, 1959 framed by the President in exercise of powers conferred by the proviso to Article 309 of the Constitution with effect from 1.3.60 in terms of rule 5. This was on the basis of selecting 400 'departmental candidates' as defined in rule 28 of the Rules. Rule 6 provides that after the initial constitution of the service, future vacancies in grade IV would be filled by direct recruitment on the basis of the result of a competitive examination conducted by the Union Public Service Commission in accordance with the educational qualifications and age limit mentioned in Schedule VIII and the scheme of examination which is to be finalised in consultation with the Commission.

E Under rule 4 the service has seven tiers beginning with grade IV and going up to the selection grade. Direct recruitment is to Grade IV and the higher grades are manned on the basis of promotion. The requirements of promotional qualifications are in rule 6A. In this group of cases the dispute is one of *inter se* seniority among direct recruits to grade IV.

F After the initial constitution there were four recruitments up to 1970, being in 1964, 1965, 1969 and 1970. It appears that in 1964 there was condonation of the age bar and 141 candidates had appeared but 22 qualified. In 1965 and 1970 perhaps there was no relaxation of age while in 1969 the prescribed age was relaxed. In the Service there were 68 *ad hoc* employees who have been regularised in the subsequent recruitments referred to above while there were 73 other *ad hoc* emp-

loyees who either took the examination and failed or never sat at the examinations to become regular recruits until the second proviso was added to rule 6A of the Rules and the order regularising their service was made by notification dated 27th January, 1977. The proviso in question reads thus:

“Provided further that persons appointed on or before 1.7.76 to discharge the duties and functions of the posts included in Grade IV of the Central Information Service to make good the shortfall in the filling up of vacancies in the grade by the above mentioned method and who have discharged the duties and responsibilities of the post included in Grade IV of the Service for at least five years shall be appointed to the Grade after they are screened by a Selection Committee to determine their suitability for appointment.”

In terms of this proviso the notification of 27th of January, 1977, was issued to the following effect:

“Under second proviso to Rule 6A of the Central Information Service Rules, 1959 as amended from time to time the following officers holding *ad hoc* appointment against grade IV posts of the CIS are hereby appointed on regular basis in Grade IV of the Central Information Service with affect from 4th of January, 1977 until further orders

The above officers will be placed *en bloc* in the same order below the last Grade IV Officers appointed on the basis of 1970 Examination i.e, below Shri Sita Ram Ho.”

Mr.V. Thirunavukkarasu, respondent no. 1, in the Civil Appeal of 1985 whose service were regularised by the order of 27th January, 1977 with effect from 4th of January, 1977—and his name occurred at 19th place in the notification—moved the Madras High Court under Article 226 of the Constitution for a mandamus to the Union Government to consider his case for promotion to Grade II and Grade I of the Service in the existing vacancies arising subsequent to 1964 by taking into consideration the period of his *ad hoc* service from the year 1964. He maintained that the *ad hoc* service between 25.5.64 to 4.1.77 should have been taken into account for determining his seniority.

- A This virtually challenged the direction in the Government order of 27th January, 1977, requiring the regularised employees to be placed below the regular recruits upto 1970 on the basis of that year's examination. The Union Government opposed the claim but the learned Single Judge relied upon the judgments of this Court in *Baleshwar Dass and Ors. Etc. v. State of U.P. and Ors. Etc.*, [1981] 1 S.C.R. 449
- B and *W.K. Chauhan and Ors. v. State of Gujarat and Ors.* [1977] 1 SCR 1037 and held that the officiating service would not be ignored once regularisation was made and directed the said period between 1964 and 1977 to be taken into account. The Division Bench affirmed the decision.

- C 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
- D *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.

- E It was considerably disputed before us as to whether there were regular recruitment examinations and an attempt was even made to equate the examination contemplated under the Rules with the screening contemplated under the amended proviso. We have found no force in such a contention. The steps taken by the Union Government and the acceptance of such steps by the regularised officers clearly militate against such a contention.

- F The regularised officers admittedly remained outside the cadre until 4.1.77 from when their services were regularised. The Union Government was, therefore, right while regularising the services under the notification to direct that the regularised officers would be placed below regular recruits through the 1970 examination.

- G Reliance on the ratio of cases where disputes of *inter se* seniority between direct recruits and promotees on the basis of officers of one category manning the posts meant for the other category should not have been relied upon for determining a dispute of the nature that arose in these cases. Since rules are clear and the Government action was within the purview of the rules, judicial interference was not called for.
- H

It was contended before us at the hearing that the petitioner before the Madras High Court in compliance of the High Court decision has now gone to Grade I and a short period is left to superannuation and in case there is reversion now he would suffer irreparably. There is perhaps some force in what is said. We had, therefore, suggested in course of the hearing of these cases that he may not be disturbed from his present position and be permitted to hold a supernumerary post but he would not be entitled to any further promotion unless by the seniority assigned to him in terms of the regularisation notification he becomes entitled to it.

Mr. Bhandari learned counsel for some of the regularised employees not covered by the Government notification of regularisation but whose services became regular through the examinations contended that though they have taken the examination and become regularised under the rules, their past service should also be taken into account. We do not find any force in such a submission particularly when there is a definite rule dealing with seniority and they had subjected themselves to that process. Their seniority in terms of the rules had to be regulated according to the merits of the respective lists in the years when the examinations were held. We, therefore, do not propose to meddle with the service in any manner. The net result, therefore, would be that the writ petition has to be dismissed and the civil appeals have to be allowed. The Judgments of the Division Bench and the Single Judge of the High Court are set aside and the judgments of the Tribunal are vacated and the two claims filed before the Central Administrative Tribunal are also dismissed.

On more than one occasion this Court has indicated to the Union and the State Governments that once they frame rules, their action in respect of matters covered by rules should be regulated by the rules. The rules framed in exercise of powers conferred under the proviso to Article 309 of the Constitution are solemn rules having binding effect. Acting in a manner contrary to the rules does create problem and dislocation. Very often Government themselves get trapped on account of their own mistakes or actions in excess of what is provided in the rules. We take serious view of these lapses and hope and trust that the Government both at the Centre and in the States would take note of this position and refrain from acting in a manner not contemplated by their own rules. There shall be no order as to costs.

V.P.R.

Petitions dismissed and
Appeals allowed.