

In the Central Administrative Tribunal  
Principal Bench: New Delhi

OA No.1422/87

Date of decision: 05.03.1993.

Shri Sunil Misra

...Petitioner

Versus

Union of India through Secretary,  
Railway Board, Rail Bhavan,  
New Delhi & Others

...Respondents

Coram:-

The Hon'ble Mr. I.K. Rasgotra, Member (A)  
The Hon'ble Mr. B.S. Hegde, Member (J)

For the petitioner

Shri P.P. Khurana, Counsel.

For the respondents

None for Respondent No.1.

Shri K.N.R. Pillai, Counsel  
for Respondent No.2&3.

Judgement(Oral)  
(Hon'ble Mr. I.K. Rasgotra, Member (A))

Shri Sunil Misra, the petitioner herein has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, aggrieved by the followed orders issued by the respondents:-

- i) the seniority list ~~circulated~~ under Northern Railway's letter dated 8.6.1987 which was issued by the Railway Board vide their letter No.E(O)I-86-SR/9 dated 21.5.1987. The impugned seniority list is as on 1.3.1987. The petitioner has been placed at srl. No.55 between Kum. Aruna Limaya and Mohd. Akhtar whereas respondents No.2 and 3 are at srl. No 38 and 39 respectively in between Mrs. R.K. Pherwani and Shri K.K. Lahiri.
- ii) Rejection of the representation by the respondents vide order dated 20.8.1987 which asserts that the seniority to respondents No.2 and 3 has been assigned correctly.
- iii) Order of the Railway Board No.E(O)III/87/FM/46 dated 19.5.1987 which communicates the decision

to allow the grade pay in junior administrative grade to Respondents No.2 and 3 with effect from 14.5.1987 or the date on which they take over charge.

2. The case of the petitioner is that he was appointed on the basis of the result of the Combined Services Examination held by the UPSC in the Indian Railway Personnel Service (IRPS for short) on 21.1.1982. Respondent No.2 Shri A.K. Nigam and Respondent No.3 Shri K. Thiagarajan were appointed to Railway Board's Secretariat Service (RBSS for short) Group 'B' on 9.7.1979 and 21.7.1979 respectively. Both respondents No.2 and 3 were later inducted in IRPS w.e.f. 15.2.1984. They were granted antedated seniority w.e.f. 15.2.1979. While IRPS is a Group 'A' service the RBSS is a Group 'B' service as adverted to earlier. The IRPS was constituted vide notification dated 20.12.1975 by the President in exercise of the powers conferred by the proviso to Article 309 of the Constitution. The rules contained in the said notification came into effect on 1.1.1976. As reference to these rules would require to be made, we consider it expedient to extract the relevant rules at this very stage. Rule-6 of the Rules deals with initial constitution of the service. Rule 8 deals with future maintenance of the service. We are concerned with the future maintenance of the service. Accordingly, rules 8 and 9 (1) are extracted hereunder:-

"8. Future Maintenance of the Service.--(1) After the initial constitution of the Service has been completed, vacancies shall be filled in the manner as hereafter provided:-

(a) Senior Administrative Grade.--Chief Personnel Officer/Additional Chief Personnel Officer--all vacancies of Chief Personnel Officers/Additional Chief Personnel Officers shall be filled by selection on merit from the officers in the Junior Administrative Grade of this Service with at least 5 years' service in the grade.

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(b) Junior Administrative Grade.--Deputy Chief Personnel Officer/Senior Divisional Personnel Officer.--all vacancies in the junior administrative grade this Service shall be filled by selection on merit from officers in the senior scale of this Service with at least 5 years' service in the grade.

(c) Senior Scale--Senior Personnel Officer/Divisional Personnel Officer--

(i) 50 per cent of the vacancies in the senior scale shall be filled by promotion in the order or seniority subject to rejection of the unfit from the junior scale (Class I) officers of this Service with at least five years' service in the scale.

(ii) 50 per cent of the vacancies in the senior scale shall be filled by transfer of officers belonging to Class I Services under the Ministry of Railways (excluding the Indian Railway Medical Service) who have completed six years' of service in the junior scale or two years service in the grade of Under Secretary in the Ministry of Railways and elect, on the basis of an option to be appointed to the Service:

Provided that an officer who is eligible to exercise option under these rules fails to do so at the first available opportunity shall not be given an other opportunity to exercise an option at any future occasion.

(d) Junior Scale (Class I).--Assistant Personnel Officers.--

(i) 50 per cent of the vacancies in the junior scale shall be filled by direct recruitment through an open competitive examination held by the Commission in the manner prescribed in Schedule II.

(ii) 50 per cent of the vacancies in the junior scale shall be filled by selection on merit from Class II Officers with at least 3 years' service in the grade in the Railway Ministry and the Personnel Departments on the Railways.

(2) In case any of the methods of recruitment referred to above fails, the vacancies shall be filled by transfer on deputation of suitable officers of the Class I Service under the Ministry of Railways (excluding the Indian Railway Medical Service). The period of deputation shall not ordinarily exceed three years.

9. Probation.--(1) Officers appointed to any of the grades of the Service, either by direct recruitment or by promotion or by transfer, shall be on probation for a period of two years:

Provided that the Government may by order for reasons to be recorded in writing extend or curtail the period of probation."

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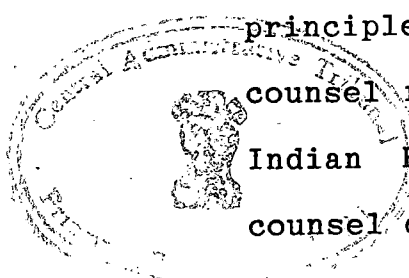


3. In accordance with the above provisions made in the Rules, two aspects stand out. First of these is that 50% of the vacancies in the senior scale are to be filled by promotion in the order of seniority subject to rejection of unfit from the junior scale (Class I) officers of the Service who have rendered at least 5 years' service in the scale. Secondly, all officers who are appointed to any of the grades of the service by any mode of recruitment have necessarily to undergo a probation period of two years. The respondents have the discretion for reasons to be recorded in writing to extend or curtail the period of probation but there is no provision to waive the period of probation. The learned counsel for the petitioner Shri P.P. Khurana submitted that in the present case respondents No.2 and 3 who have superseded the petitioner, as the rules enforced w.e.f. 1.1.1976 have not been applied to Respondents 2 and 3. Although the Government has discretion to extend or curtail the period of probation, there is no provision in the Rules to waive the probation period altogether. His next submission is that, unless the officers have rendered 5 years' service in the junior scale in the IRPS they cannot be promoted to the senior scale. The respondents No.2 and 3 have neither gone through the period of probation prescribed in the rules nor had they rendered 5 years' service in the junior scale when they were promoted to the senior scale in IRPS. In fact, it was contended by the learned counsel that respondents No. 2&3 were directly inducted in IRPS in the senior scale w.e.f. 15.2.1984. It was further submitted that the respondents No.2 and 3 could have been inducted into service only in accordance with the provisions made

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in the IRPS Recruitment Rules vide Rule 8(d)(ii). According to the said rule, 50 per cent of the vacancies in the junior scale are to be filled by selection on merit from Class II officers with at least three years' service in the grade in the Railway Ministry and the Personnel Departments on the Railways. Respondents NO. 2&3 belong to the Railway Ministry (RBSS). They joined the RBSS, as stated earlier, on 9.7.1979 and 21.7.1979 respectively but have been assigned seniority in the impugned seniority list from 15.2.1979, i.e., the date on which they were not even in RBSS which is a Group 'B' Service. Our attention was further drawn to paragraph 6.8 (iii) (page 61 of the paperbook) where it has been contended that "the applicant Shri Misra and Respondent No.2 Shri A.K. Nigam appeared in the competitive examination for recruitment to Class I of Civil Services in 1980. While Shri Sunil Misra, the applicant, got high enough rank to get recruited to I.R.P.S. Class-I cadre, Shri A.K. Nigam failed to qualify the examination. Any device or rule adopted to make Shri A.K. Nigam senior to Shri Misra in the same service is prima facie arbitrary and unreasonable and deserves to be quashed."

4. While none appeared for Union of India arrayed as respondent No.1, Respondents No. 2 and 3 were represented by Shri K.N.R. Pillai, learned counsel, who referred us to paragraph-6.7 of the counter-affidavit filed on behalf of Respondent No.1. The said paragraph refers to the principles of seniority, which according to the learned counsel regulates seniority of all Class-I Services on the Indian Railways. Elaborating this point, the learned counsel drew our attention to Railway Board's letter dated 30.11.1976. The first paragraph of the said letter reads as under:-



"Consequent on the deletion of para 8 of Appendix I to the Indian Railway Service of Engineers, Indian Railway Service of Signal Engineers, Indian Railway

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Service of Electrical Engineers, Recruitment Rules, 1962, Paragraph 9 of the Appendix I of the Indian Railway Service of Mechanical Engineers Recruitment Rules, 1968 and the I.R.S.S. Recruitment Rules, 1969 for determining the seniority of officers on their appointment to Class I Service, the Board have decided to circulate the principles, laid down for determining the seniority of officers, appointed to various Class I Services from different sources, specified in the various Recruitment Rules except officers of the Medical Deptt. and other misc. categories, these are enclosed as an Appendix to this letter."

Principle (iii) in the Appendix stipulates:-

"In the case of officers, recruited otherwise than through the regular competitive examinations and who may be granted higher initial pay on recruitment, the date for increment on time scale for the purpose of seniority, shall be so adjusted as to allow suitable credit in assigning seniority."

Principle (vii) of the same Appendix further stipulates that:-

"In the case of Class II Officers permanently promoted to Class I 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 provision the seniority of officers, permanently promoted from Class II to Class I Services, shall be determined by giving weightage based on:

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

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

The learned counsel Shri Pillai stated that in the Railways, seniority is regulated in accordance with the pay fixed at the time of entry into service. In the case of respondents No.2 and 3 their initial pay was fixed at Rs.710/- on joining the Railway Board's Secretariat Service in the pay scale of Rs.650-1200. On their appointment to I.R.P.S. Class I their pay was fixed at Rs.900/- in accordance with the principles (iii) and (vii), referred to earlier. Since their pay was fixed at Rs.900/- their seniority has to be worked back and it is in this manner that the respondents No.2 and 3 came to be assigned seniority w.e.f. 15.2.1979. When the Bench pointed out as

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to how seniority can be assigned to respondents No.2 and 3 when they were not even in RBSS Group 'B' on 15.2.1979, the learned counsel submitted that the principles of seniority in the Railways are time-tested and have been in vogue right from the beginning. In support of his case, the learned counsel referred to Annexures I, II and III annexed to his counter-affidavit. Annexure-I gives the particulars of service of direct recruits to Group 'A', IRSME, which according to him indicates that seniority was assigned to these Officers (Respondent 2 and 3) from a date when they were not even born in the service. Annexures II and III furnish particulars of Group 'B' Officers who were promoted to Group 'A' Service and have been given weightage of service in accordance with principle (vii), adverted to earlier. On a query from the Bench, the learned counsel fairly conceded that in these cases the promotion of Group 'A' Officers is within the same Service, i.e. Group 'B' Officers who were working in the Indian Railway Traffic Service (IRTS) were promoted to Group 'A' in the same Service and were given the weightage of service upto 5 years in accordance with principle (vii). None of these cases are at par with the situation where all officers belonging to one service have been inducted into another service and accorded the benefit of weightage of service. The case before us is not a case of promotion within the same service. Respondents No.2 and 3 were members of the RBSS Group 'B'. They were inducted into IRPS Group 'A' in accordance with the provisions made in Rule 8 (d)(ii) of the IRPS Rules. The experience gained RBSS would not be such as to justify/giving weightage service rendered in the newly constituted IRPS. Even though, it was contended by the learned counsel for the respondents No.2 and 3 that the basis of providing the

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weightage in service is the consideration for experience gained, we are not persuaded to accept this contention in the context of persons coming from Group 'B' Service experience in which has little to do with the requirements of new Service. The quality of experience which the officer might have acquired in the RBSS is different from the experience is required in Personnel Management needed in IRPS. The theory of experience would hold good if personnel in Class II working in personnel department is inducted into IRPS Class I. The respondents would be right in taking that experience into consideration as qualitatively supplementing the experience of such person to be given weightage for the service rendered in a job of similar nature. There can be no dispute that the experience rendered in RBSS Class II is qualitatively different from the experience required in the IRPS Class I.

5. The next argument pressed by the learned counsel for respondents No.2 and 3 was that where there is a ~~room~~<sup>rule</sup> for regulating seniority, the rule shall prevail on ~~any~~ other methodology for fixing seniority. In this connection, Shri Pillai drew our attention to paragraph of the judgement in **Rana Randhir Singh & Ors. v. State of U.P. & Ors.** reported in JT 1988 (4) SC 449. The said paragraph is reproduced below:-

"5. Law is well settled by a catena of decisions of this Court that if there be a rule to regulate seniority, seniority shall be regulated by the same. In view of the fact that Rule 21 prescribes the manner of computation of seniority, inter-se seniority has to be determined on the basis of the provisions of the Rule."

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Paragraph-5 of the judgement, extracted above, however, cannot be taken out of the context. **Rana Randhir Singh's** (supra) case deals with fixation of seniority between the direct recruits to the U.P. Police Service Class-II and to that rank by promotion of permanent Inspectors of Police. The position is made clear in paragraph-4 of the judgement in **Rana Randhir Singh's** (supra) case, which reads:-

"These Rules lead to the position that the post of Deputy Superintendent of Police is to be filled up by direct recruitment as also by promotion on the basis of 1:1. Appointment on substantive capacity makes the incumbent a member of the service. While there may be temporary posts in the cadre, seniority is to be determined according to the date of appointment in substantive capacity. Temporary service is not intended, therefore, to count for seniority."

It is clear from the above that the Apex Court was dealing with the matter of seniority between direct recruits to the grade of Deputy Superintendent of Police and the promotees from the rank of Inspectors of Police. It was in this context that their Lordships observed that the law is well-settled for regulating seniority. Where there is a rule to regulate seniority, seniority shall be regulated by the same. The seniority in **Rana Randhir Singh's** (supra) case, as adverted to earlier is again in the same service between the direct recruits and promotees. Thus, in our opinion the principle emerging from **Rana Randhir Singh's** (supra) judgement is not applicable in the matter before us.

6. The next case cited by the learned counsel is between **K.K. Gupta v. Union of India** reported in 1979 (3)

SLR 400 (All. HC). In this case the issue before the Allahabad High Court was fixation of seniority between direct recruits, promotees and special recruits in the Singal Engineering Department of the Railways. The petitioner Shri K.K. Gupta was appointed as temporary Assistant Signal Engineer by a letter dated 20.2.1956. He was given substantive appointment in the service w.e.f. 1.3.1959. He claimed that his seniority should have been determined on the principle which is applicable to the direct recruits, i.e., from the date of joining the service. He also questioned the confining of the maximum weightage of service to 5 years as he claimed that he had already in service though in Class-II and he had gained more experience than the direct recruits. The Court upheld the principle of giving weightage of 5 years to the special recruits and promotees as reasonable compromise between conflicting claims of the direct recruits on the one hand and promotees and special recruits on the other hand. In the facts and circumstances of the case we do not consider K.K. Gupta (supra) as of any help to the petitioner.

The learned counsel for the respondents in this context referred us to RBSS Rules and submitted that this argument of deriving seniority from the pay fixed is fallacious inasmuch as the pay of the direct recruit Section Officers in the RBSS in the grade of Rs.650-1200 is to be fixed in accordance with the normal rules. The note under Rule 15 of RBSS Rules clearly states that an Officer promoted to the Section Officers' Grade shall be allowed a minimum initial pay of Rs.710/- in the scale. The learned counsel Shri Khurana, therefore, stated that respondents No. 2 and 3 were not even entitled to the grant of pay of Rs.710/- on entry to RBSS as they were the direct recruits and not the promotees. Taking into consideration the pay of Rs.710/- for fixing the pay at Rs.900/- in the junior

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scale of IRPS Rs.700-1300, therefore, is violative of the Rules. Shri Khurana further submitted that following this principle a situation has been created in which the respondents No.2 and 3 have been fixed at 6th stage in the junior time scale of Rs.700-1300 even though the total service put in by the said respondents amounts to only 4 years. In regard to the letter of the Railway Board under which the principles of seniority have been circulated the learned counsel for the petitioner submitted that the letter deals with the determination of seniority of officers appointed to various Class-I Services from different sources and not from different Services. He, therefore, submitted that in any view of the matter the action of the respondents is in violation of not only the rules but also the principles of natural justice. It also confers benefits on the said respondents from a date earlier than the date they were born into the Service.

7. We have heard the learned counsel for both the parties and considered the matter carefully. It is not disputed that the petitioner joined the IRPS as a direct recruit on 21.1.1982 while respondents No.2 and 3 joined RBBS Group 'B' on 9.7.1979 and 21.7.1979 respectively.

Respondent No.4, Shri Suresh Kumar although was served has not entered appearance. It is also not in dispute that respondents No.2 and 3 were inducted into IRPS on 15.2.1984 and have been assigned seniority w.e.f. 15.2.1979 when they were not even in the RBSS (Class II).

There is also no rationale provided in the counter-affidavit of Respondents No. 2 and 3 as to how the statutory provision of probation was waived in the case of respondents No. 2 and 3 by respondent No.1. The only information in this regard provided by respondent No.1 in

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the counter-affidavit is that the matter regarding probation of Group 'B' RBSS Officers was under consideration and pending a decision. No condition for probation was notified in the circular inviting options from Group 'B' Officers for appointment to IRPS till 1984 and, therefore, provision for probation could not be made. This contention, however, ignores that the recruitment rules, as adverted to earlier came into force on 1.1.1976, i.e., much before the selection on merit of respondents No.2 and 3 was made. We are, therefore, not persuaded to accept the ingenious argument offered in the counter-affidavit by Respondent No.1. When there is a specific provision in the rules in regard to the probation, the same cannot be superseded by the circular inviting options for appointment to IRPS. There is no doubt that the probation could be extended or curtailed but there is no provision in the statutory rules to waive the probation period. There is also no satisfactory explanation as to how Respondent No.2 and 3 were inducted directly in the senior scale. There is no provision in the recruitment rules which permits such a course of action. According to ~~the Rules unless an officer has rendered at least five~~ year's service he cannot be promoted to the senior scale. It is nobody's case that Respondents No.2 and 3 had rendered 5 years' service in the junior scale before they were promoted to the senior scale. We have no hesitation, therefore, to hold the appointment to senior scale without rendering requisite service in junior scale to be violative of the rules. Regarding the weightage of service allowed under principle (vii) of the seniority principles annexed to the Railway Board's letter dated 30.11.1976 in absence of any material to justify this concession to

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another Service e.g. RBSS we are of the opinion that the weightage of service was not permissible as the appointment of respondents No. 2 and 3 is made in an-altogether different Service. Such concession will be available to officers on promotion in the same Service. For instance, if an officer belonging to the same department in Group 'B' is promoted in the same department to Group 'A', he shall be eligible for the benefit of weightage. We say so as the experience gained in Class II Service would be useful and in the interest of efficiency of administration on promotion to Class I in the same department. This alone can be the intent of provision for weightage.

8. In view of the above facts and circumstances, we are of the opinion that the action of the respondents in placing the petitioner below respondents No.2,3 and 4 by giving them weightage of Service is irrational, illegal and in violation of the Rules. Accordingly, the impugned order, circulating the seniority list as on 1.3.1987 of 21.5.1987 (Annexure A-1) and order dated 20.8.1987 rejecting the representation of the petitioner are quashed and set aside. Further, order dated 19.5.1987, promoting respondents No.2 and 3 to junior administrative grade is also set aside and quashed. The letter dated 10.6.1988 issued by Respondent No.1 granting inflated seniority to Respondent No.4 is also quashed and set aside. Respondent No.1 is further directed to frame a fresh seniority list in accordance with the date of entry in the service, maintaining the inter-se seniority in the order of merit as assigned by the UPSC/Selecting Body, as the case may be. The learned counsel for the petitioner in the course of hearing brought to our notice an order issued by the respondent No.1 dated 22.1.1992 wherein the respondents No. 2 and 3 have been given promotion to higher grade. Since the seniority list and the orders of promotion of the

respondents No.2 and 3 have been quashed and set the respondents will no doubt take action to set the matter right, as the said order flows from the seniority list of 21.5.1987.

9. The O.A. is disposed of, as above. No costs.

(B.S. HEGDE)  
MEMBER(J)

'San'

(I.K. RASGOTRA)  
MEMBER(A)

प्रमाणित प्रतिलिपि  
दिनांक.....  
CERTIFIED TRUE COPY  
Date.....

7/4/83  
जनसमन्वय विभाग (न्याय-1)  
Section Officer (J-1)  
केन्द्रीय प्रशासनिक विभाग  
Central Administrative  
Principal