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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.723 of 1987

(Writ Petition No.13519 of 1981 of the)
of the High Court of Judicature at Alld.

Mahesh Chandra Gupta & Others Petitioners

Versus

Union of India & Others Opposite Parties.

Hon.Justice Kamleshwar Nath, V.C.

Hon. K.J. Raman, Member (A)

(By Hon.Justice Kamleshwar Nath, V.C.)

The Writ Petition described above is before us under Section 29 of the Administrative Tribunals Act, 1985 for a direction to the respondents not to revise seniority of the petitioners to their detriment. The seniority list as issued by notice dated 25.11.80 is relied upon by the petitioners in this regard; that ~~the~~ seniority list was replaced by order dated 17.10.81 whereby seniority as on 1.11.80 was restored.

2. The Chief Inspectorate of Textile and Clothing at Kanpur has a Factory there. It is governed by the Ministry of Defence (Production). The Factory has a Technical side and a Scientific side, each having its own cadre. On the Technical side, the lowest ^{post} was of Technical Supervisor grade III in two scales : Rs.150-240 for those candidates who had passed B.Sc, and Rs.175-240 for those candidates who were diploma holders. On Scientific side, the lowest post was of Junior Sc^t Assistant grade II in the scale of Rs. 150-300.

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scales were revised with effect from 1.1.73 by the Third Pay Commission and got a common pay scale of Rs. 380 - 560.

3. The petitioners were originally working as Technical Supervisor grade III. In August, 1974 they were posted as Junior Scientific Assistant grade II. Junior Scientific Assistants grade II are eligible for promotion as Junior Scientific Assistant Grade I and the criterion of promotion is seniority-cum-fitness.

4. Appointment to the post of Junior Scientific Assistant grade II used to be made also by direct recruitment. The seniority of direct recruits was on the basis of their merit; the seniority of promotees was on the basis of their length of service. A dispute arose about the right of Technical Supervisors grade III to count their length of service as such to their length of service in the post of Junior Scientific Assistant grade II for the purposes of further promotion to the post of Junior Scientific Assistant grade I. The promotees claimed that Army Instruction 241/50 governed the problem. according to which benefit of all previous service rendered in the same or equivalent post was to be given and posts were to be treated as equivalent if the nature and duties attached to them were similar irrespective of the rate of pay drawn in the previous post. The promotees claimed that post of Technical Supervisor grade III were equivalent to the post of Junior Scientific Assistant grade II.

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5. The controversy led to a Civil Suit No. 78/70 in the Court of City Munsif Kanpur filed by some Technical Supervisors grade III against Union of India and Others. Another Civil Suit No. 105/70 was filed in the Court of Munsif Kanpur claiming the benefit of past previous service as Technical Supervisor grade III to their current post of Junior Scientific Assistant grade II for the purposes of further promotion as Junior Scientific Assistant grade I. The Suits were ultimately decided finally in Civil Appeal where the Appellate Court held that Junior Scientific Assistants were entitled to the benefit of their service as Technical Supervisor grade III for the purposes of seniority in accordance with Army Instruction 241/50.

6. On the basis of the appellate decision the Govt. reverted some of the Junior Scientific Assistants grade II recruited directly, because Junior Scientific Assistants grade II who were formerly Technical Supervisors grade III became senior to them. They filed a Writ Petition No. 2118/73 in the Hon'ble High Court against their reversion; the Writ Petition was dismissed and the service rendered in the capacity of Technical Supervisor grade III was allowed to be added to services rendered as Junior Scientific Assistant grade II in view of the Army Instruction 241/50.

7. According to the petitioners, Numbers 1 to 3 of them were promoted as Junior Scientific Assistants grade I while Nos. 4 and 5 could not be promoted for want

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vacancy; according to the respondents only petitioner No.1 was promoted and not the rest.

8. It appears that on the guidelines contained in the High Court judgement in Writ Petition No.2118/73 a provisional revised seniority list was issued by notice dated 25.11.70 inviting objections by 15.12.80 failing which the seniority list was to be treated as correct. The petitioners placed reliance upon this list and claimed it to be correct. However, some persons presumably direct recruits filed objections and then by orders dated 17.10.81, the revised seniority list issued with notice dated 25.11.80 was withdrawn and in its place the Seniority Roll as on 1.11.80 was restored. The effect of this restoration would have been the reversion of some promotee Junior Scientific Assistant grade I to the post of Junior Scientific Assistant grade II on account of which they became junior to Junior Scientific Assistant grade II recruited directly but had joined the service several years after the petitioners.

9. The grievance of the petitioners is that the post of Technical Supervisor grade III and Junior Scientific Assistant grade II had been judicially recognised by the Hon'ble High Court to be equivalent posts for the purposes of Army Instruction 241/50 and therefore its revised seniority list issued with Notice dated 25.11.80 was the correct list but the respondents wrongfully refused to apply the provisions of Army Instruction 241/50 and want to apply the provisions of Civilian Personnel Routine Orders

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(for short C.P.R.O.) No. 73/73. The contention of the petitioners is that C.P.R.O. 73/73 cannot supersede the provisions of Army Instruction 241/50.

10. According to the respondents, the principles of seniority as laid down in Army Instruction 241/50 stood superseded by C.P.R.O. 73/73 with effect from 1.7.73 and since the petitioners were appointed as Junior Scientific Assistants grade II in August, 1974, it is C.P.R.O. No.73/73 which governs their case and not Army Instruction 241/50.

11. We may mention that C.P.R.O. No.73/73 is published in November 1, 1973 Part of "Civilian Personnel Routine Orders" at page 4. The revised principles of seniority contained in Ministry of Defence Memo No.10(1)/60/D(Apptts) dt.11.3.65 contained in Annexure-A (and applicable to class I and class II officers) were extended to class III (like the petitioners) and class IV employees with effect from 1.7.73. The publication quoted the authority as Ministry of Defence Memo No. 28(6)/67/D(Apptts) dated 29.6.73. It is the admitted case of the parties that if this memo applies to the facts of the case then the length of service as Technical Supervisor grade III cannot be counted with the length of service as Junior Scientific Assistant grade II for the purposes of seniority. The case of the respondents is that C.P.R.O. No.73/73 applies because it is issued by the same Ministry of Defence which had issued Army Instruction 241/50. In that event the revision of seniority by order dated 17.10.81 would be correct.

12. We have heard the learned counsel for both the parties at considerable length. The submission of the learned counsel for the petitioners that C.P.R.O. No.73/73 cannot supersede or modify Army Instruction 241/50 is not correct. Annexure-I is the memo dated 4.12.59 of the Govt. of India, Ministry of Defence whereby the application of Army Instruction 241/50 was extended to class III posts laying down that in determining seniority of Govt. servant on appointment in Civilian post, benefit of all previous service rendered in the same or equivalent post should be given. Undoubtedly, it is an order issued by the Govt. of India, Ministry of Defence. The published C.P.R.O. No.73/73 described by us above also shows that it was issued by the Ministry of Defence Memo dated 29.6.73. There is no basis, therefore, for the petitioners' contention that C.P.R.O. No.73/73 has been issued by an authority junior in position to the Govt. of India, Ministry of Defence. The petitioners are under the impression that C.P.R.O. No.73/73 was issued only by the Assistant Adjutant General (vide para 13 of the Rejoinder). That is not so; it is issued by the Govt. of India, Ministry of Defence.

13. The learned counsel for the petitioners then urged that in view of the judgement of the Hon'ble High Court contained in Annexure-III, the stand of the respondents on C.P.R.O. No.73/73 against Army Instruction 241/50 cannot be accepted. We find no force in this contention because C.P.R.O. No.73/73

did not come up for consideration at all in that judgement. The reversion orders which were challenged in that Writ Petition were passed on 13th and 17th March, 1973. Till then C.P.R.O. No.73/73 had not been issued; it was issued only on 29.6.73 and made effective from 1.7.73. The decision of the Hon'ble High Court therefore throws no light on the comparative effect of Army Instruction 241/50 qua C.P.R.O. No.73/73. We are unable to hold therefore that on account of the judgement of the Hon'ble High Court in Writ Petition No.2118/73 the Govt. were not competent to issue C.P.R.O. No.73/73.

14. The learned counsel for the petitioners lastly urged that assuming that there were no Rules or Instructions on the subject, fairness and justice would demand counting of service rendered in an earlier equivalent post to the subsequent service for the purposes of seniority specially because such employees had to be in several years of service before the direct recruits came to be appointed. There can be no doubt that in the absence of the Rules/Instructions the criterion of taking into account the service rendered in an earlier post of equivalent status would be fair and just, and that persons who have already rendered several years of service should be accorded seniority over the persons recruited later on equivalent post. But this criterion cannot be made applicable to a case where rules, and in their absence instructions having force of Rules, issued by the competent executive authority do exist. We must emphasize that the validity

of C.P.R.O. No.73/73 has not been challenged before us and therefore we are not called upon to test its validity on the touch stone of reasonableness as recognised in Article 14 of the Constitution of India. We must proceed on the basis that the C.P.R.O. No.73/73 is a valid provision. That being so, it must override the general principle of giving priority to length of service.

15. The power to frame rules under Article 309 of the Constitution of India or to modify them and similarly to issue Executive Instructions under Article 73 of the Constitution of India is beyond dispute; such Executive Instructions are also binding and enforceable. Of course such Instructions cannot have a retrospective effect. In the present case the C.P.R.O. No.73/73 was issued by the Ministry of Defence on 29.6.73 and was made prospective from 1.7.73. The consequence is that as from 1.7.73 the criterion of seniority as laid down in C.P.R.O. No. 73/73 will have to be followed in respect of those persons who entered into the category of persons whose seniority is to be determined on or after 1.7.73. Admittedly, the petitioners were appointed as Junior Scientific Assistant grade II in August, 1974 and therefore their seniority has got to be determined in accordance with the criterion contained in C.P.R.O. No.73/73.

16. We have already pointed out that it is the admitted case of the parties that if C.P.R.O. No.73/73 applies, the petitioners have no valid grievance to

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the restoration of Seniority Roll as on 1.11.1980 by withdrawing the provisional seniority list as issued by Notice dated 25.11.80.

17. Our attention has been invited to the fact that on the institution of the Writ Petition an interim order was passed on 3.11.81 by the Hon'ble High Court directing that until further orders, the seniority of the petitioners shall not be adversely changed. That interim order was confirmed on 23.3.84 with the modification that the respondents were given liberty to promote and confirm other eligible employees working in the Establishment in accordance with law but posts shall be kept reserved for each petitioner so that in case their petition is allowed they may not be put to any irreparable loss. This interim order only reserved some posts in case the petitioners succeed. It does not affect the merits of this petition.

18. On a careful consideration of all the matters we find that the petition must fail.

19. The Writ Petition is dismissed; the interim order is vacated. Parties shall bear their costs of this petition.

R. M. Rawal

Member (A)

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Vice Chairman

Dated the 23rd May, 1990.

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