

O.A.No.1594/94.

Date: 25-1-1996.

J U D G M E N T

X as per Hon'ble Sri R.Rangarajan, Member(Administrative) X

Heard Sri K.K.Chakravathy, learned counsel for the applicant and Sri N.R.Devaraj, learned Standing Counsel for the official respondents.

2. The concise facts of this case are narrated as under:-

(i) Labour Officers in the Central Pool Labour Officers Service (for short CPLOS), Assistant Commissioners of Labour (for short ALC) in Central Industrial Relations Machinery (CIRM) and Assistant Welfare Commissioners (AWCs) were three distinct services under the Ministry of Labour till 3.2.1987 when all the three services were amalgamated. A notification dt. 3.2.1987 was issued combining the above three different services into one organisation called Central Labour Services and Central Labour Service Rules, 1987 (for short 1987 rules) were framed under Article 307 of the Constitution.

(ii) Respondents 4 to 6 and the applicant were appointed as Labour Officers in CPLOS on 1.5.1976, 4.3.1977, 11.3.1980 and 29.1.1980 respectively. Date of their joining in the service determine the seniority in that service when it was a separate seniority unit. R-4 to R-6 applied for the post of ALC in CIRM service, when a notification was issued by the U.P.S.C. for filling up the posts of ALC in CIRM. The grades and posts of ALC though in the same scales of pay as Labour Officers in CPLOS,

recruitment is made by the UPSC by issuing a notification for direct recruitment. R-4 to 6 applied for the direct recruitment of ALC in CIRM service and were selected as direct recruits through the above mentioned selection. R-5 joined the Service as ALC on 12.2.1982 while R-4 & R-6 joined the said service on 15.2.1983 and 20.7.1984 respectively. Thus, R-4 to R-6 joined as ALCs in CIRM as a fresh entrants in that service without having any lien in the post of Labour Officer in CPLOS, which posts they held earlier to their joining as ALCs in CIRM. It is evident that the services in the post of Labour Officer in CPLOS of R-4 to 6 were wiped off when they joined as fresh entrants as ALCs in CIRM. Their seniority in the post of ALC in CIRM will count from the date of their joining as ALCs in CIRM. The applicant herein continued as Labour Officer in CPLOS without any break till three services mentioned above were combined.

(iii) As stated, by notification dt. 3.2.87 the three separate services viz. CPLOS, CIRM and Labour Welfare Officers were combined to form a single service called 'Central Labour Service'.

(iv) When the services were combined, a seniority list of all the officers in the combined service in Grade-V was issued wherein the seniority of the applicant was shown below that of R-4 to 6 taking into account the ^{initial} dates of the joining of the respondents 4 to 6 in the post of Labour Officer in CPLOS. The contention of the applicant is that R-4 to 6 having left the service in CPLOS and joined as ALC

in CIRM as a fresh recruit, and that their earlier service as Labour Officer having been wiped off because of their resigning from that service, and joining the service in CIRM as a fresh entrants, their seniority in the combined Central Labour Service can be counted only from the date they ~~were~~ joined as ALCs in CIRM and not from the date they joined as Labour Officer in CPLOS. The applicant submitted a representation to revise the seniority list in Central Labour Service showing him senior to R-4 to 6, as he had continued as Labour Officer in CPLOS right from 1980 and thereby his date of entry in the Central Labour Service is earlier to R-4 to R-6. But, this was rejected and hence he filed this OA for showing him as senior to R-4 to 6 in the combined Central Labour Service.

(v) The respondents rely on Rule-9(1) of Central Labour Service Rules 1987 to state that the seniority of the applicant has been fixed correctly as per this rule.

Seniority Rule 9(1) of Central Labour Service Rules, 1987 reads as under:-

"9. Seniority - The inter-se seniority of officers appointed to the various Grades mentioned in Schedule-I at the initial constitution stage of the service under rule 6 shall be determined according to the length of regular continuous service in the Grade subject to maintenance in the respective grades of inter-se seniority of officers recruited under the rules mentioned in Clause (c) of rule 2: (emphasis supplied)"

A

Sub-rules of Rule-9 are not relevant to the issues involved in this OA.

Hence, this case revolves on the interpretation of Rule-9(1). Emphasised portion of the rule can be interpreted in two ~~dx~~ ways viz:-

- (1) Whether the regular continuous service in the grade in all the services which were amalgamated (i.e. counting seniority from the date R-4 to 6 joined as Labour Officer in CPLOS)? or
- (2) Whether the regular continuous service in the grade in the service in which the concerned Officers were working by the date of amalgamation (seniority for R-4 to 6 to be counted in the combined service only from the date they joined as ALCs)?

3. It was held in 1924 AC 185 (Shannon Realities Ltd. Vs. Ville De St. Michel) that where alternative interpretations are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the Statute purports to be regulating and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system. Thus, when two alternatives are available while interpreting Rule-9(1) of 1987 rules, it is essential to prefer that alternate which is consistent with the facts of this case and serves the purpose for which it was intended.

4. Reliance was placed on the following to come to conclusion that the services rendered by R-4 to 6 as Labour Officer in CPLOS also should be counted for the purpose of seniority in the amalgamated Central Labour Service.

- (a) AIR 1985 SC 1276 - Omprakash Sharma Vs. UOI
- (b) 1989 (7) SLR 311 - P.Saratchandra Vs. Smt. D.Malathy.
- (c) 1989 SCC(L&S) 206 - R.M.Ramual Vs. State of Himachal Pradesh

The above quoted cases are analysed to see how far they support the case of the respondents 4 to 6 to get the seniority from the date of their initial appointment as Labour Officers in CPLOS.

5. In O.P.Sharma's case, there were three divisions functioning under the control of the Divisional Electrical Engineer, Jhansi. The three departments are - (1) Divisional Electrical Engineer, Jhansi, (2) O/o the Asst. Electrical Engineer(Workshop), Jhansi, and (3) O/o the Asst. Electrical Engineer, Jabalpur. The clerical staff in these three units were borne in a common seniority list till 31.8.1956. Effective from 1.9.1956, the three units were made separate independent units and all the three units were also permitted to have separate seniority list for the Clerks working/ borne in their units. The workshop unit mentioned under Item-2 above was merged with the departmental office of the Chief Electrical Engineer, Bombay and this merger continued till 31.7.1979. Effective from



...7/-

1.8.1979 all the three original departments mentioned above which were trifurcated on 41.8.1956 were re-amalgamated in the matter of staff and a common seniority list was introduced.

While the respondents 3 to 6 therein who belonged to erstwhile workshop unit under item-2 above and who were amalgamated with the staff of Chief Electrical Engineer ^(CEE) Bombay obtained accelerated promotion because of easy availability of vacancies ^{under CEE unit.} Consequently, when re-amalgamation was introduced from 1.8.1979 the said respondents 3 to 6 were reverted to the ^{earlier} common seniority list, they scored a march over the appellants because of fortuitous event. In that context, it was held by the Apex court in the above referred case as follows:-

"Obviously when the amalgamation took place, respondents Nos.3 to 6 could not score a march over erstwhile seniors on any valid principle of seniority. This would unquestionably be denial of equality under Article 16 of the Constitution. It may be that they might have enjoyed some accelerated promotion when workshop staff was amalgamated with the the Bombay office. But when they were repatriated and re-amalgamated with original two offices and brought back on the common seniority list, they must find their original place qua the appellants. This is not a case where appellants ^{were passed over at the time of selection or} denied promotion on the ground of unsuitability. In such a situation status quo ante has to be restored. Obviously respondents Nos.3 to 6 will be below the appellants and any other view to the contrary

would be violative of Article 16 as it would constitute denial of equality in the matter of promotion."

From the above fact, it is clear that trifurcation of the three units with effect from 1.9.1956 and their merger once again with effect from 1.8.1979 were done on administrative grounds and when such trifurcation and re-amalgamation done for the administrative reasons apex court held that the original seniority before trifurcation should hold good and be re-introduced.

In the present case, R-4 to 6 did not join as Assistant Commissioners of Labour (ALCs) on administrative grounds. They resigned the job of Labour Officer in CPLOS and joined as ALC on the basis of their selection when applications were called for the post of ALC by UPSC. R-4 to 6 resigned from the post of Labour Officer in CPLOS and joined as a fresh entrants as ALCs. Hence, how far it will be reasonable to grant them seniority from the date they joined as Labour officer in CPLOS especially ~~and~~ when no lien on the post of Labour Officer ^{was} maintained, need not be further examined. The reply is obviously ^{a negative} one. In the facts and circumstances of the case narrated above the present case can easily be distinguished from the facts of Sharma's case. The judgment of apex court, hence has no application for grant of seniority to R-4 to 6 in the amalgamated Central Labour Service.



6. Sri Saratchandran's case also came up for discussion at the time of hearing. It was felt by us at that time that the facts of this case were not very clear. However, now that the case has been analysed for giving seniority to R-4 to 6, this case also is examined on the basis of the available material in the above referred judgment.

Kerala State Electricity Board had a common establishment till 31.3.1964 which was bifurcated into two segments viz. General Establishment and Board's Secretarial Establishment. An option was given to those who were working in the common establishment (General Establishment) to opt for new establishment (Secretarial Establishment). Only those who were selected among the optees were taken into the new establishment. In the process, some of the seniors who had opted were not selected and some of the juniors who had opted were selected. The seniors who were not selected though opted continued in the original establishment. The juniors who are selected had joined the new establishment, got promotion therein. The seniors who were not selected though opted continued in the same grade in the original establishment.

In the year 1981, the new establishment viz. the Secretarial Wing was amalgamated with the original common establishment. Then a regulation was made inter-alia for fixation of inter-se seniority of the employees of the two establishments at the initial stage of amalgamation. It was laid down that the total length of

A

service in the cadre in which they were working at the time of amalgamation as the basis for fixation of inter-se seniority. This formula was challenged by the seniors in the original establishment who could not be selected for the Secretarial Wing over their juniors by claiming that they have to be given seniority over their erstwhile juniors while fixing inter-se seniority on amalgamation irrespective of the cadre by the date of their amalgamation. Though, the Writ Petition was allowed, the same was set aside in Writ Appeal, but an opportunity was given to the concerned employees to make representations to Kerala State Electricity Board in regard to the same. On consideration of those representations, Kerala State Electricity Board decided to fix the inter-se seniority by taking into consideration the total length of service irrespective of the cadre. The Kerala High Court had not agreed with the said view in Saratchandran's case. While referring to Omprakash's case, it was observed by the Kerala High Court that the seniors who had opted having been overlooked at the time of selection to the Secretarial Establishment, while in the case of Omprakash Sharma's case there was no such passing over and hence the total length of service in the same cadre had to be taken into account for consideration for fixation of inter-se seniority on amalgamation.

From the above fact, it is clear that the bifurcation of the original department and amalgamation of the bifurcated departments was done on the basis of

existing circumstances at that time. The bifurcation and re-unification was done for the administrative reasons. The employees were given option to join the new department on selection. It is not the case where employees left their original establishment on their own and joined the new establishment. The bifurcation and re-unification is similar to the case of O.P.Sharma. For the reasons stated in O.P.Sharma's case, the case of the present applicant in this O.A. is distinguishable from the case of Sri Sarachandran. For reasons stated, the present citation also cannot help the respondents 4 to 6 in this case to get seniority from the dates of their joining as Labour Officer in CPLOS.

7. In Ramual's case, the question of fixation of inter-se seniority when the part of Punjab State was added to Himachal Pradesh at the time of re-organisation of States came up for consideration. The inter-se seniority is to be decided on the basis of length of service in the same post or equivalent posts. There was also a second guideline in regard to equation of posts. The apex court in this reported case considered only in regard to equation of posts. Here also the question of joining the other department on their volition as a fresh entrants does not arise. The amalgamation was done for the administrative reasons. Hence, this case also cannot help R-4 to 6 in the present case for getting seniority from the dates of their joining as Labour Officers in CPLOS.

8. Now, we will take up the question of applicability of second interpretation of Rule-9(1) referred to in para-2(v) supra. The facts of this case reveal that the R-4 to 6 in this case have joined as Labour Officer in CPLOS earlier to the applicant, resigned their job and joined as ALC in CIRM by applying to a notification issued by UPSC for the posts of ALC. There is no averment by the ^{official} respondents in their reply that R-4 to 6 maintained their lien in the Labour Service in CPLOS eventhough they joined as ALCs in CIRM. The applicant states that R-4 to 6 resigned their job on their posting as ALCs. Hence this would mean that R-4 to 6 have discontinued their service as Labour Officer and joined as ALCs as fresh entrants, thereby wiping of earlier service as Labour Officers in CPLOS.

9. The applicant relies on the reported case [AIR 1974 SC 246 - State of Gujarat Vs. C.G.Desai and Ors.] to state that R-4 to 6 having resigned the job of Labour Officer in CPLOS to join as ALC for bettering their prospects cannot claim their earlier service as Labour Officer in CPLOS for placing them (R-4 to 6) above him(applicant). The facts of the above referred case are as follows:-

R-1, in the appeal filed by the State of Gujarat, was initially officating ⁱⁿ the post of Deputy Engineer since May, 1955 in P.W.D. of the then State of Bombay and he continued in service as such until 3.12.1959 when he was selected and appointed as a result of a competitive examination held by Public Service Commission,



to a post in B.S.E. Class-II service. Being a direct recruit to Class-II service, he had to undergo training for a period of one year and thereafter to work on probation as Incharge of sub-division, for a further period of one year. Since, he had ~~was~~ already worked as officiating Deputy Engineer, the training period was waived and he was directly placed as Incharge of Sub-Division. On completion of two years of probation he was confirmed as Deputy Engineer Class-II with effect from 3.12.1961. Sometime in June, 1961 a committee was appointed by the State Government to prepare a select-list of Deputy Engineers for promotion as officiating Executive Engineers. But, the case of R-1 was not considered for the reasons that he had not put in six years of service in 1961 as "eligibility service" for consideration for selection to the post of officiating Executive Engineer. The stand of the Govt. was that in case of Deputy Engineer directly recruited through a competitive examination held by the Public Service Commission, service if any, rendered by them as officiating Dy. Engineer prior to their appointment to Class-II service (hereinafter called pre-selection service) could not be taken into account in computing their 'eligibility service'. The case of the R-1 therein was that the stand of the Govt. was wrong and under the relevant rules, his pre-selection service (from 16.5.55 to 2.12.1959) as ~~an~~ officiating Dy. Engineer had to be tagged ~~on~~ to his post selection service for ~~the~~ calculating the requisite period of his 'eligibility service'. The cases of R-2 & R-3 in the cited case was also similar.

The main ground taken before the High Court was that the action of the Government in excluding from computation of service rendered ^{by them} /as officiating Dy. Engineers (Class-II service) was violative of Article 16 of the Constitution of India in-as-much-as in the case of persons who were recruited to Class-II by promotion, their pre-selection service as officiating or temporary DE was computed towards their eligibility service. The High Court held "for promotion as ^{officiating} /Executive Engineers shall be considered on the basis that the pre-selection service rendered by them as officiating Dy. Engineers prior to their direct recruitment ^{as Deputy Engineer} /was liable to be taken into account in counting the minimum period of eligibility service requisite for promotion ^{as} /officiating Executive Engineers". The Judgment of the High Court was appealed against by the State of Gujarat and was heard by Their Lordships V.R. Krishna Iyer and H.S. Sarkaria, JJ. (as they were then). The appeal was allowed and it was held by the Supreme Court that there was no violation of Article 16 of Constitution as contended by the respondents therein.

In the course of the judgment Their Lordships held that the respondents appeared for direct recruitment selection of Dy. Engineer Class-II, to better their prospects. Had they continued as officiating Dy. Engineers they would have ~~been~~ taken long time to ^{get} /promoted to Class-II service.

It is worth to reproduce the observation made in the above context by the apex court:-

"If a person like any of the respondents to avoid the long tortuous wait leaves his position in the never ending queue of Temporary officiating Deputy Engineers etc. looking for promotion, and takes a short cut through the direct channel, to Class-II service, he gives up once for all, the advantages and disadvantages that go with the channel of promotion and accepts all the handicaps and benefits which attach to the group of direct recruits. He cannot, after his direct recruitment claim the benefit of his pre-selections service and thus have the best of both the worlds."

The important principles ^{that} are discernible in the above judgment are:-

- (a) When an employee resigns his previous job and joins as a direct recruit after ^{applying for} direct recruitment, his earlier service even in the same grade is wiped off.
- (b) The earlier service cannot also be considered for service eligibility for promotion to higher post. When the earlier service cannot be considered even for service eligibility, there can be no reason to consider that service for the purpose of seniority.

In the present case, R-4 to 6 appeared for direct recruitment to the post of ALC which was in a different seniority unit at that time from that of the Labour Officer in CPLOS. The intention of R-4 to 6 to

switch over to the new unit is evidently for bettering their career prospects or for reasons which will give them advantage. When they joined as ALC, they know very well that their seniority in that unit counts only from the date they ~~join~~^{joined} the post of ALC, as it existed as a separate ^{seniority} unit before amalgamation. Having known their seniority status as ALC they cannot claim the seniority from an earlier date in the combined service from the date they ^{joined} as Labour Officer in CPLOS. Knowing this only they have not presented their case, even though notices were served on them in this O.A. The ^{official} respondents for inexplicable reasons granted them (R-4 to 6) seniority in the amalgamated CLS from their initial appointment as Labour Officer in CPLOS. A perusal of the reply statement filed in this OA by the official respondents did not give any valid reason to grant seniority to R-4 to 6 as above. The official respondents hide themselves under rule 9(1) of 1987 rules to sustain their case. They have not given any reason as ^{to why} "the length of service in their grade in Rule-9(1) of 1987 Rules cannot be interpreted as "The grade in service he was working on the date of amalgamation".

The judgment in the appeal filed by State of Gujarat referred to above clearly states that when directly recruited to a post, the length of service in that grade only after direct recruitment will count for service eligibility ^{for further promotion}. When earlier service before direct recruitment cannot be computed even for service eligibility for promotion to a higher grade, how the department in the present case can grant seniority for

It was held in the said case that the petitioner therein had left the service under Punjab State Government and joined the Engineering Department of Chandigarh Administration and hence "his service as Assistant Engineer whether in the Irrigation Department or P.W.D. (B&R) prior to 18.8.1972 was completely wiped off". It was further held in the said case that the petitioner therein cannot claim his service as Asst. Engineer in Punjab State Government for reckoning of seniority in the cadre of A.E. in the Engineering Department of Chandigarh Administration.

The above cited case clearly indicates that counting of seniority when an official left his previous job and joins other department on his own volition is only from the date of his joining the other department. As can be seen from the facts of the case though the petitioner was initially sent on deputation to the Engineering department of Chandigarh Administration on 7.10.1972 he made a request to the Chandigarh Administration to absorb him in Engg. Department of Chandigarh Administration giving him the benefit of service in the Punjab State Govt. right from 15.7.1968, the date on which he joined as Asst. Engineer in Punjab Government. Chandigarh Administration informed him that he will lose his past services in the State Govt. and he will be given seniority at the bottom of the gradation list of officers of his category in Chandigarh Administration. However, the apex court by its decision dt. 1.9.1988 held that

Under Rule 12.5 administration had given power to give retrospective seniority and hence the seniority given to the petitioner with effect from 7.10.1972 was valid. From the facts of this case it is evident that the applicant joined Chandigarh Administration with effect from 7.10.1972 and hence he was given seniority in that cadre only from the date he joined Chandigarh Administration and his past services in Punjab Government were wiped off as he volunteered to join Chandigarh Administration on his own volition.

11. The principle in Puranjit Singh's case is very valid in the present case as R-4 to 6 had resigned from the post of Labour Officer in CPLOS and joined as fresh entrants as ALC. Had this amalgamation ~~had~~ not taken place, their seniority as ALCs would be from the date they had joined as ALCs, as their past services as Labour Officer in CPLOS had been wiped off. Hence, when the amalgamation of the three different seniority units ~~of the department~~ took place, ~~it means~~ they cannot claim seniority from ~~the~~ ^{their} earlier date of joining as Labour Officer in CPLOS as they had resigned from that post before joining as ALC. Puranjit Singh's case is ^a fore-runner for deciding the case of the respondents herein in the seniority dispute. I am of the opinion that Sri Puranjit Singh's case is identical to the case under discussion now. The reliance of the

...20/-



applicant on this reported case to strengthen his contention cannot be dismissed lightly as not helpful to him, but it had to be held that it proves his case.

12. The apex court in (1995) 31 ATC 516 (R.Ramaswamy Vs. Govt. of Tamil Nadu and Ors.) had observed that "when an officer is transferred from one post to another with the same status of scale of pay, his seniority will count from earlier post as per rule in that case. Conversely this ruling would imply that an Officer who was not transferred but joined the other department after resigning the post in the earlier department, cannot count his seniority from the date of his joining in the earlier department".

13. It is not disputed that the Labour Welfare Officer in CPLOS and ALC in CIRM are borne on two different seniority units prior to amalgamation and both of them were in the same scales of pay. If in the amalgamated cadre R-4 to 6 can claim seniority from the dates of their joining as Labour Officer a piquant situation will arise. This situation can be explained as follows:-

All Class-I services in the Central Government are having same scales of pay as given in Schedule-III of 1987 rules. The lowest in Class-I service is Grade-V scale. The Labour officer in CPLOS and ALC in CIRM are

recruited in that grade before amalgamation. All other Central Services also are having the same scales of pay at the initial induction stage viz. Grade-V. How the seniority of ^{an} Indian Railway Personnel officer (IRPS for short) who joins the Railway in Class-I service and later joins on fresh selection in Grade-V scale viz. junior scale as ALC or Labour Officer or in Central Labour Service is to be fixed? IRPS officer also deals with Labour matters similar to Labour Officers/ALCs/Officers in Central Labour Service. If the IRPS officer after joining the Railways applies for the post of ALC and gets selected and joins the post can he also claim ~~xxx~~ his past service in the post of Asst. Personnel Officer in Railways for counting the seniority in the new seniority unit of Labour Service. Obviously this request of the IRPS officer cannot be countenanced and will be resisted even by the official respondents in this OA as he was from other seniority unit. If such a request of the IRPS officer is accepted that will be violative of the provisions of the Constitution. The case of R-4 to 6 is also similar to the case of IRPS officer quoted above. Hence, to avoid such a piquent situation only alternative interpretation(2) suggested to Rule 9(1) of 1987 rules is more appropriate.

14. Departmental rules and precedences/past experiences forms the back bone of the Administrative Law. It was held by us in X 1995(1) ATJ 477 - Smt.S. Shakuntala Devi and Ors. Vs. The C.P.O., S.C.Rly., Sec'bad and Ors. X that reliance on precedences/past experiences is valid while resolving the disputes arising amongst employees. Large and established departments give valuable clue for resolving disputes of the type in this case. One

D

such instance from Railways is quoted below:-

An Asst. Station Master (ASM) of the Hubli Division accepted bottom seniority and joined Guntakal Division in the direct recruitment category of ASM thereby foregoing his seniority in Hubli Division. He was posted to a contiguous section of the Hubli Division in Guntakal Division. For operational reasons the said contiguous division was attached to Hubli Division later and the ASM also opted to stay in the contiguous division though attached to Hubli division. Thus, he was taken back to Hubli division with his seniority position in Guntakal Division as he was posted to Hubli Division on administrative grounds. His erstwhile juniors in Hubli Division became senior to him when he joined Hubli Division as he joined as a fresh entrant in Guntakal Division on his own volition and his seniority in Guntakal Division was only protected.

The rules for such absorption as quoted above is more and less similar in all the G.O.I. departments. The case of the respondents 4 to 6 herein in this OA is also to be viewed on the same lines as the ASM in Railway referred to above. Whenever an employee opts to come to other seniority unit on his option either through direct recruitment or otherwise, he has to be placed at the bottom of the seniority unit in the category in which he joins and if any amalgamation takes place the employee is entitled to get only that seniority he

and is also possesses in the opted department. This is a well in accordance settled rule in administrative parlour. Hence R-4 to with the principle laid down by R-6 are entitled to get ^{only} that seniority which they possess Apex court in Sharma's case as ALC in CIRM when the three departments were amalgamated

A

and they cannot aspire to get the seniority from the date they joined as Labour Officer in CPLOS.

15. I have already stated that R-4 to 6 were fully aware at the time of their joining as ALC in CIRM that their seniority will count only from the date of their joining as ALC in CIRM unit as they joined in that department as fresh entrants. Having known that, they cannot now ask for seniority from an earlier date just because the amalgamation had taken place. The service earlier to their joining as ALC in CIRM having been wiped off because of the fact that they entered as fresh entrants as ALCs they can have no claim for their past service as 'Labour Officer' in CPLOS.


[as otherwise they would have contested this case with full vigour]

16. In any seniority disputes both sides cannot be satisfied. Especially a seniority dispute between two officials/^{one} will always stand to loose because of the rules. In such a case the question of violation of any Constitutional provision does not arise. Hon'ble V.C. has said that there will be violation of Article 16 of Constitution if the relevant phrase of Rule 9(1) of 1987 Rules is interpreted as grade in service in which he was working on the date of amalgamation. Violation or otherwise of Article 16 of the Constitution has to be examined on its merits of each case. ~~That alternate~~ which is absurd or violative of constitution has to be avoided. If one of the interpretation chosen which has

a better merit as envisaged in 1924 AC 185, it cannot be said that it will violate Article 16 of the Constitution. The question of violation of any Article, in my opinion, does not arise in this case if one of the ^{interpretation} which has better merit is chosen. In my opinion, the second interpretation will clear the uncertainty or friction in the working of the system and hence to be preferred for the reasons stated above.

17. Hon'ble V.C. in his judgment at para-14 seems to suggest that the applicant will gain by second interpretation only few places whereas the respondents will lose heavily in their seniority position. But, our aim is not to see who loses or who gains. Our aim in this interpretation is to see that the rule is properly interpreted and the respondents adhere to that interpretation and revise the seniority list accordingly. Hence, I see no purpose will be served by looking into the details regarding the positions gained by the applicant or position lost by the respondents.

18. With due respect I differ from the views expressed by Hon'ble V.C. for the reasons stated above. The OA has to be allowed and a direction has to be given to the official respondents to fix the seniority of R-4 to 6 taking into account their date of entry into the grade of ALC vis-a-vis the applicant's date of entry as Labour Officer in CPLOS.


(R. Rangarajan)
Member (Admn.)

Grh.



19. Earlier, the learned V.C. had circulated for my concurrence a 13-page judgment. I gave my views differing from the views expressed by the learned V.C. in my draft judgment of 24-pages as above. After going through my views in this case, the learned V.C. has revised his earlier judgment of 13-pages to a 22-page judgment and sent the same to my judgment. In my judgment the case of State of Gujarat Vs. C.G.Desai [AIR 1974 SC 246] was discussed which was relied upon by the applicant to assist his contention. Though in his earlier judgment, the learned V.C. has not made any reference to this citation, the same has been analysed in this revised draft judgment, as I had discussed this citation in my brief. Though my draft judgment needs no revision as all the points discussed by learned V.C. in the present draft have been fully brought out in my judgment, I feel it necessary to clarify/^{elaborate} comment/on some of the points mentioned in the revised draft of the learned V.C. Hence, in addition to the points mentioned by me earlier as above, the following comments are added on the revised draft of the learned V.C.

20. In the latter part of para-10 of the revised draft, learned V.C. has stated that the case of Puranjit Singh Vs. Union Territory of Chandigarh & Ors. [1974 (5) SLR 280] does not help the applicant in support of his plea. In my judgment, in paras-10 & 11, I have stated that the earlier service of Puranjit Singh in the Punjab State Govt. has been wiped off as he has joined the

Chandigarh administration from 7.10.1972 on his own volition as held by Apex Court. Eventhough it is not an integration of the department, the fact that when an employee joins the other department on his own volition which is a different seniority unit, that past services though in the same grade cannot be counted for purposes of seniority in the later department. This principle has been held to be correct by the Apex court in that case. In the present case R-4 to R-6 having left the CPLOS on their own volition, cannot claim the service in CPLOS. This is the principle which had to be followed even if the three departments viz. CPLOS, CIRM and Welfare Organisations were combined subsequently. Because an integrated seniority list was prepared on amalgamation, the principle laid down by the Apex court in Puranjit Singh's case cannot be adhered to is not a proper appreciation of the Apex Court's ^{judgment} in Puranjit Singh's case. The principle laid down by the Apex court in Puranjit Singh's case is very valid in the present case also and hence assists the applicant in advancing his contention.

21. In para-11 of the revised judgment of the learned V.C. the case of Sarat Chandra (1989 (7) SLR 311) was discussed. No notable conclusion was drawn from this citation. The case itself is entirely different. In Sarat Chandra's case, those, who applied for the new service were screened and the seniors who were overlooked at the time of screening for the new service were not given the seniority on

A

amalgamation. Hence, the integrated seniority list was prepared on the basis of length of service in the cadre in which they were working at the time of amalgamation. I have already stated in para-6 that the Sarat Chandra's case cannot help the respondents 4 to 6 to get their seniority from the date of their joining in CPLOS as in Saratchandra's case element of selection was involved at the time of bifurcation. As the learned V.C. has not drawn any conclusion on the basis of this citation. I presume that my view that Sarat Chandra's case does not help R-4 to R-6 has been agreed to.

22. My views that the case of Omprakash Sharma (AIR 1985 SC 1276) and Ramual (1989 SCC(L&C) 206) cannot be taken as citations helping the case of R-4 to 6 has not been fully commented upon. As a matter of fact, the learned V.C. himself has stated in the last para of page-22 in his revised draft that neither the applicant nor the respondents had made any direct reference to any appropriate citation to assist their case. Hence my view that Sharma and Ramual's case does not help R-4 to R-6 stands good.

23. The learned V.C. has advanced his reasoning that the case of State of Gujarat Vs. C.G.Desai (AIR 1974 SC 246) does not help the applicant. The case of Desai has been fully explained by me in para-9 supra. It is not necessary now to state the facts of this case once again. My comments on the various points mentioned by the learned V.C. in this connection are as below:-

(i) It is conceded even in the revised judgment of the learned V.C. that R-4 to 6 had chosen to apply for Grade-V posts in CIRM considering better prospects in that service. In that context the observation of the Supreme Court in Desai's case extracted at page-15 above assumes relevance. If one leaves the job on his own and joins the other seniority unit having better career prospects, can he add the earlier service in the former department for seniority in the amalgamated service? This point has been aptly replied in Desai's case. The present case of R-4 to R-6, having left CPLOS for achieving "better career prospects, they cannot claim the benefit of the previous service and thus have the best of both worlds". It is a fact that R-4 to 6 had resigned their job in Grade-V service in CPLOS and joined as a fresh entrant in Grade-V service in CIRM. It is not the case of the respondents, both official and private, that R-4 to 6 were permitted to apply to CIRM retaining their length of service in CPLOS while joining CIRM. Applications of R-4 to R-6 were forwarded through the proper channel as per the rules in vogue. The forwarding of the application is to ensure that R-4 to R-6 will be relieved if they are selected in CIRM. Just because the pay scales of Grade-V cadre, both in CPLOS and CIRM are same, it will not mean that the earlier service will also be carried forward. No rule or instruction to the above assumption has been advanced either by respondents or by the learned V.C. in his revised draft judgment.



(ii) It is an admitted fact that the seniority unit of CPLOS and CIRM are entirely different. Just because the three departments viz. CPLOS, CIRM and Welfare Officers cadre are under the one Umbrella viz. the Department of Labour, it does not mean that the Grade-V officers from one branch can be drafted to the other branch with their seniority. No doubt, it may be possible that one can go on deputation to the other department, but their seniority will be maintained in their parent department. If absorbed in the other department on administrative grounds only, they can carry their earlier seniority. If they leave their previous seniority unit on their volition and join the other seniority unit, they have to be placed in the bottom of the other seniority unit. Mere assertion that the old service will be carried along with them for giving them seniority in the other unit, does not carry conviction. No such rule or even executive instruction has been brought out by respondents or by the learned V.C. If so, where is the violation of Article 16?

(iii) Seniority on amalgamation of units in all cases need not be given by equating the posts if the grades and pay scales are same. This will arise only in cases similar to Sarat Chandra's case decided by the Kerala High Court. In the present case, there is no reason why the past services of R-4 to 6 have to be taken into account at the time of the amalgamation of the three services. As there is no case for counting earlier service of R-4 to 6, the question of discrimination does not arise and hence there is no violation of any Constitutional provision

D

(iv) The learned V.C. himself has observed that if R-4 to 6 are given the past services, there may be cases of Grade-V Officers who have joined initially in CIRM earlier to R-4 to R-6 joining CIRM may rank junior to them in the combined service. If such a case arises, then it will be a clear case of violation of Article 16 of the Constitution. Considering this aspect also, it is proper that R-4 to 6 get seniority in the amalgamated unit only as per their seniority in CIRM.

(v) The fact that R-4 to R-6 have resigned from CPLOS to join CIRM has not been highlighted at all in the revised draft judgment of the learned V.C. I have mentioned in my judgment that R-4 to R-6 having left CPLOS to join CIRM on their own, there is only one criteria for fixing the seniority viz. the date of joining in the last unit in which they served before amalgamation. In para-22 of the revised draft judgment of the learned V.C. it is observed that "it is well established that there can be a classification on any intelligible differentia". He seems to be under the impression that those who joined in one department and continued in that department till amalgamation and those who joined in one department and switched over to the other department before amalgamation form two different categories. On that basis, he seems to be of the opinion that if R-4 to R-6 does not compare their chances with their erstwhile juniors in CPLOS after amalgamation, it will be a case of discrimination. Such a view can be taken only if R-4 to R-6 joined CIRM from CPLOS on administrative grounds. But, the fact conveniently forgotten is that R-4 to R-6 resigned from

CP-OS on their own volition and hence cannot have any claim over their past services in CP-OS. If that is so, the question of two distinct categories as brought out in the revised draft judgment does not arise. Hence, there is no case of denial of equal opportunity to R-4 to R-6 and the interpretation of the Rule 9(1) of the Central Labour Service Rules, 1987 should be to the effect that the length of service in the grade in the last unit before amalgamation is only to be taken for preparing the integrated seniority list after amalgamation.

(vi) The learned V.C. seems to suggest in para-28 that only legal precedences have to be taken while interpreting a provision, and the decision taken by the administration cannot be taken as a precedent in that context. Good laws are made by observing the actual precedences in the field. Laws are not made by the wisdom of a single individual. Laws are enacted on the basis of collection of statistics, precedences in the field and such other related matters. No law can be realistic, if the reality is not taken into account. Hence, though the reported case (1995(1) ATJ 477) may not be an authority to be taken note of in this case, the principle that only legal precedences should be quoted while interpreting the provisions does not carry conviction.

24. In view of what is stated above, the O.A. has to be allowed. No costs./

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

न्यायालय अधिकारी
COURT OFFICER
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद बेंच
HYDERABAD BENCH

In view of the difference of views expressed by us, these orders along with the pleadings have to be placed before the Hon'ble Chairman for referring under section ²⁶29 of A.T.Act, 1985.

Sd/- HRRN
MCA)

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

J. Sune

न्यायालय अधिकारी
COURT OFFICER

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Officer

हैदराबाद बेंच
HYDERABAD BENCH

Sd/- HVRG
V.C.

1/2/86

- To
1. The Secretary, Govt. of India, Ministry of Labour Shramashakti Bhavan, Rafi Marg, New Delhi.
 2. The Secretary, U.P.S.C. Shajahan Road, New Delhi-11.
 3. The Secretary, Dept. of Personnel and Training, Govt. of India, North Block, New Delhi-1.
 4. One copy to Mr. K.K. Chakravathy, Advocate, CAT. Hyd.
 5. One copy to Mr. N.R. Devraj, Sr. CGSC. CAT. Hyd.
 6. One copy to Library, CAT. Hyd.
 7. One spare copy.

pvm.

Comm
to be
Compl

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL:

AT HYDERABAD.

M.A.NO. 219 OF 1995

in

O.A.NO.1594 of 1994.

..

BETWEEN:

T.Koteswara Rao
s/o Sri T.Ankineedu,
aged about 45 yrs, Grade IV Officer,
Central Labour Service,
on deputation as Industrial
Religations Officer at Nuclear
Fuel Complex,Hyderabad-500 762.

.. APPLICANT/
Applicant.

and

1. The Government of India,
represented by its Secretary,
Ministry of Labour,
Shramshakti Bhavan,Rafi Marg,
New Delhi-110 001.
2. The Secretary,
Union Public Service Commission,
New Delhi-110 011.
3. The Secretary,
Department of Personnel & Training,
Government of India,North Block,
New Delhi-110 001.
4. Sri R.Shanti Sharma,
Father's name: not known,
aged about 51 years,
Regional Labour Commissioner(Central)
Ajmir Post,
Ajmir District,Rajasthan.
5. Sri D.M.Dhiwal,
Father's name: not known,
aged about 44 years, Regional
Labour Commissioner(Central),
Bellard Estate,
Bombay, Maharashtra-400 038.
6. Sri V.S.S.Srivastava,
Father's name: not known,
aged about 44 years, Regional
Labour Commissioner(Central),
Dhanbag,Bihar -State- 260003.

.. RESPONDENTS/
Respondents.

Petition filed under Rule 8(3) of the Central Adminis
tive Rules,1987.

2.

The address of the Applicant for the purpose of service of all notices etc., is that of his counsel M/s.G.Bikshapathy,G.Vidyasagar, V.Vishwanatham and K.K.Chakravarthy,Advocates, 16-9-749/41,Race Course Road, Old Malakpet, Hyderabad-500 036.

The address of the Respondents for the purpose of service of all notices etc., are the same as mentioned in the cause title.

Facts of the case:

The Applicant submits that he was appointed as Labour Officer with effect from 29-1-1980 under the central pool Labour Officers Service Rules. The said appointment was under direct recruitment rules. He was regularised in the said post. Similarly respondents 4 to 6 were also appointed as Labour Officers under the said category. The next promotion from the said category lies to the post of Senior Labour Officer at the relevant time.

2. The averments made in the O.A. may be read as part of this petition.

3. The Applicant submits that he has filed this O.A. questioning the office memorandum No.A-23021/2/92-CLS.I (V Vol.I.II) dated 1-11-1994 issued by the first respondent, in so far as it relates to fixation of seniority of the respondents 4 to 6 over the applicant.

3.

It was admitted and ordered to be expedited.

Subsequent to the filing of this O.A. the first respondent conducted a D.P.C. during the third week of February and finalised the promotional panel for giving ~~promotion~~ on adhoc basis to the respondents No.4 Sri R. Shanti Saran, who is working as Regional Labour Commissioner, Ajmir, Rajasthan state to the post of grade-III of Central Labour Services which is the next promotional post to the applicant also. The contention of the applicant is that he is the senior than the other respondents 4 to 6 and as such he has to be provided with that post. in whatever manner it may be whether it is adhoc or regular. The first respondent ought to have considered the applicant's case because he is in the knowledge of the matter. He failed to do so. Therefore the applicant prays this Hon'ble court to give a direction to the first respondent to promote him in the said vacancy or vacancies that may be filled up prior to the promotion of Respondent No.4.

4. In this connection it is submitted that the contention of the first respondent that the above promotion is adhoc and as such no right can be conferred may not hold good for the reason the contention of the petitioner is that he is senior and as such in any event he must be given promotion before considering the ~~case~~ case of fourth respondent.

Prayer:

Therefore it is prayed that this Hon'ble

Tribunal may be pleased to direct the respondent No.1 to consider the petitioner for promotion to the post of Grade III of Central Labour Services before considering the case of Respondent No.4 which is going to be effected in a short span of time, pending disposal of the O.A. and pass such further or other orders as this Hon'ble Tribunal deems fit and proper under the circumstances of the case.


Applicant.

Verification:

I, T.Koteswara Rao son of Sri T.Ankineedu, aged about 42 years, working as Industrial Relations Officer at Nuclear Fuel Complex, Hyderabad applicant herein, do hereby verify and state that the contents of the above Application are true and correct to the best of my knowledge and belief and that I have not suppressed any material facts.

Hence verified on this the 26th day of February, 1995 at Hyderabad.


COUNSEL FOR THE APPLICANT.


APPLICANT

Returned MASR 752/95

1. 2 more copies of MA
to be filed.

in days time

Ar
6/3/95
for DE(S)

~~Referred~~
~~petition~~

Completed
Ar
7.3.95

Reg: = Direction petition

HYDERABAD DISTRICT

CENTRAL ADMINISTRATIVE TRIBUNAL:

AT HYDERABAD.

M.A.NO

OF 1995.

in

O.A.NO. 1594 of 1994.

..

Miscellaneous Application:

..

Received 2/3/95
Ar
N/Ram



Filed by:

M/s. G. Bikshapathy,
G. Vidyasagar &
V. Viswanatham &
K. K. Chakravarthy

Counsel for the Applicant

Ar
7/3/95