

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 8324-8327 OF 2022

[Arising out of Special Leave Petition (Civil) Nos. 30734-30737 of 2014]

AMIT SINGH

...APPELLANT (S)

VERSUS

**RAVINDRA NATH PANDEY & ORS.
ETC. ETC.**

...RESPONDENT(S)

J U D G M E N T

B.R. GAVAL, J.

1. Leave granted.
2. The appeals challenge the judgment and order dated 4th September 2014, passed by the Division Bench of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow, in Special Appeal No. 625 of 2008 and other connected Appeals, thereby, while upholding the order

passed by the learned Single Judge, modifying it to the extent that the seniority list shall be prepared by applying the *rota* system to direct recruits and promotees appointed in one recruitment year.

FACTUAL BACKGROUND

3. The facts, in brief, giving rise to the present appeals are as under:

3.1 The writ petitioners, who were promoted to the post of Assistant Consolidation Officers (hereinafter referred to as “the ACOs”) against the recruitment year 1997-1998, approached the learned Single Judge of the High Court, claiming that their seniority was above the direct recruits of the same recruitment year. It was the contention of the writ petitioners that the ACOs who were directly appointed were erroneously given seniority over the promotees. It was their contention that the seniority was required to be given in accordance with Rule 8(3) of the U.P. Government Servants Seniority Rules, 1991 (hereinafter referred to as “the 1991

Rules”) and their names had to be placed in a cyclic order, i.e. a promotee followed by a direct recruitee.

3.2 The writ petitioners were initially appointed as Consolidators in the Consolidation Department in various districts. They were promoted to the post of ACOs on various dates in the year 1997. The respondents in the writ petitions, i.e. direct recruits were directly appointed to the post of ACOs, on the basis of the recommendation of the Uttar Pradesh Subordinate Services Selection Commission and as per the recruitment process under the Uttar Pradesh Revenue Consolidation Service Rules, 1992 (hereinafter referred to as “the 1992 Rules”). The direct recruits were appointed on 18th August 1997. As such, both the promotees as well as the direct recruits came in the cadre of the ACOs in the recruitment year of 1997-1998, i.e. between 1st July 1997 and 30th June 1998.

3.3 The claim of the writ petitioners was resisted by the State as well as by the direct recruits. It was contended on behalf of the State as well as the direct recruits that the

seniority has to be assigned on the basis of the year of vacancy. It was submitted that, in the case of direct recruits, though for an earlier year there existed vacancy for them, they were appointed subsequently and as such, they were given seniority in the quota available in the earlier years.

3.4 The learned Single Judge of the High Court came to the conclusion that the direct recruits were appointed on 18th August 1997, whereas the writ petitioners were promoted on 16th December 1997. The learned Single Judge found that both the promotees as well as the direct recruits became members of the cadre of ACOs in the same recruitment year, i.e. 1997-1998, and, therefore, in accordance with Rule 8 of the 1991 Rules, they had to be placed in the seniority list in a cyclic order. It was found that the said exercise was carried out in the year 2003; however, the same had been abruptly changed through the seniority list dated 29th July 2005, impugned before the High Court. The learned Single Judge found that in the

recruitment year 1997-1998, there were requisite number of posts available for promotees and as such, the action of the State in denying the seniority to the promotees was not sustainable. The learned Single Judge, therefore, allowed the writ petitions and quashed and set aside the impugned seniority list dated 29th July 2005. The learned Single Judge further directed that the promotees of 1997 to be placed above the direct recruits of that year.

3.5 Being aggrieved thereby, the direct recruits preferred appeals before the Division Bench of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow. The learned Judges of the Division Bench of the High Court, vide the impugned judgment and order dated 4th September 2014, upheld the findings of the learned Single Judge of the High Court, but modified the same to the extent that the State shall apply *rota* system to direct recruits and promotees appointed in one recruitment year.

3.6 Being aggrieved thereby, the appellant-direct recruit has approached this Court.

SUBMISSIONS

4. We have heard Mr. S.R. Singh, learned Senior Counsel appearing on behalf of the appellant and Mr. Pradeep Kant, learned Senior Counsel, Mr. Rakesh K. Sharma, and Mr. Tanmaya Agarwal, learned counsel appearing on behalf of the respondents.

5. Mr. S.R. Singh, learned Senior Counsel, submitted that the direct recruits were appointed as ACOs on 18th August 1997, whereas the promotees came to be promoted vide order dated 16th December 1997. It is, therefore, submitted that the promotees had not even entered the cadre of ACOs when the appellant was appointed. It is submitted that, since the appellant was appointed much prior to the date on which the promotees were promoted, the 2005 seniority list rightly placed the direct recruits (including the appellant herein) above the promotees. It is submitted that the learned Single Judge as well as the Division Bench of the High Court have grossly erred in setting aside the said seniority list.

6. Mr. Singh further submitted that the 1991 Rules had an overriding effect, and in view of Rule 8 of the 1991 Rules, the seniority of persons appointed has to be determined only from the date of the order of their substantive appointments. It is submitted that the 1991 Rules will have no application to the facts of the present case. It is submitted that the finding of the learned Judges of the Division Bench that, if the selection is made in one recruitment/selection year the *rota* rules will apply, is without any basis.

7. Mr. Singh further submitted that if the judgments of the learned Single Judge and the Division Bench of the High Court are upheld, it would amount to permitting the promotees to get seniority retrospectively, which is not permissible in view of the law as laid down by this Court in the case of ***Uttaranchal Forest Rangers' Assn. (Direct Recruit) and others vs. State of U.P. and others***¹.

1 (2006) 10 SCC 346

8. Mr. Pradeep Kant, learned Senior Counsel, on the contrary, submits that the learned Single Judge as well as the Division Bench of the High Court have rightly held that since both the promotees as well as the direct recruits have entered the cadre of ACOs in the same recruitment/selection year, i.e. 1997-98, no interference would be warranted with the impugned order.

CONSIDERATION

9. For considering the rival submissions of the parties, it will be apposite to refer to the relevant Rules.

10. Rule 8 of the 1991 Rules reads thus:

“8. Seniority where appointments by promotion and direct recruitment.-

(1) Where according to the service rules appointments are made both by promotion and by direct recruitment, the seniority of persons appointed shall, subject to the provisions of the following sub-rules, be determined from the date of the order of their substantive appointments, and if two or more persons are appointed together, in the order in which their names are arranged in the appointment order:

Provided that if the appointment order specifies a particular back date, with effect from which a person is substantively appointed, that date will be deemed to be the date of order of substantive appointment and, in other cases, it will mean the date of issuance of the order:

Provided further that a candidate recruited directly may lose his seniority if he fails to join without valid reasons, when vacancy is offered to him the decision of the appointing authority as to the validity of reasons, shall be final.

(2) The seniority inter se of persons appointed on the result of any one selection,--

(a) through direct recruitment, shall be the same as it is shown in the merit list prepared by the Commission or by the Committee, as the case may be;

(b) by promotion, shall be as determined in accordance with the principles laid down in Rule 6 or Rule 7, as the case may be, according as the promotion are to be made from a single feeding cadre or several feeding cadres.

(3) Where appointments are made both by promotion and direct recruitment on the result of any one selection the seniority of promotees vis-a-vis direct recruits shall be determined in a cyclic order (the first being a promotee) so far

as may be, in accordance with the quota prescribed for the two sources.

Illustrations.--(1) Where the quota of promotees and direct recruits is in the proportion of 1 : 1 the seniority shall be in the following order :

First Promotee

Second Direct Recruits

and so on

(2) Where the said quota is in the proportion of 1 : 3 the seniority shall be in the following order:

First Promotee

Second to fourth Direct Recruits

Fifth Promotee

Sixth of eight Direct recruits

and so on

Provided that:

- (i) where appointment from any source are made in excess of the prescribed quota, the persons appointed in excess of quota shall be pushed down, for seniority, to subsequent year or years in which there are vacancies in accordance with the quota;
- (ii) where appointment from any source fall short of the prescribed quota and appointment against such unfilled vacancies are made in subsequent year or years, the persons so appointed shall not get seniority of any earlier year but shall get the seniority of the year in which their appointments are made, so

however, that their names shall be placed at the top followed by the names, in the cyclic order of the other appointees;

- (iii) where, in accordance with the service rules the unfilled vacancies from any source could, in the circumstances mentioned in the relevant service rules be filled from the other source and appointment in excess of quota are so made, the persons so appointed shall get the seniority of that very year as if they are appointed against the vacancies of their quota.”

11. The perusal of sub-rule (1) of Rule 8 of the 1991 Rules would reveal that, where according to the service rules appointments are made both by promotion and by direct recruitment, the seniority of persons appointed shall, subject to the provisions of the said sub-rules, be determined from the date of the order of their substantive appointments. It further provides that, if two or more persons are appointed together, then, it shall be in the order in which their names are arranged in the appointment order.

12. Sub-rule (3) of Rule 8 of the 1991 Rules would be most important. It provides that, where appointments are made both by promotion and by direct recruitment on the result of any one selection, the seniority of promotees vis-à-vis direct recruits shall be determined in a cyclic order, i.e. the first being a promotee, so far as may be, in accordance with the quota prescribed for the two sources.

13. The illustration given is clear that, where the quota of promotees and direct recruits is in the proportion of 1:1, the first post will go to a promotee; and the second post will go to a direct recruit and so on, and where the quota is in the proportion of 1:3, then the first post will go to a promotee, and second to fourth posts will go to direct recruits, the fifth post will go to a promotee and sixth to eighth posts will go to direct recruits, and so on. The proviso thereto clarifies that, where appointments from any source are made in excess of the prescribed quota, the persons appointed in excess of the quota shall be pushed down, for the purposes of seniority, to a subsequent year or years in which there

are vacancies in accordance with the quota. Similarly, it provides that, where appointments from any source fall short of the prescribed quota and appointment against such unfilled vacancies are made in a subsequent year or years, the persons so appointed shall not get seniority of any earlier year but shall get the seniority of the year in which their appointments are made, so however, that their names shall be placed at the top followed by the names, in the cyclic order of the other appointees. It further provides that, where in accordance with the service rules, the unfilled vacancies from any source could, in the circumstances mentioned in the relevant service rules be filled from the other source and appointments in excess of quota are so made, the persons so appointed shall get the seniority of that very year as if they are appointed against the vacancies of their quota.

14. It will also be relevant to note that, in the 1991 Rules, the term recruitment/selection year is not defined.

15. On 25th March 1992, the 1992 Rules were notified. The perusal of the 1992 Rules would reveal that they have been made in supersession of all existing Rules and Orders on the subject. Clause (m) of Rule 3 of the 1992 Rules defines “Year of recruitment’ to mean, a period of twelve months commencing from the first day of July of a calendar year.

16. Rule 5 of the 1992 Rules provides that, insofar as posts of ACOs are concerned, 67% posts would be filled by direct recruitment through the Uttar Pradesh Subordinate Services Selection Commission and 33% posts by promotion from amongst the substantively appointed Consolidators and Rectangulators through the Selection Committee. Rules 18 and 19 of the 1992 Rules would be vital, which read thus:

“18. Combined select list.- If in any year of recruitment appointments are made both by direct recruitment and by promotion, a combined select list shall be prepared by taking the names of candidates from the relevant list, in such manner that the prescribed percentage is

maintained, the first name in the list being of the person appointed by promotion.

Part VI- Appointment, Probation, Confirmation and Seniority

19. Appointments.- (1) Subject to the provisions of sub-rule (2) the appointing authority shall make appointment by taking the names of candidates in order in which they stand in the list prepared under Rule 15, 16 or 17, as the case may be.

(2) Where in any year of recruitment, appointments are to be made both by direct recruitment and by promotion, regular appointments shall not be made unless selections are made from both the sources and a combined list is prepared in accordance with Rule 18.

(3) If more than one orders of appointments are issued in respect of anyone selection, a combined order shall also be issued, mentioning the names of the persons in order of seniority as determined in the selection or, as the case may be, as it stood in the cadre from which they are promoted. If the appointments are made both by direct recruitment and by promotion, names shall be arranged in accordance with the cyclic order referred to in Rule 18.”

17. Rule 18 of the 1992 Rules mandates that, if in any year of recruitment, appointments are made both by direct

recruitment and by promotion, a combined select list shall be prepared by taking the names of candidates from the relevant list, in such manner that the prescribed percentage is maintained, the first name in the list being of the person appointed by promotion.

18. Sub-rule (2) of Rule 19 of the 1992 Rules specifically provides that, where in any year of recruitment, appointments are to be made both by direct recruitment and by promotion, regular appointments shall not be made unless selections are made from both the sources and a combined list is prepared in accordance with Rule 18. Sub-rule (3) of Rule 19 of the 1992 Rules further provides that, if more than one orders of appointments are issued in respect of any one selection, a combined order shall also be issued, mentioning therein the names of the persons in order of seniority as determined in the selection or, as the case may be, as it stood in the cadre from which they are promoted. It further provides that, if the appointments are made both by direct recruitment and by promotion, names shall be

arranged in accordance with the cyclic order referred to in Rule 18.

19. The position is thus clear. The 1992 Rules, which are framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, are in supersession of all existing Rules and Orders on the subject. Insofar as the contention of Mr. S.R. Singh, learned Senior Counsel, on Rule 3 of the 1991 Rules is concerned, the said Rules reads that, “*these rules shall have effect notwithstanding anything to the contrary contained in any other service rules made hereto before*”. As such, the 1991 Rules will have effect only if there is anything inconsistent therein with any of the provisions in the earlier service rules. This submission is without merit inasmuch as the 1992 Rules specifically state that they are in supersession of all existing rules and orders.

20. This Court in the case of ***Pawan Pratap Singh and others vs. Reevan Singh and others***² observed thus:

2 (2011) 3 SCC 267

“44. The Constitution Bench of this Court in *Direct Recruit Class II Engg. Officers’ Assn. v. State of Maharashtra* [(1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348] stated the legal position with regard to inter se seniority of direct recruits and promotees and while doing so, inter alia, it was stated that once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

45. From the above, the legal position with regard to determination of seniority in service can be summarised as follows:

(i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory

rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.”

21. This Court in the said case held that the effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be. This Court further held that the *inter se* seniority in a particular service has to

be determined as per the service rules. It held that the date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority *inter se* between one officer or the other or between one group of officers and the other recruited from different sources. It further held that any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution of India. It further held that the seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It held that the seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.

22. A bench of three learned Judges of this Court in the case of ***P. Sudhakar Rao and others vs. U. Govinda Rao***

and others³ has approved the law as laid down by this Court in the case of ***Pawan Pratap Singh and others (supra)***.

23. It is thus clear that the *inter se* seniority between the promotees and the direct recruits will have to be determined in accordance with the 1992 Rules. The 1992 Rules fix the quota of 67% for direct recruits and 33% for promotees. A “year of recruitment” has been defined to be a period of twelve months, commencing from the first day of July of the calendar year and as such, in the present case, the year of recruitment would be from 1st of July of 1997 to 30th of June 1998.

24. Admittedly, the direct recruits were appointed on 18th August, 1997, whereas the promotees were appointed on 16th December, 1997, i.e. both were appointed in the selection/recruitment year 1997-98. In view of sub-rule (2) of Rule 19 of the 1992 Rules, where the appointment of both the direct recruits and of the promotees were to be made in

3 (2013) 8 SCC 693

the same year of recruitment, regular appointments should not have been made unless selections were made from both the sources and a combined list was prepared in accordance with Rule 18 of the 1992 Rules. In view of sub-rule (3) of Rule 19 of the 1992 Rules, since the appointments in the same selection/recruitment year were made both by direct recruitment and by promotion, the names were required to be arranged in accordance with the cyclic order referred to in Rule 18 of the 1992 Rules. In view of Rule 18 of the 1992 Rules, a combined select list has to be prepared by taking the names of candidates from the relevant list, as per the quota for the direct recruits. In other words, the first name in the list was required to be that of a promotee.

25. A combined seniority list was initially prepared in accordance with the said provisions of the 1992 Rules on 18th September 2003. However, it had been erroneously changed on 29th July, 2005, thereby giving undue benefits to the direct recruits over the promotees. Such a list was in contravention of the provisions of Rules 18 and 19 of the

1992 Rules. When the 1992 Rules specifically emphasized that, where in any year of recruitment, appointments were to be made both by direct recruitment and by promotion, regular appointments could not have been made unless selections were made from both the sources and a combined list was to be prepared in accordance with Rule 18 of the 1992 Rules, the seniority list dated 29th July 2005, which provided a higher seniority to the direct recruits, is, for the aforesaid reasons, not sustainable in law.

26. Insofar as the judgment of this Court in the case of ***Uttaranchal Forest Rangers' Assn. (Direct Recruit) and others (supra)*** is concerned, the same would not be applicable to the facts of the present case. In the said case, the promotees, who were promoted in 1991, claimed seniority over the direct recruits who were substantively appointed at a prior point of time in 1990. In any case, the 1992 Rules did not fall for consideration in the said case.

27. As already discussed herein above, we are of the considered view that, in view of Rules 18 and 19 of the 1992

Rules, the seniority list dated 29th July 2005, impugned before the High Court, is not sustainable in law.

28. In the result, we find no merit in the present appeals. The appeals deserve to be dismissed and, as such, are dismissed.

29. Pending applications, if any, shall stand disposed of. No costs.

.....**J.**
[B.R. GAVAI]

.....**J.**
[B.V. NAGARATHNA]

NEW DELHI;
NOVEMBER 11, 2022