

Supreme Court of India

R. Prabha Devi & Ors vs Government Of India, Through ... on 8 March, 1988

Equivalent citations: 1988 AIR 902, 1988 SCR (3) 147

Author: B Ray

Bench: Ray, B.C. (J)

PETITIONER:

R. PRABHA DEVI & ORS.

Vs.

RESPONDENT:

GOVERNMENT OF INDIA, THROUGH SECRETARY, MINISTRY OF PERSONNEL

DATE OF JUDGMENT 08/03/1988

BENCH:

RAY, B.C. (J)

BENCH:

RAY, B.C. (J)

SEN, A.P. (J)

CITATION:

1988 AIR 902 1988 SCR (3) 147

1988 SCC (2) 233 JT 1988 (1) 488

1988 SCALE (1) 453

ACT:

Constitution of India, 1950-Central Secretariat Service Rules-Rule 12(2) as amended fixing 8 years approved service for both direct recruits and promotees as eligibility condition-Whether arbitrary and violative of Articles 14 and 16.

Service Jurisprudence-Promotion-Rule-making authority competent to frame rules laying down eligibility conditions-Seniority relevant for promotion only when eligibility criteria is fulfilled-Seniority cannot be substituted for eligibility-Mere seniority will not entitle a person for promotion-Seniority relevant only amongst eligible persons.

HEADNOTE:

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The appellants are direct recruit Section officers and were appointed in substantive vacancies of Section officers in accordance with the quota reserved for direct recruits. The inter-se seniority of the direct recruits and promotees is fixed in accordance with the quota and rota system. According to the C.S.S. Rules, 1962, the substantive vacancies of Section officers are manned by direct recruits and promotees and a quota of one-fifth of the substantive

vacancies has been reserved to be filled up by direct recruits. The remaining substantive vacancies of Section officers are to be filled up by appointment of persons included in the select list i.e. by promotion. The direct recruits on their appointment against substantive vacancies become senior to the promotees, as is in the present case.

The promotion of Section officers to Grade I post of C.S.S. Rules is made in accordance with the provisions of sub-rule 2 of rule 12 of the said Rules framed in 1962. According to this rule the direct recruits were eligible for promotion to Grade I in C.S.S. even though they have not rendered 10 years service, when promotee Section officers junior to them are considered for promotion to Grade I. The promotee Section officers had to render 10 years' approved service as Section officer before being considered for promotion to Grade I. This rule had been

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amended from time to time, the last of which was in 1984 by way of Notification No. 5/9/80 CS. I dated 29th December, 1984 which prescribed 8 years of approved service as Section officer as condition of eligibility for being considered for promotion to Grade I post in C.S.S.

This amendment was challenged before the Central Administrative Tribunal which dismissed the applications, holding that the amended rule is valid, just and equitable and no exception can be taken to it, and that it is not ultra vires of Articles 14 and 16 of the Constitution.

Aggrieved by the said order three appeals have been preferred before this Court, by way of special leave. It was contended that the amendment purports to entrench upon the prospects of the directly recruited Section officers for being considered for promotion to Grade I in as much as they are left out of the zone of consideration while their juniors i.e. the promotee Section officers are eligible for being considered for promotion to Grade I. This condition of eligibility has no nexus to suitability for promotion to the post and as such is in violation of the equality clause in Article 16 of the Constitution of India.

It was contended that for purposes of seniority in service the senior will be considered for promotion before those who are junior to them in service, and that the condition of eligibility as laid down in the said rule has no reference to suitability for promotion to the post and as such it is arbitrary and so void. The system prior to the amendment worked out satisfactorily and the direct recruit Section officers who were promoted to Grade I post performed their duties attached to the higher post duly and satisfactorily, and therefore the amendment is arbitrary and inequitable, and that this amendment works out to the serious prejudice of the direct recruit Section officers.

It was submitted that the effect of the amendment is to neutralise and negative the decision of this Court in *Pardasani & Ors. v. Union of India & Ors.*, [1985] 2 SCC 468

which held that the rules of seniority on the basis of quota-rota basis are unexceptionable.

On behalf of the promotee Section officers it was contended that the inter-se seniority between direct recruit Section officers and promotee Section officers is fixed in accordance with the quota-rota rule and thus has no reference to the length of service. The promotee Section officers have not been considered for promotion in spite of their rendering service as such for more than 13 years, whereas the direct recruit

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Section officers who were appointed much later were considered and promoted purely on the ground of seniority. This has created frustration in the minds of the promotees and in order to obviate this, the Government has amended the proviso and that the amendment is neither arbitrary nor unjust.

Dismissing the appeals, this Court,

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HELD: 1. The rule in question which prescribes on uniform period of qualified service cannot be said to be arbitrary or unjust or violative of Articles 14 or 16 of the Constitution. The rule making authority, by the amendment made in 1984, has brought in an uniform eligibility qualification of 8 years' approved service to be rendered by the Section officers-both promotees and direct recruits before coming within the zone of consideration for promotion to Grade I. Thus it treats all Section officers equally and there is no discrimination between the Section officers. The directly recruited Section officers are not totally excluded from the zone of consideration for promotion. They will be considered like the promotee Section officers as soon as they have rendered eight years' approved service as Section officers. The eligibility conditions imposed has a nexus to the object sought to be achieved, viz. enlisting experienced officers of proven merit to man the higher posts by way of promotion. [158B; 156B-D]

2. The validity of rule providing for fixation of seniority between the direct recruits and promotees in the grade of Section officer on the basis of quota reserved for direct recruits (i.e. 1/5 of the total substantive vacancies) has already been upheld by this Court. But this does not mean that the direct recruits who are senior to the promotees are entitled to be considered for promotion to a higher post even though they do not fulfil the eligibility qualification specified in the rule framed by the rule-making authority. The rule-making authority is competent to frame rules laying down eligibility condition for promotion to a higher post, and it cannot be said that a direct recruit who is senior to the promotees is not required to comply with the eligibility condition and he is entitled to be considered for promotion to the higher post merely on the basis of his seniority. The submission that a senior Section

officer has a right to be considered for promotion to Grade I post when his juniors who have fulfilled the eligibility condition are being considered for promotion to the higher post, is wholly unsustainable. [155G; 156A-B; 157D-F]

H.V. Pardasani & Ors. v. Union of India, [1985] 2 SCC 468, followed.

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3. When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor can it over-ride it in the matter of promotion to the next higher Post. [157G-H: 158A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2040- 2042 of 1987 From the Judgment and order dated 11.2.1986 of the Central Administrative Tribunal, New Delhi in Appln. Registration No. 4, 9 and 10 of 1985 Shanti Bhushan, K.R. Nagaraja, R.S. Hegde and Jayant Bhushan for the Appellants.

V.C. Mahajan, C.V. Subba Rao, A. Subba Rao and T.S. Sundrarajan-in-person for the Respondents.

The Judgment of the Court was delivered by RAY, J. In these appeals under special leave the only question that falls for consideration is whether the service rule requiring 8 years of approved service as Section officer both for the direct recruits as well as for promotees for being eligible for consideration for promotion to the Grade I Post in Central Secretariat Service is arbitrary being in contravention of Articles 14 and 16 of the Constitution of India.

The matrix of the case is that the appellants along with one Rajiv Kalsi made four applications under section 19 of the Administrative Tribunals Act, 1985 challenging the vires of proviso to sub-rule 2 of Rule 12 of Central Secretariate Service (C.S.S.), 1962 as amended by Notification No. 5/8/80-CS. I dated 29th December, 1984 prescribing 8 years of approved service as Section officer as condition of eligibility for being considered for promotion to Grade-I Post in C.S.S. The appellants, Miss Prabha Devi and Shri Rajiv Kalsi were recruited directly- through examination held by Union Public Service Commis-

sion in 1978 as Section officers. The appellants Shri G.S. Grewal and Shri Surjit Singh were recruited through examination held by Union Public Service Commission in 1980 as Section officers. These direct recruits had been appointed in substantive vacancies of Section officers in accordance with

the quota reserved for direct recruits by the service rules. The inter se seniority of the direct recruits and the promotees is fixed in accordance with the quota and rota system. The appellants are seniors to the promotees in accordance with the said quota and rota Rule. The promotion to Grade I post of C.S.S. Rules is made in accordance with the provisions of sub-rule 2 of rule 12 of the said Rules. The proviso to sub-rule 2 of rule 12 of C.S.S. Rules, 1962 was originally to the following effect:

"Provided that if any person appointed to the Section officers' Grade before the prescribed date is considered for promotion to Grade I in accordance with the provisions of this sub-rule, all persons senior to him in that grade before the prescribed date shall also be considered notwithstanding that they may not have rendered 10 years' approved service in the grade."

According to this rule the direct recruits were eligible for consideration for promotion to Grade I in C.S.S. even though they have not rendered 10 years' service when promotee Section officers junior to them are considered for promotion to Grade I. The promotee Section officers had to render 10 years' approved service as Section officer before being considered for promotion to Grade I. This proviso to sub-rule (2) of Rule 12 was substituted by the following proviso with effect from July 31, 1972:

"Provided further that if any person appointed to the Section officers' Grade is considered for promotion to Grade I under this sub-rule, all persons senior to him in that grade shall also be considered notwithstanding that they may not have rendered 10 years' approved service in that grade. "

The proviso to sub-rule (2) of rule 12 was again substituted by the following proviso with effect from February 23, 1978:

"Provided further that if any person appointed to the Section officers' Grade is considered for promotion to Grade I under this sub-rule, all persons senior to him in Section Officers' Grade who have rendered not less than six years' approved service in that Grade, shall also be considered notwithstanding that they may not have rendered 10 years' approved service in that Grade; provided that the aforesaid condition of six years' approved service shall not apply to a person belonging to the Scheduled Castes or the Scheduled Tribes."

Thus according to this proviso to sub-rule (2) of rule 12 a direct recruit Section officer who has rendered six years' approved service in that grade was eligible for consideration for promotion to Grade I whereas a promotee Section officer would have to render ten years' approved service in the grade of Section officer before being eligible for consideration for promotion. In 1979 the substantive part of sub-rule (2) of rule 12 was amended to provide eight years' approved service in the Section officers' Grade as against ten years approved service for eligibility for promotion to Grade I of C.S.S. The third proviso of sub-rule (2) of rule 12 was further substituted by the following proviso by Notification dated December 29, 1984:

"Provided further that if any person appointed to the Section officers' Grade is considered for promotion to Grade I under this sub-rule, all persons senior to him in Section officers' Grade, belonging to the Scheduled Castes or the Scheduled Tribes who have rendered not less than 4 years' approved service in that grade, shall also be considered for promotion.

This amended rule enjoins that a directly recruited Section officer has to render 8 years' approved service in the grade of Section officer before being eligible for consideration for promotion to Grade I. The only exception made in this rule is with regard to Section officers belonging to the Scheduled Castes or Scheduled Tribes who shall have to render only four years approved service in that grade in order to qualify themselves for being considered for promotion to the said Grade I.

This condition of eligibility as introduced by the 1984 amendment of the third proviso of sub-rule (2) of rule 12 has been questioned in the petitions before the Central Administrative Tribunal which after hearing the parties dismissed the applications by a common judgment holding inter alia that neither the amendment of February, 1978 nor the amendment of December, 1984 made in the proviso to sub- rule (2) of rule 12 of the C.S.S. Rules, 1962 is discriminatory or arbitrary or unreasonable so as to be declared ultra vires of Articles 14 and 16 of the Constitution of India. It has been further held that the amended rule of December, 1984 is valid, just and equitable and no exception can be taken to it.

Aggrieved by the said order these three appeals on special leave have been preferred before this Court. Mr. Shanti Bhushan, learned counsel appearing on behalf of the appellants has advanced three-fold submissions before this Court. The first submission is that the impugned amendment made in third proviso of sub-rule (2) of rule 12 of C.S.S. Rules purports to entrench upon the prospects of the directly recruited Section officers for being considered for promotion to Grade I in as much as they are left out of the zone of consideration while their juniors i.e. the promotee Section officers are eligible for being considered for promotion to Grade I. This condition of eligibility has no nexus to suitability for promotion to the post and as such this is in violation of the equality clause in Article 16 of the Constitution of India. It has been submitted that any rule framed by the Government must be subject to the Fundamental Rights guaranteed by the Articles 14 and 16 of the Constitution of India. Seniority of the direct recruits entitles them for consideration for promotion to the higher post while their juniors i.e. promotee Section officers are being considered for promotion to the higher post. The purpose of the seniority in service is that the senior will be considered for promotion before those who are junior to them in the service. Of course, a senior incumbent may be considered not suitable for promotion. It has been submitted that the condition of eligibility as laid down in the said rule has no reference to suitability for promotion to the post and as such it is arbitrary and so void. It has been submitted in this connection that prior to 1978 directly recruited Section officers having rendered 3-4 years of service in that grade had been promoted to Grade I and they had duly performed their duties. Some of them have rendered their service in the promoted post very efficiently and they have earned remarks such as "very meritorious and outstanding" from the Department. There is nothing to show that the promoted direct recruits were proved inefficient in discharging their duties and responsibilities of the higher post.

Mr. Shanti Bhushan further submitted that even in accordance with the provisions of sub-rule (2) of rule 12 as amended in 1978 direct recruit Section officers after having rendered six years' approved service in the grade had been considered for promotion and were promoted to Grade I. This system worked out very satisfactorily and the direct recruit Section officers who were promoted to Grade I post performed their duties attached to the higher post duly and satisfactorily. The amendment of the eligibility qualification in 1984 providing a longer period of service as S.O. is, therefore, arbitrary and inequitable. There is no rationale behind this amendment which works to the serious prejudice of the direct recruit Section officers for being considered for promotion to Grade I of the C.S.S. Service even though the promotee Section officers junior to them are being considered for promotion.

It has been secondly contended that the rule of determination of seniority on quota-rota basis in the grade of Section officers having been held valid and not arbitrary by this Court in the case of H.V. Pardasani and ors. v. Union of India and Ors., [1985] 2 SCC 468, the condition of eligibility introduced by the 1984 amendment of sub-rule (2) of rule 12 is wholly unjust and arbitrary as it excludes direct recruit Section officers from the zone of consideration for promotion even though their juniors having put in eight years' approved service as Section officers are eligible for consideration for promotion. It has been submitted that the effect of the amendment is to neutralise and negative the decision of this Court which held that the rules of seniority on the basis of quota-rota basis are unexceptionable. It has been lastly contended that at any rate the promotee Section officers form a very small portion of the officers promoted to the Grade I Post and as such elimination of the direct recruit Section officers from the zone of consideration for promotion will not have any appreciable effect in as much as it will not obviate the frustration of the promotee Section officers for not being promoted to the higher post. It has also been submitted that it is unjust and arbitrary to prevent the senior Section officers from being considered for promotion by enhancing the period of service from six years to eight years to be rendered in the grade of Section officer.

Mr. T.S. Sundara Rajan, a promotee Section officer, Respondent No. 2 has submitted that the appellants who are directly recruited Section officers on the result of examination held by the Union Public Service Commission in 1978 and 1980 against substantive vacancies, have become senior to the promotee Section officers on the basis of the quota reserved for direct recruits even though the promotee Section officers have rendered more than thirteen years' service as Section officers. This Fixation of seniority has no reference to the length of service. The inter se seniority between the direct recruits and the promotee Section officers being determined on the basis of the quota, the promotee Section officers even though they have been promoted to the post of Section officers and have rendered service for a considerable period have become juniors to them in service and were not considered for promotion even. These promotee Section officers like the Respondent No. 2 have not been considered for promotion in spite of their rendering service as such for more than thirteen years whereas the direct recruit Section officers who were appointed much later were considered and promoted purely on the ground of seniority. This has created frustration in the minds of the promotees. To obviate this the Government after due consideration of all aspect has by Notification dated December 29, 1984 amended the proviso to sub-rule (2) of rule 12 of C.S.S. Rules prescribing an uniform eligibility of rendering eight years' approved service as Section officers by both the direct

recruit Section officers and the promotee Section Officers for being considered for promotion to Grade I (Under Secretary). The said amendment, it has been submitted, is neither arbitrary nor unjust. It has been further submitted that the promotee Section officers if given promotion will render their service duly and efficiently as has been rendered by the direct recruit Section officers promoted to Grade I.

According to the C.S.S. Rules, 1962, the substantive vacancies of Section officers are manned by direct recruits and promotees and a quota of one-fifth of the total substantive vacancies has been reserved to be filled up by direct recruits. The remaining substantive vacancies of Section officers are filled up by appointment of persons included in the select list i.e. by promotion. The inter se seniority between the direct recruits and promotees is determined on the basis of the quota-rota rule. The direct recruits on their appointment against substantive vacancies become senior to the promotees.

This Court in the case of H.V. Pardasani and ors. v. Union of India and Ors. (supra) considered the question of the validity of rule providing for fixation of seniority between the direct recruits and promotees in the grade of Section officer on the basis of quota reserved for direct recruits and held that the prescription of quota becomes necessary to work out a scheme constituting a service manned by both the direct recruits as well as promotees. Such a scheme is unexceptionable and seniority based upon the rota is also not open to attack. The scheme does not appear to be arbitrary and the rules and regulations to give effect to the scheme are not ultra vires either Article 14 or Article 16 of the Constitution. Therefore, the inter se seniority of direct recruit and promotee Section officers on the basis of quota-rota rules has been held to be valid. This does not mean that the A direct recruits who are senior to the promotees are entitled to be considered for promotion to a higher post even though they do not fulfil the eligibility qualification specified in the rule framed by the rule-making authority. The rule-making authority by the amendment made in 1984 has brought in an uniform eligibility qualification of eight years' approved service to be rendered by the Section officers-both promotees and direct recruits before coming within the Zone of consideration for promotion to Grade I. Thus it treats all Section officers equally and there is no discrimination between the Section officers. It has been submitted that this rule is arbitrary and unreasonable as it prescribes a certain minimum service in a lower post for promotion to a higher post on the ground that it has no nexus to suitability for holding the higher post. This submission in our considered opinion, cannot be sustained in as much as experience over certain number of years in service and also due performance of the duties and responsibilities attached to the post of Section officer is very relevant and as such prescribing such an eligibility qualification has nexus to the suitability for the promoted post. The directly recruited Section officers are not totally excluded from the zone of consideration for promotion. They will be considered like the promotee Section officer as soon as they have rendered eight years' approved service as Section officer. The Tribunal has held that:

"The qualifications for any post are prescribed having regard to the nature of the post and the duties and responsibilities attached to it. For due discharge of duties attached to a post, academic excellence alone may not be sufficient. Factors like experience over certain number of years in service and holding a post of a certain level are relevant. That gives them the opportunity to deal with several files, handle different

situations, tackle varied problems, extract work from subordinates of varying capabilities and serve under superiors with differing styles of functioning. They acquire knowledge of men and matters and the necessary acumen to deal with issues arising from time to time. Academic brilliance and excellent performance at the competitive examinations by themselves cannot wholly substitute experience. They can only supplement. However brilliant a person may be, he needs experience such as can be gathered only by discharging the duties and responsibilities attached to a post. If recruitment to a post is by way of promotion, the minimum number of years one should serve in the lower post would have to be prescribed. Valuable experience gained in service, better equips a person to shoulder higher responsibilities and man the superior post. Period spent in discharge of duties of a post has nexus to the object of enlisting experienced officers of proven merit with consistent good record over sufficiently long period to man the higher posts by way of promotion."

The 1984 amendment of the rules providing an eligibility condition of rendering eight years' approved service as section officer for coming within the zone of consideration for promotion to Grade I Post of C.S.S. is not at all arbitrary and unreasonable as it prescribes a minimum period of eight years' of service as Section officer both for direct recruits and promotees as a condition of eligibility for consideration for promotion to the higher post. This rule is, therefore, not violative of Articles 14 and 16 of the Constitution of India.

The rule-making authority is competent to frame rules laying down eligibility condition for promotion to a higher post. When such an eligibility condition has been laid down by service rules, it cannot be said that a direct recruit who is senior to the promotees is not required to comply with the eligibility condition and he is entitled to be considered for promotion to the higher post merely on the basis of his seniority. The amended rule in question has specified a period of eight years' approved service in the grade of Section officer as a condition of eligibility for being considered for promotion to Grade I post of C.S.S. This rule is equally applicable to both the direct recruit Section officers as well as the promotee Section officers. The submission that a senior Section officer has a right to be considered for promotion to Grade I post when his juniors who have fulfilled the eligibility condition are being considered for promotion to the higher post, Grade I, is wholly unsustainable. The prescribing of an eligibility condition for entitlement for consideration for promotion is within the competence of the rule-making authority. This eligibility condition has to be fulfilled by the Section officers including senior direct recruits in order to be eligible for being considered for promotion. When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can over-ride it in the matter of promotion to the next higher post. The rule in question which prescribes an uniform period of qualified service cannot be said to be arbitrary or unjust violative of Articles 14 or 16 of the Constitution. It has been rightly held by the Tribunal:

"When certain length of service in a particular cadre can validly be prescribed and is so prescribed, unless a person possesses that qualification, he cannot be considered eligible for appointment. There is no law which lays down that a senior in service would automatically be eligible for promotion. Seniority by itself does not outweigh experience."

It has also been observed:

"In any event, the appropriate Rule making Authority is the best judge in this regard. The Rule making Authority is certainly competent to amend the Rule and extend the period from 6 years to 8 years so as to make the direct recruits more experienced and suitable for the higher post. That is a matter for the Rule making Authority; the Tribunal cannot sit in judgment over the opinion of the Rule making Authority. No Court or Tribunal can substitute its own view in a matter such as this. Such a Rule framed by a competent Authority cannot be struck down unless it is shown to be violative of any Fundamental Right guaranteed to a citizen under the Constitution."

We do not find any infirmity in the above findings arrived at by the Tribunal.

In the premises aforesaid we hold that the third proviso to sub rule 2 of Rule 12 of Central Secretariat Service Rules, 1962 as amended by Notification No. 5/8/80-CS. I. dated 29th December, 1984 is not ultra vires of Articles 14 and 16 of the Constitution. The judgment and order of the Central Administrative Tribunal is hereby affirmed and the appeals are dismissed without costs.

G.N.

Appeals dismissed.