

PETITIONER:
CHIEF ENGINEER AND SECRETARY, ENGINEERING DEPARTMENT, FOR AND

Vs.

RESPONDENT:
K.S. BRAR & ANR. ETC.

DATE OF JUDGMENT 01/09/1988

BENCH:
KANIA, M.H.
BENCH:
KANIA, M.H.
DUTT, M.M. (J)

CITATION:
1988 AIR 2106 1988 SCR 797
1988 SCC Supl. 756 JT 1988 (3) 581
1988 SCALE (2) 766

ACT:

Punjab Service of Engineers Class II P. W.D. (Buildings & Roadways Branch) Rules, 1965, Rules 10 and 12--Appointment of officer by transfer--Assignment of seniority in public interest--Whether can be assigned from the date of deputation which is prior to the date of absorption.

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Rule 10 of the Punjab Service of Engineers Class II, P.W.D. (Buildings and Roadways Branch) Rules, 1965 provides that the Government may, in special circumstances, with the approval of the Commission, appoint an officer to the service by transfer. Sub-rule (5) of Rule 12 of the rules lays down that any person appointed to a post in the service as an Assistant Engineer by transfer can be assigned seniority as of a date earlier than the date of absorption provided this is done in the interest of the public service and the seniority thus fixed shall in no case be more favorable than the seniority determined after allowing him credit for the period of service rendered by him in previous appointment as Assistant Engineer.

HELD:

The appellant, in Civil Appeal No. 3100 of 1988 (hereinafter referred to as respondent No. 4 as in the Tribunal) was an Assistant Engineer in the Punjab Public Works Department. He was deputed to work with the Engineering Department of Chandigarh Administration on October 7, 1972 and was absorbed in the said Department on June 17, 1978, at his request. However, he was granted seniority w.e.f. October 7, 1972 being the date of his joining as an Assistant Engineer on deputation in the Chandigarh Administration.

One K.S. Brar (hereinafter referred to as petitioner as in the Tribunal) joined the Chandigarh Administration as an Assistant Engineer on June 24, 1976. He challenged before the Tribunal the seniority of respondent No. 4 on the ground that the order of absorption of respondent No. 4 in the Chandigarh Administration and the order fixing his seniority were not in public interest or in the interest of the

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service. The Tribunal allowed the petition holding that

respondent No. 4 should be placed at the bottom of the gradation list of officers of his category and granted seniority from the date he was absorbed in the cadre. Hence these appeals by special leave by respondent No. 4 and the Chandigarh Administration respectively.

It was contended on behalf of respondent No. 4(a) that the question of regularity or validity of the order of absorption was irrelevant to the question of fixation of seniority; and (b) that the Chandigarh Administration was entitled to assign a seniority to respondent No. 4 from a date prior to the date of his absorption as per the provisions of subrule (5) of Rule 12 of the Rules. It was, on the other hand, argued on behalf of the respondent (petitioner before the Tribunal) that, as the transfer of respondent No. 4 and his appointment as an Assistant Engineer in the Chandigarh Administration was at his own request, he should be placed at the bottom of the seniority list as on the date of absorption.

Allowing the appeals,

HELD: (1) For the question of determining seniority, what one has to see is not Rule 10 but Rule 12(5) of the said Rules. The Tribunal completely failed to notice Rule 12(5) and, probably, it was because of this that it fell into the error of coming to the conclusion that it did. This appears clear from the fact that there is no reference to Rule 12(5) at all in the judgment of the Tribunal. [803C-D, 804B-C]

2(i) The Notification dated 14.1.19X0 relating to the fixation of seniority of Respondent No. 4 expressly sets out that the order assigning a higher seniority to him has been passed by the Chandigarh Administration taking into account all the circumstances of the case and keeping in view public interest and after considering the representations made in connection with the tentative seniority list which was circulated earlier. By the said order seniority is assigned to Respondent No. 4 with effect from 7.10.1972 which is clearly within the limits laid down in the proviso to Rule 12(5) of the said Rules. [803D-E,G]

2(ii) Respondent No. 4 was first appointed as an Assistant Engineer through the Public Service Commission in July 1968 whereas the petitioner was appointed to a similar post as late as on June 24, 1976. Respondent No. 4 was thus holding the post of an Assistant Engineer prior to the petitioner. As far as the qualifications go, it appears prima facie that the qualifications of Respondent No. 4 are

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better than those of the petitioner and certainly, not lower than those of the petitioner. No oblique motive for granting a higher seniority to Respondent No. 4 is shown. In these circumstances, it is not possible to say that the order assigning seniority to Respondent No. 4 as aforesaid has been passed merely under the guise of Public interest. [803-804H, A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3099 and 3100 of 1988.

From the Judgment dated 17.9.87 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh in O.A. No. T-5/CH of 1987.

.Kapil Sibbal, G.L. Sanghi, Ms. Kamini Jaiswal, P.N. Puri, R.K. Chopra and Ravinder Chopra for the Petitioners
V.C. Mahajan and S.C. Patel for the Respondents

The Judgment of the Court was delivered by KANIA, J. Special Leave granted in both the petitions. The Registry is directed to register and number these petitions as Civil Appeals.

These Appeals are both directed against a judgment of the Central Administrative Tribunal, Chandigarh Bench, dated September 17, 1987. The Appeal arising out of Special Leave Petition No 15073 of 1987 has been preferred by the Chandigarh Administration, Chandigarh and the Appeal arising out of Special Leave Petition No 11877 of 1987 has been preferred at the instance of Puranjit Singh Writ petition No. 3287 of 1978 filed in the Punjab & Haryana High Court was transferred to the said Tribunal and treated as T.A No T-5/CH of 1987 and it is the judgment of the Tribunal in this petition which is impugned before us. The said writ petition was filed by K.S Brar who is Respondent No. 1 in Special Leave Petition No 15()73 of 1987 and Respondent No. 4 in Special Leave Petition No. 11877 of 1987 Puranjit Singh, the petitioner in Special Leave Petition No 11877 of 1987 was Respondent No. 4 in the said writ petition and Chandigarh Administration and its officers were Respondents Nos. 1 to 3 We propose to refer to the parties by their description in the said writ petition.

Respondent No. 4 was appointed as an Assistant Engineer in the Punjab Public Works Department (Irrigation Wing) on PG NO 800 July 15, 1968 on selection through the Punjab Public Service Commission. On October 7, 1972 Respondent No. 4 was deputed to work with the Chandigarh Administration in its Engineering Department as an Assistant Engineer. On June 24 1976 the petitioner joined the Chandigarh Administration as an Assistant Engineer as a direct recruit by his selection through the Union Public Service Commission. Respondent No. 4 made an application, while on deputation with the Administration of the Union Territory of Chandigarh, for absorbing him in the cadre of Sub-Divisional Engineers in the Engineering Department at Chandigarh. His request was acceded to by the Administration and by an order passed by the Home Secretary on June 17, 1978 he was absorbed in the Engineering Department as a Sub-Divisional Engineer (B & R) in the Chandigarh Administration, working on deputation in the Housing Board, Chandigarh. The order absorbing him as a Sub-Divisional Engineer was incorporated in a Notification dated March 1, 1979, which was duly Gazetted. The said Notification sets out that the Chief Commissioner, Union Territory, Chandigarh, in consultation with the Union Public Service Commission, New Delhi, is pleased to appoint Puranjit Singh as Assistant Engineer (Civil), Class II, in the Engineering Department of Chandigarh Administration on buildings and roads side, by transfer from Punjab, P.W.D Buildings and Roads Branch, and that his appointment will be subject to further provisions of P.W D Class II Rules, 1965 as applicable to the Engineering Department of the Chandigarh Administration. There is no mention of public interest or interest of the service in this order. The consent of the State of Punjab as well as the approval of the Union Public Service Commission with regard to this appointment of Respondent No 4 was duly taken. On consideration, a tentative seniority list was circulated on November 19, 1979 inviting objections and after hearing the objections Respondent No. 4 was granted seniority with effect from October 7, 1972, being the date of his joining as an Assistant Engineer on deputation in the P.W.D. Buildings and Roads Branch of the Chandigarh Administration. The Notification dated 14.1.1980 granting him final

seniority sets out inter alia as follows:

"AND WHEREAS the Chandigarh Administration considered all the circumstances of the case and keeping the public interest in view, fixed the tentative seniority of Shri Puranjit Singh w.e.f. 7.10.1972, the date of his joining as Assistant Engineer in P.W.D. Buildings & Roads Branch

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Now, therefore, in pursuance of rule 12.5 of Punjab Service of Engineers, Class II, P.W.D. (Buildings and Roads Branch) Rules, 1965, the Chief Commissioner, Chandigarh Administration is pleased to order the fixation of seniority of Shri Puranjit Singh as Assistant Engineer w.e.f. 7.10.1972

From this it is clear that Respondent No. 4 was granted seniority with effect from 7.10.1972 when he was appointed on deputation as Assistant Engineer in P.W.D. (Buildings and Roads Branch) as stated earlier. The petitioner in the writ petition challenged both the order of absorption of Respondent No. 4 in the Chandigarh Administration and the order fixing his seniority on the ground that these orders were not in public interest or in the interest of the service. However, at the hearing before the Tribunal, at the very outset, learned Counsel for the petitioner made it clear that he was not challenging the absorption of Respondent No. 4 but only the placement of the petitioner in the seniority list and the assigning of seniority to Respondent No. 4 from the date he was taken on deputation, namely, 7.10.1972. The contention of the petitioner was that, since Respondent No. 4 was appointed by transfer to the Chandigarh Administration at his own request, he ought to have been placed at the bottom of the seniority list in the year of absorption and below the petitioner. Curiously, although the challenge to the order absorbing Respondent No. 4 in the service of the Chandigarh Administration was given up by the petitioner, the Tribunal came to the conclusion, on the basis of Rule 10 of the Punjab Service of Engineers, Class II, P.W.D. (Buildings and Roads Branch) Rules (referred to hereinafter as "the said Rules''). that the order of absorption was not valid as no special circumstances had been set out or shown justifying the same and hence, there was a lacuna in the order. The Tribunal held that, as a result of this Respondent No. 4 should be placed at the bottom of the gradation list of officers of his category and granted seniority from the date he was absorbed in the cadre, namely, February 9, 1979. It is against this decision that both, the Chandigarh Administration and Respondent No. 4, have come by way of these Appeals.

It was urged by learned Counsel for the Chandigarh Administration as well as learned Counsel for Respondent No. 4 that the question of regularity or validity of the order of absorption was irrelevant to the question of fixation of seniority. It was submitted by them that, in view of the challenge to the order of absorption of Respondent No. 4 having been specifically given up by learned Counsel for the petitioner before the Tribunal, it was not open to the

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Tribunal to consider the question of validity of the absorption at all, and that as per the provisions of sub-rule (5) of Rule 12 of the said Rules the Chandigarh Administration was entitled to assign a seniority to Respondent No. 4 from a date prior to the date of his absorption in the interest of the public service and after taking into account all the circumstances of the case provided that Respondent No. 4 could not be granted

seniority more favourably than the seniority determined after allowing him credit for the period of service rendered by him in his previous appointment as Assistant Engineer. It was, on the other hand, contended by learned Counsel for the petitioner that, as the transfer of Respondent No. 4 and his appointment as an Assistant Engineer in the Chandigarh Administration was at his own request, he should be placed at the bottom of the seniority list as on the date of absorption.

In order to appreciate these respective contentions, it is necessary to set out the relevant provisions. Rule 10 of the said Rules provides for the appointment in Class II service by transfer and reads as under:

"The Government may in special circumstances with the approval of the Commission, appoint an Officer to the service by transfer."

Sub-Rule (5) of Rule 12 of the said Rules reads thus:

" 12(5) in the case of an officer appointed by transfer as an Assistant Engineer, while normally he would be placed junior to all the officers appointed directly or by promotion as Assistant Engineers in a particular year, the Government may in the interest of the public service and taking into consideration all the circumstances of the case, fix his seniority on ad hoc basis.

Provided that the seniority thus fixed shall in no case, be more favourably than the seniority determined after allowing him credit for the period of service rendered by him in previous appointment as Assistant Engineer or on a post the duties of which in the opinion of the Government are of equivalent or greater responsibility The decision of Government on this point shall be final "

As far as the appointment of Respondent No 4 as
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Assistant Engineer in the Chandigarh Administration is concerned, we must proceed on the footing that it was made at his own request. Rule 10 of the said Rules clearly provided that such an appointment can be made only in special circumstances. In our view, where the request made by the officer concerned is based on circumstances showing the request for transfer is justified, this might be looked up as a special circumstance. It was, however, pointed out by learned Counsel for the petitioner that the order of appointment by transfer does not refer to any special circumstance and hence, the appointment of Respondent No. 4 in the Chandigarh Administration by transfer is itself not regular. However, we do not wish to go into the question as to whether such an appointment could be said to be invalid or irregular merely because no special circumstances has been recited in the order because the challenge to the order appointing Respondent No 4 by transfer has been specifically given up by the petitioner in the Tribunal. In our view, for the question of determining seniority, what one has to see is not Rule 10 but Rule 12(5) of the said Rules which, in terms, provides that any person appointed to a post in the service in question by transfer can be assigned seniority as of a date earlier than the date of absorption provided this is done in the interest of the public service The Notification dated 14 1 1980 relating to the fixation of seniority of Respondent No 4 expressly sets out that the order assigning a higher seniority to him has been passed by the Chandigarh Administration taking into account all the circumstances of the case and keeping in view public interest and after considering the representations made in connection with the tentative seniority list which was circulated earlier The said Notification, in its earlier

portion, recites that Respondent No 4 was appointed on July 15, 1968 as an Assistant Engineer (Civil) in the Punjab P.W D (Irrigation Branch) and that he was appointed as an Assistant Engineer (Civil) in the Buildings and Roads Branch of Punjab P W D on October 7 1972 through the Public Service Commission and joined on deputation in the Engineering Department of the Chandigarh Administration By the said order seniority is assigned to Respondent No. 4 with effect from 7.10.1972 which is clearly within the limits laid down in the proviso to Rule 12(5) of the said Rules In view of this, the order granting him seniority as aforesaid appears ex facie to be in order. It was urged by learned Counsel for the petitioner that, although public interest has been referred to in the said Notification, it is clear that this consideration was not in the mind of the Chandigarh Administration at all but the appointment was made to favour Respondent No 1 We are afraid that there is no basis on which such a submission can be founded. Respondent No. 4 was first appointed as an Assistant Engineer through the Public
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Service Commission in July 1968 whereas the petitioner was appointed to a similar post as late as on June 24, 1976. Respondent No. 4 was thus holding the post of an Assistant Engineer prior to the petitioner. As far as the qualifications go, it appears prima facie that the qualifications of Respondent No. 4 are better than those of the petitioner and certainly, not lower than those of the petitioner. No oblique motive for granting a higher seniority to Respondent No. 4 is shown to us. In these circumstances, it is not possible to say that the order assigning seniority to Respondent No. 4 as aforesaid has been passed merely under the guise of public interest. In our view, the Tribunal completely failed to notice Rule 12(5) of the said Rules and, probably, it was because of this that it fell into the error of coming to the conclusion that it did. This appears clear from the fact that there is no reference to Rule 12(5) at all in the judgment of the Tribunal.

In the result, the appeals are allowed, the judgment and order passed by the Tribunal are set aside and validity of the order dated 14.1.198() fixing seniority of Respondent No 4 is upheld.

Looking to the circumstances of the case, there will be no order as to costs

M.L.A

Appeals allowed .