

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) Nos.372-76/2006**

% **Date of Decision: 06.07.2011**

Rajender Guglani & Others Petitioners

Through Ms. Jyoti Singh, Sr. Advocate with Mr.
Amandeep Joshi Advocate

Versus

Union of India & Others. Respondents

Through Mr. S.K.Gupta Advocate for respondent
Nos. 4 to 8 and Sh.Mrigank Johri,
Respondent No.8 in person.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be
reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioners have challenged the order dated 30th August, 2005 passed by the Central Administrative Tribunal, Principle Bench, New Delhi in OA No.1490 of 2004, titled as 'V.S.Kundlass & Others v. Union of India & Others', allowing the original application of V.S.Kundlass & Others, junior engineers who had joined the Department of Post on deputation initially and absorbed in the regular service allowing their original applications and directing the

respondents to count their past services rendered in the analogous post in the All India Radio and to give them proper place in the seniority list of junior engineers. The petitioners in the present writ petition were the intervenors who were directly recruited as junior engineers in the Department of Post during the year 1998.

2. The brief facts to comprehend the controversies between the parties are that respondent Nos.4 to 8 were initially appointed as junior engineers (Electrical) in the All India Radio during 1990-91. They were sent on deputation to the Electrical Wing in the Postal Department as junior engineers pursuant to the Office Memorandum issued by S.E.(C) HQ, Postal Department dated 15.03.1999, 17.06.1996, 17.06.1996, 24.08.1998 & 09.01.1999 respectively.

3. Respondent Nos.4 to 8 joined the Department of Post on 07.04.1999, 01.07.1996, 08.07.1996, 09.07.1996 and 02.07.1996 respectively and they were relieved from Parent Department, All India Radio.

4. Respondent Nos.4 to 8 had contended that they were absorbed in the regular service on transfer basis as per the terms and conditions. According to them, since they had no option but to join the postal department, they agreed to accept the terms and conditions of absorption including the term of absorption that their past services will

count for all purpose except their seniority in the cadre. The terms and conditions for absorption of junior engineers on permanent transfer basis in the Postal Wing were as under:-

TERMS AND CONDITIONS FOR ABSORPTION OF JE(C)/(E)
ON PERMAIN IN TRANSFER BASIS IN THE POSTAL CIVIL
WING

- (i) He will sever all connections with his parent Ministry/Department.
- (ii) He will not ask for repatriation to his parent Ministry/Department.
- (iii) He will be deemed to be new recruits in the unit to which he is ordered to be posted.
- (iv) He will be given pay protection and his pay will be regulated in accordance with the provisions in FR/SE, and pay will be down as for ICCS pa rules applicable to DOP Civil Wing.
- (v) His past services will count for all purposes except his seniority in the cadre.**
- (vi) He will move to the place of posting at his own cost.
- (vii) He will stand Junior to all JEs/(E) who have already opted for DOP Civil Wing and those who have joined the postal civil wing before date of issue of letter of his absorption in the civil wing of Deptt. Of Post.

5. Though the term of the transfer and absorption of respondent Nos.4 to 8 in the Department of Post was that their past services will not be counted for their seniority in the cadre, however, later on they claimed that their past services rendered in All Indian Radio preceding the date of their regularization in the Department of Post should be counted for the purpose of their seniority which has not been counted illegally. The respondents, therefore, made a representation which was however, declined. According to them, while declining their

representation no reasons were given by respondents, and therefore, they filed an original application being OA No.1490 of 2004, titled as 'V.S.Kundlass & Others v. Union of India & Others', and claimed their seniority by taking into consideration their services in the All India Radio also despite the term of absorption that their seniority in the cadre could not be counted on the ground that conditions which were agreed to by respondent Nos.4 to 8 were against the rules and could not be relied on to deny them their seniority in the parent department. Respondent Nos.4 to 8 categorically asserted that they were compelled to agree to the conditions only because the absorption otherwise could not be possible.

6. Respondent Nos.4 to 8 for counting their services rendered in the All India Radio relied on OM No.20020/7/80-Estt (D) dated 25th September, 1986 stipulating as under.

“In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant Recruitment Rules provide for Deputation/Absorption) his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same equivalent grade on regular basis in his parent department, such regular service in the grade shall be taken into account in fixing his seniority, subject to the condition that he will be given seniority from:

The date he has been holding the post on deputation
or

The date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department whichever is later.”

Respondent Nos.4 to 8 also relied on a decision of the Supreme Court titled SI Roop Lal and Others v. Lt.Governor through Chief Secretary, Delhi (2000) 1 SCC 644.

7. The Department of Post contested the claim of respondent Nos.4 to 8 contending inter-alia that seniority list issued on 5th January, 2004 had been modified on 16th July, 2004 consequent upon reorganization of the office of the Postal Electrical Circle, New Delhi. In seniority list the names of respondent Nos.4 to 8 who had joined the Department of Post on deputation and they were finally absorbed after getting the NOC from the AIR, were shown below the junior engineers of Department who were recruited on the basis of their merit list prepared after appearing in the examination. The Department of Post, respondent Nos.1 to 3 contended that list was prepared as per existing rules and regulations. Reliance was placed on the recruitment rules contemplating that 83-1/3% persons are to be appointed by direct recruitment through open competitive examination conducted by Department of Post/Telecommunication and 16-2/3% persons are appointed by promotion on the basis of departmental competitive examination. Respondent Nos.1 to 3 also countered the allegation of respondent Nos.4 to 8 that they had to accept offer of absorption including that their services in the cadre in the All India Radio would not be counted as they had no option available with them.

8. The Tribunal considered the respective contentions of the parties and held that the provisions of OM dated 25th September, 1986 were not brought to the notice of respondent Nos.4 to 8 when they were given terms and conditions and in the circumstances, respondent Nos.4 to 8 could not be estopped from claiming their seniority by counting the services rendered prior to date of their absorption for the purpose of the seniority in the Department of Post. The Tribunal has also held that terms and conditions of the absorption which took away the benefit of past services of respondent Nos.4 to 8 were violative of Articles 14 and 16 of the Constitution of India and the principles of law laid down in SI Roop Lal's case. The Tribunal also held that the judgment in SI Roop Lal's case (Supra) has been followed in large number of cases and thus, directed respondent Nos.1 to 3 to redraw the seniority list and assign proper position in the seniority to respondent Nos.4 to 8 after counting their regular service on the analogous post of junior engineers in the lending department of AIR preceding their deputation followed by permanent absorption on the post of junior engineers in the Department of Post.

9. The order of the Tribunal dated 30th August, 2005 directing respondent Nos.1 to 3 to consider the seniority of respondent Nos.4 to 8 in their parent department, dated is being challenged by the petitioners in the present writ petition, the petitioners were directly appointed as Junior Engineers in the Department of Post, on the ground that the

deputation of respondent Nos.4 to 8 was with their consent and willingness and not on account of any compulsion by respondent Nos.1 to 3, or by their parent department. The petitioners asserted that once respondent Nos.4 to 8 were relieved from the Parent Department i.e. the All India Radio, they were permanently absorbed in the Department of Post on the terms and conditions which were agreed to by them and which have been reproduced hereinabove. The terms and conditions specifically specified that on absorption, the past service of the respondent nos. 4 to 8 would not be counted for the purpose of seniority in the cadre with respondent Nos.2 & 3 and respondent Nos.4 to 8 would be junior to all Junior Engineers who had already opted for Department of Post Civil Wing and those who had joined the Postal Civil Wing before the date of issue of the letter of absorption in the Civil Wing of Department of Post. The terms and conditions also categorically stipulated that seniority of respondent Nos. 4 to 8 would be counted from the date of issue of the letter permanently absorbing them.

10. The petitioners asserted that respondent Nos.4 to 8 cannot be permitted to deny the terms and conditions on which they were absorbed, as deputation and absorption was not the method of recruitment in terms of the recruitment rules and the benefit of the past seniority had been undertaken to be forgone by them. The relevant recruitment rules for the post of Junior Engineer (Electrical) Civil Wing

especially the method of recruitment and the grade from which the promotion could be made are as under:-

11.

“Method of recruitment whether by direct recruitment or by promotion or by deputation on or transfer and percentage of vacancies to be filled by various methods.

- (i) 83-1/3% by direct recruitment through All India Open Competitive Examination conducted by the Department of Post/Telecommunication and
- (ii) 16-2/3% by promotion through departmental competitive examination.

12.

In case of recruitment by promotion or deputation or transfer, grades from which promotion or deputation or transfer to be made

Promotion:

- 1. Departmental Candidates namely Draftsman (Electrical) Work Assistants (Electrical) of Civil Wing and Draughtsman of parent wing with 5 years regular service in one or more grades as on 1st July of the year of departmental examination shall be eligible to appear in the departmental examination for promotion and
- 2. All group ‘C’ employees of Civil wing and Postal Wing of the Department including the cadres, indicated above at (1) possessing a diploma of 3 years duration from a recognized institution in Electrical Engineering and having put in a minimum of 3 years regular service in the department as on 1st July of the year of Departmental Examination shall also be eligible to appear in the departmental examination for promotion provided they are not above 40 years of age, as on the crucial date.

Deputation:

Official under Central Government-

- (i) Holding analogous posts on regular basis; or

(ii) with 5 years regular service in the pay scale of Rs.1400-2300 as Junior Engineer (Electrical)

Transfer:

Officials under Central Government held analogous post

(Period of deputation including period of deputation in another cadre post held immediately preceding the appointment in the same or some other Organisation/Department of the Central Government shall ordinarily not to exceed Three years. The maximum age limit for appointment by transfer on deputation shall be not exceeding fifty six years, as on the closing date of receipt of application)".

11. The petitioners made a grievance that on account of the impugned order of the Tribunal, respondent Nos. 4 to 8 are getting the benefit twice, as had they not consented to the terms of absorption, they would not have been absorbed in the first place. Thus, the respondent Nos.4 to 8 first agreed to the terms and conditions in order to avail the benefit of absorption and now they are denying those very terms and conditions, to seek a benefit they are not entitled to after their absorption.

12. The petitioners also contended that the ratio of SI Roop Lal's case (Supra) does not apply to the present facts and circumstances. Distinguishing the case of SI Roop Lal (Supra), learned counsel for the petitioners asserted that in that case there was no undertaking by the employees who were absorbed, nor were any such terms and conditions agreed to at the time of absorption stipulating that the seniority in the

parent cadre would not be counted. Further distinguishing the case of SI Roop Lal (Supra), it was stated that in the case of SI Roop Lal, Delhi Police had called him for his absorption through a letter and deputation and absorption was a mode of recruitment in contradistinction to the case of respondent Nos.4 to 8 who had themselves requested in writing that since they were enjoying their work in the Department of Post during the period of deputation, they would be grateful if they could be absorbed in the Postal Department itself. Further distinguishing the case of SI Roop Lal (Supra), the learned counsel for the petitioners contended that Rule 5 (h) of the Delhi Police (Appointment & Recruitment) Rules, 1980 gave powers to the Commissioner to make appointment on deputation basis by drawing suitable persons from any other State, Union Territory or Central Police Organization or any other force. Further Rule 17 gave powers to the Commissioner to sanction permanent absorption of persons sent on deputation with the consent of the deputed officials. Thus, in the case of SI Roop Lal (Supra), the method of recruitment was deputation and absorption whereas in case of respondent Nos.2 & 3 the method of recruitment was not deputation and absorption and therefore, respondent Nos.4 to 8 could not rely on the ratio of SI Roop Lal (Supra), and the Tribunal has committed a grave illegality in relying on SI Roop Lal's case (Supra), to allow the original application of respondent Nos.4 to 8 and holding that they are entitled for their seniority in the parent cadre, All India Radio.

13. Refuting the reasoning and the inferences of the Tribunal that the provisions of amended OM dated 25th September, 1986 were not brought to the notice of respondent Nos.4 to 8, it was contended that the said OM was amended in March 2001 and the terms and conditions were accepted by the respondent Nos. 4-8 subsequent to that. In any case there is nothing to show that the respondent Nos.4 to 8 were not aware of them. The learned counsel for the petitioners contended that in any case, the alleged ignorance of law and rules does not give any vested right to respondent Nos.4 to 8. It was contended that respondent Nos.4 to 8 after giving an undertaking to forgo a particular benefit could not turn back and claim the same, as they are estopped from doing so. It was also asserted that when an employee comes on his own request on transfer from one cadre to the other, he is normally to be kept at the lowest in the transferred cadre unless there exists any rule which confers the benefit of counting his previous service in the previous cadre. According to the petitioners, there was no rule in existence when respondent Nos.4 to 8 joined the Department of Post conferring them the benefit of counting their past services in the previous cadre. Referring to OM dated 25th September, 1986 as amended it was also emphasized by the learned counsel, Ms.Jyoti Singh, Sr.Advocate, that the said OM clearly stipulates that it was to be applied to those cases where relevant recruitment rules provide for absorption and deputation. However, in the case of respondent Nos.4 to 8 there is no recruitment

rule for deputation and absorption, therefore, respondent Nos.4 to 8 were not entitled for benefit of seniority in view of the OM dated 25th September, 1986.

14. Learned counsel for the petitioners also relied on Union of India & Others v. Deo Narain & Others, JT 2008 (10) SC 294 in support of their pleas that if an employee voluntarily and unilaterally gets transferred forgoing his seniority and joins another cadre with open eyes and is placed below, the employees of the cadre where he is transferred, it would not be open to such an employee to claim seniority on the basis of his service in the previous cadre. Reliance was also placed by the learned counsel for the petitioners on Arun Kumar & Others v. Union of India & Others, JT 2007 (5) SC 181 holding that direct appointment as a source of recruitment is not synonymous and equivalent to recruitment by deputation/transfer. The learned counsel also referred to SI Rooplal & Anr. v. Lt. Governor, through Chief Secretary, Delhi & Others, AIR 2000 SC 594 to contend that the ratio of the said case is distinguishable from the facts of respondent Nos.4 to 8. Hence the benefit granted by the Tribunal to respondent Nos.4 to 8 on the basis of the ratio of the said judgment could not be granted to them.

15. The writ petition is opposed by respondent Nos.4 to 8 who filed a counter affidavit dated 21st August, 2006 contending that the terms and

conditions of absorption of respondent Nos.4 to 8 were in contravention of the statutory rule and law declared by the Supreme Court and, therefore, the terms and conditions are not binding upon respondent Nos.4 to 8. According to Mr.Gupta, learned counsel for respondent Nos.4 to 8, condition Nos.5 & 7 as reproduced hereinabove are not binding on respondent Nos.4 to 8 i.e. that their seniority in the previous cadre will not be counted and that they will stand junior to all Junior Engineers (Electrical) who had already opted DOP&T (Civil Wing) thus, who had joined the Postal (Civil Wing) before the date of issue of letter of absorption of respondent Nos.4 to 8.

16. The learned counsel for respondent Nos.4 to 8 relying on Department of Post, (Junior Engineer, Electrical) Civil Wing Rules, 1995 contended that the rules contemplate that the mode of recruitment is deputation/transfer especially in view of column 12 which stipulate the grades from which promotion or deputation or transfer can be made. According to learned counsel, Mr.Gupta, the absorption of respondent Nos.4 to 8 was done in accordance with Rules of 1995, wherein absorption is a mode of recruitment.

17. An application under Order 1 Rule 10 of the Code of Civil Procedure for impleadment was also filed by certain applicants, Nawab Singh & Others, contending that the Chief Engineer (Civil, North Zone),

Department of Post pursuant to order of the Tribunal dated 30th August, 2005 has considered the regularization and promotion of respondent Nos.4 to 8 as well as the applicants. The applicants alleged that they are working in the same department and the seniority on promotion is to be considered by respondent No.2 for the Electrical and Civil Department, by a common order. In the circumstances, it was contended that they are necessary parties, and therefore, are required to be impleaded in the present matter. On the application of these applicants, Nawab Singh & Others, CM No.1130 of 2010, by order dated 14th September, 2010 it was held that the applicants would be entitled for intervention, however, they would not file any pleading and would rely upon the pleadings of the petitioners as that they have been supporting them.

18. Though by order dated 14th September, 2010 the application of intervenors, Nabab Singh, L.K.Sharma, R.K.Sharma, Mohan Lal, Karan Singh, Raj Kishore, Brijesh Kumar, Mukhtiar Singh, D.K.Goel and H.K.Agarwal was allowed and they were permitted to rely upon the pleadings of the petitioners, however, no one appeared on their behalf and argued the matter in support of their pleas and contentions regarding their seniority.

19. This Court has heard the learned counsel for the parties in detail and has also perused the pleadings and documents filed by the parties and the precedents relied on. Perusal of the Recruitment Rules, Column-11 it is amply demonstrable that the mode of recruitment is only by direct recruitment and or by promotion. Column 11 of the said rules prescribes the method of recruitment which states that recruitment to the post of Junior Engineer (Electrical) Civil Wing will be 83-1/3% by direct recruitment through All India Open Competitive Examination to be conducted by the Department of Post/Telecommunication and 16-2/3% by promotion through Departmental Competitive Examination

20. This cannot be disputed by respondent Nos.4 to 8 that they had not been appointed in the Department of Post through direct recruitment, on the basis of any All India Open Competitive Examination conducted by Department of Post/Telecommunication. This is also not the case of respondent Nos.4 to 8 that they have been appointed by promotion on the basis of the Departmental Competitive Examination.

21. The Supreme Court in Arun Kumar & Others (Supra), relied on by the petitioners had held that direct appointment as a source of recruitment is different from deputation/transfer in the methods of

recruitment. In the said case relied on by the petitioners, an IPS Officer who was in the Punjab Police, was killed by a terrorist and consequently, his sister, Ms. Amrit Brar was appointed as an Assistant Commandant in CRPF on probation for two years. The appointment of the sister of the deceased IPS Officer was not on compassionate grounds, but as a result of an exception as governed by CRPF Rules. On completion of her probation, she was appointed on deputation to the post of Superintendent of Police in Punjab Police, however, she retained her lien as Assistant Commandant in CRPF till 11th September, 1998 when she was absorbed as DSP in Punjab Police. She was also allowed all benefits including pay and seniority from 9th June, 1989. In between, she was promoted to the post of Deputy Commandant in CRPF in March, 1995. The deputation and absorption of Ms. Amrit Brar in Punjab Police was challenged by some of the highly decorated senior officers in the Punjab Police Service on the ground that the Punjab Police Service Rules did not contemplate absorption of a deputationist from CRPF. The High Court construing the rules which stipulated the mode of recruitment as being direct recruitment and promotion, held that “direct appointment” would also include appointment by deputation and thus, held that Rule 14 detailing the method of recruitment would be applicable in the said case. In the appeal, the Supreme Court struck down the order of the High Court holding that direct appointment as a source of recruitment is different from deputation/transfer as the method of recruitment. Construing the

Punjab Police Service Rules, 1959 it was held that deputation was not the source of recruitment under the said 1959 Rules and the service Rules governing the CRPF are different from the Service Rules which governed the Punjab Police. In Para 9, the Supreme court held as under:-

“9. Before we proceed further, we may make it clear that, in our judgment, we have observed earlier that we do not find any infirmity in the action of the State Government in absorbing respondent No. 4 as Deputy S.P. in Punjab Police Service. However, there is a caveat. According to us, strictly on interpretation of the said 1959 Rules, there is no scope for opening of a third mode of recruitment. Deputation is not the source of recruitment under the said 1959 Rules. It is only as an exceptional case that respondent No. 4 was given the benefit of absorption in Punjab Police Service as Deputy S.P. and we do not find any fault with that exercise. It is the genuine exercise. However, when her services are regularized by the State not from 16/17.8.1993, when she stood appointed as a deputationist, but from 9.6.1989, when she was appointed as Assistant Commandant in CRPF, then infirmity in the action of the State Government crept in. CRPF functions cannot be compared with Punjab Police Service. Apart from policing, an officer of Punjab Police Service has to do the work of investigation of crime detection, which is not within the purview of CRPF. A Deputy S.P. in CRPF need not have the knowledge of CrPC, IPC etc., which an officer in Punjab Police Service needs to possess. The Service Rules governing CRPF are different from the Service Rules which governed Punjab Police Service. Therefore, even functionally, the two cadres are different. In fact, respondent No. 4, Ms. Amrit Brar, has not undergone training as contemplated under Punjab Police Service Rules. However, she has put in 5 years experience as Deputy S.P. in Punjab Police Service between 16/17.8.1993 and 11.9.1998. That experience should be given due weightage. In our view, having examined the above Punjab Police Service Rules, 1959, it is clear that deputation is not the source of recruitment. Direct recruitment is the source. Promotion is the source. However, deputation is not the source for recruitment. Moreover, in the present case, we are concerned with the rights of the appellants. We are concerned with the inter se seniority in the

said post of Deputy S.P. since that seniority ultimately counts for promotion to the next higher cadre. The post of Deputy S.P. is a feeder post in that sense and when the post is a feeder post, the inter se seniority has the role to play. **In the circumstances, if deputation is not the source of recruitment, then even in exceptional cases of this nature, weightage cannot be given, in the absence of the rules, to the services rendered by Ms. Amrit Brar in CRPF. Rule 14 talks of relaxation. However, Rule 14 is not applicable to the rules which do not provide for recruitment through deputation.** Rule 14 would have applied if the said 1959 Rules had a third source of recruitment, namely, deputation. There is no such third source of recruitment. Hence, Rule 14 has no application. Rule 14 refers to relaxation of rules. Rule 14 contemplates existence of a rule of recruitment. **If there is no such rule providing for third source of recruitment, the Government cannot relax a non existent rule.** Therefore, the High Court had erred in treating deputation as a third source of recruitment. **There is a difference between direct appointment as a source of recruitment and deputation/transfer as a source of recruitment.** In certain cases, cited before us, weightage has been given to the service put in by the transferee. However, in all those cases, the third source of recruitment was transfer/ deputation. In the present case, there is no such rule to that extent. There is an error in the impugned judgment of the High Court. As state above, Ms. Amrit Brar has put in 5 years service as a deputationist in Punjab Police Service between 16/17.8.1993 and 11.9.1998. She is certainly entitled to the weightage for the services rendered by her during these 5 years. However, she is not entitled to weightage of service between 9.6.1989 and 16/17.8.1993, as held by the High Court, for the fixation of inter se seniority.”

22. This is not disputed that respondent Nos.4 to 8 came on deputation to Department of Post (Electrical, Civil Wing) and there they were absorbed, pursuant to their request on the terms and conditions stipulated in their letter of appointment. Respondent Nos.4 to 8, therefore, could not contend that they were either recruited as direct

recruit or were promoted to the post of Junior Engineer (Electrical) Civil Wing in the Department of Post in consonance with the recruitment rules.

23. Reliance of learned counsel for the said respondents on column 12 of the recruitment rules giving the grades for deputation also does not establish that the method of recruitment contemplated under the Recruitment Rules for the post of Junior Engineer (Electrical) is by deputation. Column 12 of the Recruitment Rules is pertaining to the grades from which promotion or deputation or transfer is to be made in case of recruitment by these modes. If the mode of recruitment is not deputation, then the grades which are given for deputation, or transfer in case of recruitment will not modify or amend the method of recruitment as contemplated under the column 11 of the said rule. Column 11 of the Recruitment Rule only contemplates direct recruitment and promotion, and therefore, on the basis of the column 12 of the recruitment rules providing grades for deputation, it cannot be inferred that the mode of recruitment is also deputation. Consequently, the plea of the learned counsel for respondent Nos.4 to 8, Mr.Gupta that deputation was also a mode of recruitment cannot be accepted.

24. Rule 5 of Department of post Junior Engineer (Electrical) Civil Wing Rules, 1995 referred to as Rule also has power to relax which is as under:-

“Rule 5- power to relax: Where the Central Government is of the opinion that it is necessary of expedient so to do it may, by order for reasons to be recorded in writing, relax any of the provision of these rules with respect to any class or category of person.”

25. No order has been produced either by respondent Nos.1 to 3 or by respondent Nos.4 to 8 reflecting any reason under which the rules were relaxed and the reasons for relaxing. Nothing has been produced to show that the modes of recruitment were modified so as to include deputation and absorption as the mode of recruitment. Respondent Nos.4 to 8 had come to the Department of Post on deputation and were absorbed on the terms and conditions as has been categorically stipulated and agreed by respondent Nos.4 to 8 including that their seniority in the parent cadre will not be considered and they will remain junior to those who had already opted for Department of Post Civil Wing and those who had joined the Post Civil Wing before the issue of letter of absorption of respondent Nos.4 to 8. Once respondent Nos.4 to 8 had accepted these terms and conditions, they could not later on contend that whatsoever was agreed by them is hit by Article 14 and 16 of the Constitution of India.

26. The Office Memorandum dated 25th September, 1986 reproduced hereinabove cannot be relied on by respondent Nos.4 to 8, as it is applicable only in those case where the recruitment rules provide for deputation/absorption as mode of recruitment. It has already been held hereinabove that deputation and absorption is not the mode of recruitment under the rules, nor by virtue of power of relaxation under Rule 5 a new mode of recruitment could be introduced in the rules. The said power could be exercised only in respect of the rules already framed and the grades provide under column 12 in case of promotion. In the circumstances, respondent Nos.4 to 8 could not contend that they are not estopped from claiming contrary to the terms and conditions agreed pursuant to which they were absorbed in the Department of Post. The observation of the Tribunal that the said Office Memorandum was not brought to the notice of respondent Nos.4 to 8, when they were given terms and conditions of absorption, is without any factual basis. Respondent Nos.4 to 8 cannot contend ignorance of rules or Office Memorandum and cannot claim any right on the basis of alleged ignorance. In any case said Office Memorandum is not applicable to respondent Nos.4 to 8, nor could be relied on by them, as the OM dated 25th September, 1986 is applicable only where recruitment rules provide for recruitment by deputation and absorption. The inferences of the Tribunal to the contrary are therefore, not sustainable in the facts and circumstances.

27. The observation of the Tribunal that the terms and conditions for absorption were accepted by respondent Nos.4 to 8 as no other option was available to them, is also without any basis and is based on the bald allegation of respondent Nos.4 to 8. The said allegation is also contrary to the plea raised by the petitioners that respondent Nos.4 to 8 came on deputation willingly and after giving consent, they opted for absorption on the terms and conditions agreed, as they had realized that they would be rendered surplus in All India Radio and consequently, they consented for absorption in the Department of Post on the terms and conditions including that they would be junior to all the Junior Engineers (Electrical), Civil Wing who had already opted for Department of Post and those who had joined the Postal Civil Wing. In the circumstances, the plea of respondent Nos.4 to 8 that they had no other option but to accept the absorption in the Department of Post cannot be accepted, nor can be the basis to grant them seniority over those Junior Engineers who had already joined the Postal Civil Wing before the issuance of letter of absorption of respondent Nos.4 to 8.

28. The Supreme Court in the case of 'Union of India & Others v. Deo Narain & Others' had held that employees who voluntarily and unilaterally seek transfer, forgoing their seniority and joins another cadre with open eyes and are placed below the employees working in the transferred cadre, cannot make a grievance later on regarding their

seniority. In the said case, a policy decision was taken by the Union of India that in certain circumstances, LDCs could be transferred from one Collectorate to another Collectorate on compassionate ground subject to the conditions that such transferees would not be entitled to claim the services rendered by them in the previous Collectorate for the purpose of seniority in the transferred Collectorate, as such LDCs who were transferred were to be treated as new entrants in the new Collectorate and were to be placed at the bottom of the list of the employees of the new cadre. The statutory rules had also empowered the Central Government to relax the provisions of the Rules. On account of power of relaxation under Rule 7 of those Rules, the action of transfer was held to be legal and lawful and the Supreme Court had declined to interfere on the plea of LDSs that they are entitled for the seniority in the previous cadre. It was held that the LDCs who got themselves transferred voluntarily and unilaterally forging their seniority and who had joined the new Collectorate with open eyes and were placed below all the LDCs who were serving with the said Collectorate, were not entitled to claim seniority over them. It was held that neither law, nor equity support the claim of such LDCs as is also the case of the respondent Nos.4 to 8. In similar circumstances, neither law, nor equity support claim of respondent nos. 4 to 8 to get their seniority in All India Radio counted after their absorption in the Department of Post subject to conditions that they would be placed below those who had already joined the Department of Post before issuance of their letter of

absorption. Reliance of respondent Nos.4 to 8 and the Tribunal on SI Roop Lal's case (Supra) is also misplaced as the said judgment is clearly distinguishable. In the said case, the Commissioner of Police in 1985 with a view to strengthen the existing security system in the Capital had created 12 new Police Station and consequent it, in view of prevailing conditions and with a view to fill up the required post within the shortest possible time as normal course of recruitment at different levels and training would have taken long time, had taken suitable persons from various other forces on deputation and later absorbed. While calling the suitable employees from different forces for deputation, it was categorically stipulated that they would be permanently absorbed after one year if they would be found suitable. The Delhi Police (Appointment & Recruitment) Rules, 1980 under Rule 5 (h) also contemplated deputation and absorption as a mode of recruitment. In such circumstances after the employees from other forces were called for deputation and absorbed in Delhi Police relying on OM dated 25th September, 1986, the seniority of such employees in the parent cadre before deputation was considered in the Delhi Police. The facts and circumstances of respondent nos. 4 to 8 are clearly distinguishable and in the circumstances, the Tribunal could not have placed reliance on SI Roop Lal's case (Supra) to accept the plea for counting the seniority of respondent Nos.4 to 8 in All India Radio contrary to the terms and conditions accepted by them at the time of their absorption in the Department of Post. In the circumstances, the

observations of the Tribunal that the terms and conditions of absorption of respondent Nos.4 to 8 were violative of Article 14 and 16 of the Constitution of India is also not sustainable. Respondent Nos.4 to 8 opted voluntarily and unilaterally their transfer by deputation to the Department of Post and with open eyes agreed to the terms and conditions for absorption as had respondent Nos.4 to 8 come back to All India Radio after the expiry of deputation, they could be declared surplus. This fact has not been denied and thus respondent Nos.4 to 8 had opted for absorption on the terms and conditions in the Department of Post voluntarily. For these reasons, their claim for seniority in All India Radio cannot be granted to them either in law or in equity nor it can be held that terms and conditions of absorption were violative of Article 14 and 16 of the Constitution of India. The inferences of the Tribunal in the facts and circumstances are not sustainable and suffer from apparent illegality.

29. In the circumstances, the direction by the Tribunal by impugned order dated 30th August, 2005 to re-draw the seniority and assign a proper position in the seniority list to respondent Nos.4 to 8 after counting their regular services on the analogous post of Junior Engineer in All India Radio preceding their deputation cannot be sustained. The Tribunal could not have directed respondent Nos.1 to 3 to re-draw the seniority list in the facts and circumstances and

consequently, the order of the Tribunal dated 30th August, 2005 in OA No.1490 of 2004 is set aside.

30. For the foregoing reasons, the writ petition is allowed. The order dated 30th August, 2005 in OA No.1490 of 2004, titled as 'V.S.Kundlass & Others v. Union of India & Others', directing respondent Nos.1 to 3 to redraw the seniority list and assign seniority to respondent Nos.4 to 8 after counting their regular service on the analogous post of Junior Engineer in the lending department of AIR preceding their deputation followed by permanent absorption on the post of Junior Engineer in the Department of Post is set aside and the original application of the respondent nos. 4 to 8 is dismissed. All the pending application are also disposed of in terms of this order. Considering the facts and circumstances, the parties are however, left to bear their own costs.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

July 6th, 2011

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