

CWP-14482-2018 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-14482-2018 (O&M)
Date of decision : 26.08.2019**

Tej Ram and others

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Keshav Gupta, Advocate
for the petitioners.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

Mr. Sanjiv Gupta, Advocate
for respondent Nos.4 to 7.

AMIT RAWAL, J.

The short point involved in present writ petition, whether on absorption of services, which is being admitted by the respondents, petitioners can be denied the right of seniority or not?

Mr. Keshav Gupta, learned counsel appearing on behalf of petitioners submitted that services of Drivers in Minister Car Section is governed by the Rules, namely, Haryana Transport (Group C), Commissioners Office Service Rules, 1998 (in short 'the 1998 Rules'). All the petitioners in writ petition, 6 (six) in number, were working on deputation in Minister Car Section, but subsequently, absorbed in the Minister Car Section vide (Annexure P-1) and have been working on identical posts i.e. on the same footing in the parent department. However, on 02.02.2018, a tentative seniority list of Drivers in Minister Car Section

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(Annexure P-2) was issued, whereby persons, juniors to the petitioners, have been shown as seniors, though their services were not confirmed. Accordingly, a representation 05.02.2018 was submitted, but without deciding the same, Department finalized the seniority list dated 31.03.2018 (Annexure P-4), which is not sustainable in the eyes of law, being contrary to the Rules and settled law as per judgment of Hon'ble the Supreme Court rendered in **“Sub-Inspector Rooplal V/s Lt. Governor” (2000) 1 SCC 644.**

Per contra, Mr. Hitesh Pandit, Addl. A.G., Haryana, submitted that service condition for post of Staff Car Driver is governed within the preview of the 1998 Rules and mode of recruitment is provided under Rule 9 (I) (ii) of 1998 Rules i.e. By direct recruitment; or by transfer or deputation of Staff Car Drivers in the service of any State Government or the Government of India. Petitioners were not recruited directly to the post of Staff Car Driver, under the aforementioned rule, but taken on deputation as stop gap arrangement from other Departments/cadres. It has been a practice in Minsters Car Section for taking drivers on deputation on demand, as stop gap arrangement. On 19.08.1982, the State Government circulated instructions specifying that whenever, a person is taken on transfer, all the Departments should be communicated and parent department would forward the names of all eligible for consideration, but in case, a person like petitioners, who have been adjusted on stop gap arrangement, on deputation, though continued for a long period, that period can be counted for seniority. Though petitioners were not intimated formally that their seniority in their parent department will not be considered on absorption, despite that opted for absorption, vide Annexure

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P-1. The seniority list, as per Rule 11 of 1998 Rules, is to be determined viz-a-viz direct, promotion or transfer recruitment mode and *inter se* seniority fixation regarding persons coming on deputation, shall not be considered for seniority. However, after absorbing him permanently, on transfer basis, length of continued service, shall be counted only from date of absorption and not from the previous period, thus, urges this Court for dismissal of present writ petition.

I have heard learned counsel for parties, appraised paper book and of the view that there is force and merit in submissions of Mr. Keshav Gupta.

It would be in the fitness of things to extract relevant paragraphs 15 & 16 of judgment cited supra, which reads as under:-

"15. We will now take up the question whether the appellants are entitled to count their service rendered by them as Sub-Inspector in the BSF for the purpose of their seniority after absorption as Sub-Inspector (Executive) in Delhi Police or not. We have already noticed the fact that it is pursuant to the needs of Delhi Police that these officials were deputed to Delhi Police from the BSF following the procedure laid down in Rule 5(h) of the Rules and subsequently absorbed as contemplated under the said Rules. It is also not in dispute that at some point of time in the BSF, the appellants' services were regularised in the post of Sub-Inspectors and they were transferred as regularly appointed Sub-Inspectors to Delhi Police force. Therefore, on being absorbed in an equivalent cadre in the transferred post, we find no reason why these transferred officials should not be permitted to count their service in the parent department. At any rate, this question is not res Integra and is squarely covered by the ratio of judgments of this Court in more than one case. Since the earlier Bench of the tribunal

relied upon Madhavan's case [(1987) 4 SCC 566: 1987 SCC (L&S) 496: (1987) 5 ATC 91 : AIR 1987 SC 2291 : (1988) 1 SCR 421] to give relief to the deputationists, we will first consider the law laid down by this Court in Madhavan `s case [(1987) 4 SCC 566: 1987 SCC (L&S) 496: (1987) 5 ATC 91 : AIR 1987 SC 2291 : (1988) 1 SCR 421]. This Court in that case while considering a similar question, came to the following conclusion: (SCC p. 580 para 21)

" 21. We may examine the question from a different point of view. There is `not-much. difference between deputation and transfer. Indeed, when a deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words, deputation may be regarded as a transfer from one government department to another. .It will be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service in the post from which he has been transferred. It has been observed by this Court that it is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new service that their pre-existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre. See R.S. Mokashi and Ors, v. I.M. Menon and Ors., [1982] 1 SCC 379 : 1982 SCC (L&S) 77; and Wing Commander J, Kumar V. Union of India and Ors., [(1982) 2 SCC 116 : 1982 SCC (L&S) 177 : (1982) 3 SCR 453]."

16. Similar is the view taken by this Court in the cases of R.S. Mokashi and Ors, v. I.M. Menon and Ors., [1982] 1 SCC 379 : 1982 SCC (L&S) 77; and Wing Commander J, Kumar V. Union of India and Ors., [(1982) 2 SCC 116 : 1982 SCC (L&S) 177 : (1982) 3 SCR 453], which judgments have been followed by This Court in Madhavan's case [(1987) 4 SCC 566: 1987 SCC (L&S) 496: (1987) 5 ATC 91 : AIR 1987 SC 2291 : (1988) 1 SCR 421]. Hence, we do not think it is necessary for us to deal in detail as to the view taken by this Court in those judgments. Applying the principles laid down in the above referred cases, we hold the appellants are entitled to count the substantive service rendered by them in the post of Sub-Inspector in the BSF while counting their service in the post of Sub-Inspector (Executive) in Delhi Police force."

Undisputed facts are that vide Annexure P-2, 02.02.2018, all the petitioners were absorbed in the Department of Ministers Car Section, Haryana, Chandigarh. The tentative seniority list and impugned final seniority list, putting petitioners below the juniors, who have not been confirmed, is wholly preposterous and repugnant. There cannot be any justification as to why transferred officials absorbed should not be permitted continuity of their service in the parent department. The aforementioned conclusion came to be arrived at by noticing earlier Bench of Hon'ble Supreme Court in various judgments. Any person appointed to the posts, according to the rules, his seniority has to be counted from date of appointment and not according to date of his confirmation.

It would be apt to extract Rule 11 of the 1998 Rules, which reads as under:-

"11. Seniority, inter se of the members of the Service shall be

determined by the length of continuous service on any post in the Service.

Provided that where there are different cadres in the Service, the seniority shall be determined separately for each cadre:

Provided further that in the case of members appointed by direct recruitment, the order of merit determine by the Board or any other recruiting authority, as the case may be, shall not be disturbed in fixing the seniority.

Provided further that in the case of two or more members appointed on the same date, their seniority shall be determined as follows:-

(a) A member appointed by direct recruitment shall be senior to a member appointed by promotion or by transfer;

(b) A member appointed by promotion shall be senior to a member appointed by transfer

(c) In the case of a member appointed by promotion or by transfer, seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred; and

(d) In the case of members appointed by transfer from different cadres their seniority shall be determined according to pay, preference being given to a member, who was drawing a higher rate of pay in his previous appointment; and if the rates of pay drawn are also the same, then by the length of their service in the appointment; and if the length of such service is also the same, the older member shall be senior to the younger member."

From the perusal of the Rule, it is irresistibly concluded that the entire service rendered on a post is required to be considered for the purpose of seniority, de hors of the fact whether services were rendered prior or post confirmation of absorption.

Keeping in view the aforementioned facts, impugned seniority

list dated 31.03.2018 (Annexure P-4) of Drivers in Ministers Car Section, Transport Department, Haryana, is hereby quashed and the respondents are directed to determine the seniority in terms of aforementioned observations as well as Rules.

Resultantly, the present writ petition is allowed.

26.08.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No