

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

LPA-461-2020

State of Haryana and others	Vs.	 Appellants
Tej Ram and others		 Respondents

LPA-1730-2019

Anil Kumar and others	Vs.	 Appellants
State of Haryana and others		 Respondents

**Reserved on: 10.01.2023
Date of Decision: 24.01.2023**

**CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS JUSTICE SUKHVINDER KAUR**

In LPA-461-2020

Present: Mr.Hitesh Pandit, Addl. A.G. Haryana,
for the appellants.

Mr.Keshav Gupta, Advocate,
for the respondents No.1 to 6.

Mr.Sunil K. Nehra, Advocate,
for the respondents No.7 to 13.

In LPA-1730-2019

Present: Mr.Sunil K. Nehra, Advocate,
for the appellants.

Mr.Hitesh Pandit, Addl. A.G. Haryana,
for respondents No.1 to 3

Mr.Keshav Gupta, Advocate,
for respondents No.4 to 9.

M.S. RAMACHANDRA RAO, J.

These two appeals are preferred against the order dt.26.08.2019
passed by the learned Single Judge of this Court in CWP-14482-2018.

The appellants in LPA-461-2020 are respondents No.1 to 3 in CWP-14482-2018 and the appellants in LPA-1730-2019 are respondents No.4 to 10 in the said Writ Petition.

The parties will henceforth be referred to as per their array in the said Writ Petition.

CWP-14482-2018

CWP-14482-2018 was filed by the petitioner therein for quashing of seniority list dt.31.03.2018 pertaining to Drivers in Ministers Car Section, Transport Department Haryana.

These individuals had been appointed in the Civil Secretariat of the State of Haryana, Haryana Roadways under the auspices of the Transport Department of the State of Haryana and Cattle Fair Office, Karnal between 1996-2003 on regular basis. Thereafter, they continued to work in the said department till 22.12.2003, when the Transport Commissioner of the Government of Haryana deputed them to work in the Ministers Car Section through an order filed as Annexure A1 in LPA-461-2020.

Though the said order stated that their postings in the Ministers Car Section would be purely on temporary basis, they continued in the Ministers Car Section and were confirmed in the said Section on 31.01.2014 and 02.07.2014 respectively.

Tentative senior list of Drivers in the Ministers Car Section was framed on 02.02.2018 and objections were invited thereto. In the said list, respondents No.4 to 10 in CWP-14482-2018 were shown as seniors to the Writ Petitioners.

Objections (P-3) dt.5.2.2018 were filed to the said tentative seniority list by the Writ Petitioners contending that respondents No.4 to 10 in the Writ Petition are juniors to them, having been appointed through direct recruitment through Staff Selection Commission process only on 14.08.2013, and they cannot be shown as seniors to them. They placed reliance on the decisions of the Supreme Court in *Sub Inspector Rooplal and another Vs. Lt. Governor through Chief Secretary, Delhi and others*¹ and *Devdutta Vs. State of M.P.*².

But the said objections were rejected by the Transport Department of the State of Haryana i.e., respondents No.1 to 3 in the Writ Petition, vide Annexure P4 dt.31.03.2018. No reason was given why the objections raised by the Writ Petitioners are rejected.

Assailing the same, the Writ Petitioners filed CWP-14482-2018 relying on Rule 11 of the Haryana Transport Department (Group C) Transport Commissioners Office Service Rules, 1998 which are applicable.

The plea of the Writ Petitioners in CWP-14482-2018

They contended that the entire service rendered in a post has to be considered for the purpose of seniority and it does not matter as to whether the service has been rendered prior to or past confirmation/absorption in the department; in the event of a confirmation/absorption of a person working in the Ministers Car Section on deputation, the entire period of service rendered by him in the parent department as well as the subsequent department has to be considered for the purpose of counting seniority; and necessary consequential

¹ (2000) 1 SCC 644

² 1991 Supp (2) SCC 553

benefits in the form of promotion etc. have to be granted right from the date of his initial joining in his parent department.

They contended that in *Sub Inspector Rooplal* (1 Supra), it was held that there was not much difference between deputation and transfer; when a deputationist is permanently absorbed in another department, he is under the Rules appointed on transfer; deputation may be regarded as a transfer from one Government Department to another; it would 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 and the period of his service in the post before his transfer is not taken into account 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; where persons from different sources are drafted to service in a new service, then their pre-existing total length of service in the parent department should be respected by taking the same into account in determining their ranking in the new service.

They contended that the rejection of their objections by the State is contrary to law and the impugned final seniority list dt.31.03.2018 issued by it violates Articles 14, 16, 21 and 300A of the Constitution of India.

They sought for setting aside of the Annexure P4 final seniority list dt.31.03.2018. They also sought a direction to the State to re-frame the seniority list in accordance with the settled principles of law.

The stand of respondents/State

The State filed a written statement opposing the contention of the Writ Petitioners.

It contended that the Writ Petitioners were recruited directly to the post of Staff Car Driver under the Haryana Transport Department (Group C) Transport Commissioner's Service Rules, 1998; that they were taken on deputation post as a stop-gap arrangement from other departments/cadres; academic qualifications and experience for the post of staff car driver in the Ministers Car Section governed by the said Rules are different to those in the Haryana Roadways and Haryana Civil Secretariat where the Writ petitioners were working as heavy vehicle drivers; though the services of the petitioners were continued on deputation for a long period and they were absorbed subsequently, they were given seniority only from the date of absorption/confirmation in the Ministers Car Section.

It is contended that the Writ Petitioners had their lien in their parent department of Civil Secretariat or Haryana Roadways and only on absorption/confirmation in the Ministers Car Section as staff car driver they became members of the Ministers Car Section, and so their service, for the purpose of seniority, was considered only from the date of such absorption/confirmation.

It is also stated that though the petitioners were not intimated formally that their seniority in their parent department will not be considered on their absorption in Ministers Car Section, since they were willing for absorption in the said section and they did not represent at that time that their seniority in their parent department should also be considered, they are deemed to have accepted their transfer to the Ministers Car Section by giving up their seniority in the parent department.

It is further contended that seniority as per Rule 11 of the 1998 Rules is to be determined *vis a vis* direct recruitees, promotees or recruitment through transfer mode; and as per the said Rules person coming on deputation would not be considered for seniority; only after absorbing him permanently on transfer basis, from the date of such absorption (i.e. coming into the cadre of Ministers Car Section), his length of continue service in the said section will be counted.

It is contended that persons, who are working on deputation basis, have their lien with their parent departments and can claim benefit of promotion and seniority in their parent departments only and they cannot claim it in the department where they are working on deputation basis.

It is stated that since the date of confirmation/absorption of the Writ Petitioners in the Ministers Car Section is 2014, but respondents No.4 to 10 were appointed by direct recruitment in the Ministers Car Section through Haryana Staff Selection Commission in 2013 and joined the Ministers Car Section of Haryana on 14.08.2013 and they were also confirmed w.e.f. the said date vide order dt.27.12.2019, they are seniors to the Writ Petitioners and the final seniority list was thus valid in law.

Judgment in the Writ Petition

The learned Single Judge, however, relied on judgment in ***Sub Inspector Rooplal*** (1 Supra) and held that as per Annexure P2 dt, 02.02.2018 all the Writ Petitioners were absorbed in the department of Ministers Car Section, Haryana; the tentative seniority list and the main seniority list putting the Writ Petitioners below their 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; any person appointed to posts, according to the Rules, would have his seniority counted from the date of appointment and not according to the date of his confirmation and even Rule 11 of 1998 Rules allows the entire service rendered on post to be taken for consideration for the purpose of seniority *de hors* the fact whether services were rendered prior or posts confirmation or absorption.

The learned Single Judge, therefore, quashed the Annexure P4 final seniority list dt.31.03.2018 and directed the State/respondents No.1 to 3 in the Writ Petition to determine seniority as per his order.

Present Appeals

Challenging the same, these two appeals are filed.

Counsel for the State as well as counsel for the respondents 4 to 10 in the Writ Petition raised the following contentions: -

- (a) Rule 11 of the Haryana Transport Department (Group-C), Transport Commissioner's Office Service Rules, 1998 defines the term 'Service' in Rule 2(f) as 'service in the Haryana Transport Department (Group C) Transport Commissioner's Office Service'; and as per Rule 11 of the said Rules, Seniority *inter se* of the members of the service shall be determined by the length of continuous service on any post *in the service*; therefore, only post confirmation service of the Writ Petitioners in the Ministers Car Section can be taken into account for determining their seniority *vis a vis* respondents 4 to 10 in CWP-14482-2018.

- (b) They contended that there is no question of considering the services rendered by the Writ Petitioners in their parent department prior to their absorption for determining the *inter se* seniority between the Writ Petitioners and the respondents 4 to 10.
- (c) According to them since the Writ Petitioners were not borne in the service in the Ministers Car Section prior to 2014 and since the private respondents had been directly recruited in 2013 itself, no illegality was committed by the Transport Department in fixing the seniority of the Writ Petitioners below that of the private respondents/direct recruits.
- (d) They also contended that the decision of the Supreme Court in ***Sub Inspector Rooplal*** (1 Supra) was not applicable and that the same had been distinguished by the Supreme Court in ***The Director, Central Bureau of Investigation & another Vs. Shri D.P. Singh***³ and ***Indu Shekhar Singh and others Vs. State of UP and others***⁴.

Counsel for the Writ Petitioners refuted the said contentions and supported the judgment of the learned Single Judge.

Consideration by the Court

From the facts narrated above, it is clear that the Writ Petitioners were appointed as Drivers in Civil Secretariat, Haryana Roadways and in Cattle Fair Office, Karnal in the State of Haryana prior to 2000; that they were sent on deputation from their parent departments to the Minister Car Section on 22.12.2003 and 02.03.2006, respectively, initially on temporary basis

³ 2010(1) SCC 647

⁴ 2006(8) SCC 129

specifically stating that they would not be entitled for any seniority in the Minister Car Section as their lien is kept in their parent department. But they were absorbed/ confirmed on 31.01.2014 and 02.07.2014 in the Minister Car Section.

The respondents No.4 to 10 in the Writ Petition were appointed by direct recruitment through the Haryana Staff Selection Commission between 14.08.2013 and 13.02.2014.

The question for consideration is:

“ Whether the State was right in placing the Writ Petitioners below the respondents No.4 to 10 by ignoring the period of service rendered by the Writ Petitioners in their parent department prior to their absorption in the Ministers Car Section in the Transport Department of the State of Haryana?

Seniority of persons appointed in the Ministers Car Section is governed by the Haryana Transport Department (Group C), Transport Commissioner's Office Service Rules, 1998.

Rule 2(f) of the said Rules defines the term 'Service' as meaning 'the Haryana Transport Department (Group C) Transport Commissioner's Office Service'.

Rule 11 of the said Rules states:

“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 determined 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 case of members 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 such service in the appointments, and if the length of such service is also the same, the older member shall be senior to the younger member.”*

Thus, the said Rule requires seniority *inter se* of members of the service to be determined by the length of continuous service on any post in the service.

The appellants/State/private respondents in the Writ Petition contend that Rule 2(f) read with Rule 11 permit only service rendered in the Haryana Transport Department (Group C), Transport Commissioners Office Service i.e. Minister Car Section alone to be considered for determining seniority of the members of the said service *inter se*; and service rendered by the Writ Petitioners in their respective parent departments prior to their absorption in the Minister Car Section cannot be taken into account and so the State had correctly determined their *inter se* seniority in Annexure P4.

Though this argument looks attractive at first blush, on a deeper scrutiny it does not have much substance.

The State has categorically admitted in its written statement that the Writ Petitioners were not informed formally that their seniority in their parent department will not be considered on their absorption in the Minister Car Section.

It is possible that if the petitioners had been so informed at the time of their absorption in the Minister Car Section, they might have preferred to go back to their respective parent departments where they had lien and where their service from inception (prior to 2000) would be counted for the purpose of seniority and promotion.

Without informing the Writ Petitioners that their long service in their respective parent departments would not be counted on their absorption in the Minister Car Section, it is not proper for the State to count only service rendered by them in the Minister Car Section, consequent on their absorption in the said department in 2014, and to place them below the respondents 4 to 10, who are direct recruits appointed in August 2013 and who have not even been confirmed on the date the final seniority list Annexure P4 was prepared i.e. 31.03.2018.

The decision of the Supreme Court in *Sub Inspector Rooplal* (1 Supra)

That apart the Supreme Court in *Sub Inspector Rooplal* (1 Supra) had held that there is not much difference between deputation and transfer; deputation may be regarded as a transfer from one government department to another; it would 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, and the period of the service in the post before his transfer is not taken into consideration in computing his seniority in

the transferred post; and the transfer cannot wipe out his length of service in the post from which he has been transferred. This principle laid down in ***K Madhavan Vs. Union of India***⁵, ***R.S. Makashi Vs. I.M. Menon***⁶ and ***Wing Commander J. Kumar Vs. Union of India***⁷, was followed in ***Sub Inspector Rooplal*** (1 Supra).

In ***Sub Inspector Rooplal*** (1 Supra), the appellants were Sub Inspectors of Border Security Force (BSF), who were initially taken on deputation in Delhi Police as Sub Inspectors (Executing) and were later on absorbed in Delhi Police in the same capacity. While fixing their seniority in Delhi Police, service already rendered by them as Sub Inspector in BSF was not taken into consideration on the ground that the pay scale of Sub Inspector in BSF was not equivalent to pay scale in Delhi Police. The Supreme Court held that on being absorbed in an equivalent cadre in the transferred post, the appellants are entitled to count their service in the parent department also in the post of Sub Inspector (Executive) in the Delhi Police. It held that if the previous service of a transferred official is to be counted for seniority in the transferred post, then the two posts should be equivalent; such equivalence is not judged by the sole fact of equal pay; while determining the equation of two posts many factors other than 'pay' will have to be taken into consideration, like the nature of duties, responsibilities, minimum qualification etc.

The respondents in ***Sub Inspector Rooplal*** (1 Supra) had relied on an office memorandum which stated: -

“Even in the type of cases mentioned above, that is, where an officer initially comes on deputation and is subsequently absorbed, the normal

⁵ (1987) 4 SCC 566

⁶ (1982) 1 SCC 379

⁷ (1982) 2 SCC116

principles that the seniority should be counted from the date of such absorption, should mainly apply. Where, however, the officer has already been holding on the date of absorption in the same or equivalent grade on regular basis in his parent department, it would be equitable and appropriate that such regular service in the grade should also be taken into account in determining his seniority subject only to the condition that at the most it would be only from the date of deputation to the grade in which absorption is being made. It has also to be ensured that the fixation of seniority of a transferee in accordance with the above principle will not effect any regular promotions made prior to the date of absorption. Accordingly it has been decided to add the following sub-para (iv) to para 7 of general principles communicated vide OM dated 22-12-1959:

‘(iv) In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for “transfer on deputation/transfer”), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has so ever been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also 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.’ ”*

The Court held that this office memorandum had not been made public and its existence was not made known to anybody. It therefore, did not permit the respondents to place reliance on it. It then observed:

*“19..... It is to be noted that the law in regard to the right of a deputationist to count his service for the purpose of seniority in the transferred department was settled as far back as in the year 1982 itself in the cases of **R.S. Makashi** and **Wing Commander J. Kumar** (if not earlier). Therefore, it is reasonable to expect that a deputationist, when his service is sought to be absorbed in the transferred department would certainly have expected that his seniority in the parent department would be counted. In such a situation, it was really the duty of the respondents, if at all the conditions stipulated in the impugned memorandum were applicable to such person, to have made the*

conditions in the memorandum known to the deputationist before absorbing his services, in all fairness, so that such a deputationist would have had the option of accepting the permanent absorption in the Delhi Police or not. The very fact that such steps were not taken shows that this memorandum was, in fact, never acted upon. Apart from the above question of equity, the appellants have challenged the constitutional validity of the above memorandum on the ground that the same violates Articles 14 and 16 of the Constitution. One of the grounds raised is that their vested right of counting the seniority in the deputed department, after absorption in an equivalent post, is arbitrarily taken away, if the memorandum in question is applicable to them. Therefore, they had prayed for a declaration that the memorandum be declared as ultra vires to the extent it offends their fundamental right.

.....

20.....A perusal of clause (iv) of the memorandum shows that the author of this memorandum has taken inconsistent views in regard to the right of a deputationist to count his seniority in the parent department. While in the beginning part of clause (iv) in clear terms he says that if a deputationist holds an equivalent grade on regular basis in the parent department, such regular service in the grade shall also be taken into account in fixing the seniority. In the latter part the author proceeds to say—

“... subject to the condition that he will be given seniority from the date he has been holding the post 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.”

The use of the words “whichever is later” negatives the right which was otherwise sought to be conferred under the previous paragraph of clause (iv) of the memorandum. We are unable to see the logic behind this. The use of the words “whichever is later” being unreasonable, it offends Article 14 of the Constitution. It is also argued on behalf of the appellants that this memorandum is further violative of Articles 14 and 16 of the Constitution inasmuch as it arbitrarily takes away the service rendered by the deputationist when he is absorbed in the Delhi Police which right of a civil servant cannot be taken away without the authority of law. We have noticed earlier that the petitioners, who are the appellants in the civil appeals, were regularly appointed as Sub-Inspectors in BSF on the date of their deputation. We have also accepted the fact that the post of Sub-Inspector held by them in BSF is equivalent to the post of Sub-Inspector (Executive) in the Delhi Police to which

*they stood deputed. That being the case, in view of the judgment in the cases of **R.S. Makashi**⁶, **Wing Commander J. Kumar**⁷ and **Madhavan**¹ it is clear that they are entitled to count the service rendered by them in the post of Sub-Inspector in BSF for the purpose of seniority in the cadre of Sub-Inspector (Executive) in the Delhi Police. Therefore, such a right of the appellant-petitioners could not have been taken away in the garb of an office memorandum which is impugned in the above writ petition.”*

(emphasis supplied)

The principle laid down in the above decision applies to the instant case as well.

We are of the opinion that even in the instant case, the Writ Petitioners, who were working as Drivers in other departments were initially brought on deputation to the Ministers Car Section in the Transport Department and were absorbed therein obviously considering the nature of duties and responsibilities of both posts and the minimum qualification thereto, and by treating the post of Driver held by them in the parent department as equivalent to the post held by them on deputation.

Therefore, they cannot be denied their right to count their service in the parent department also as service in the Ministers Car Section for the purpose of their seniority. Therefore, they ought to have been put above the respondents 4 to 10 in the Writ Petition in the final seniority list Annexure P4.

The decision in the **Director Central Bureau of Investigation** (3 Supra) cited by the counsel for the appellants is distinguishable because the respondent therein was held to be not holding a rank equivalent to the post of Deputy SP in the CBI while working in the parent department i.e. UP Police Service on the date of his absorption and so was held not entitled to count the service rendered by him in his parent department on his absorption in the CBI.

That is why the decision in *Sub Inspector Rooplal (1 Supra)* was not followed in that case.

In *Indu Shekhar Singh* (4 Supra) cited by the appellants, the decision in *Sub Inspector Rooplal* (1 Supra) was considered, but the said decision was not applied because certain employees of Jal Nigam were absorbed in the Ghaziabad Development Authority contrary to the statutory rules contained in the Uttar Pradesh Urban Planning and Development Act, 1973 which created UP Development Authority Centralized Service Rules. The Rules had provided that only those who were in the employment of the different *development authorities* shall be borne to the cadre of the Central Services, but the UP Jal Nigam was not a development authority, having been constituted under a different statute and was an autonomous body. It was held that though they might have been deputed, they did not derive any right to be absorbed in the services of the Ghaziabad Development Authority; that the Rules did not provide for appointment by way of transfer; so their service could not have been absorbed under Section 5A(2) of the UP Planning and Development Act, 1973; and appointment by way of absorption of the deputed employee would amount to fresh appointment.

Also in that case while making offer of absorption in the Ghaziabad Development Authority, the State informed the respondents that their past services rendered in the UP Jal Nigam would not be reckoned for the purpose of determination of seniority and they would be placed below the officers who had been appointed on regular basis in the Centralized Service after their absorption. It was held that once the employees accepted the offer, they are bound by the said condition and cannot disclaim it.

The said decision, therefore, is also clearly distinguishable.

Accordingly, we do not find any error in the impugned judgment of the learned Single Judge and so the LPAs are dismissed. No costs.

Pending application(s), if any, shall stand disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

24.01.2023
Vivek

- | | |
|-------------------------------|--------|
| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |