

SHRI KAILASH CHAND AND ORS.
v.
LT. GOVERNOR OF DELHI AND ORS.

FEBRUARY 3, 1997

[J.S. VERMA AND S.P. KURDUKAR, JJ.]

Service Law:

Delhi Administration Subordinate Service Rules, 1967: Rule 26(3) (as amended on 19-5-1989).

Seniority—Executive and Ministerial services—Merger of—Provision in R.26(3) provided for fixation of seniority of officers of Executive and Ministerial services in the integrated cadre on basis of length of service in their former cadre as on the date immediately preceding the date of integration and rotating the names of officers appointed under Rules 5 or 6 or 19 in the Executive service with that of the officers appointed under the Ministerial services under the same Rules—Held: The amended Rule 26 incorporated the principle of service jurisprudence for determining seniority—Hence Rule 26, as amended, was valid—The mere fact that on account of certain fortuitous circumstances the officers of Ministerial branch got an unfair advantage over those belonging to the Executive branch or chances of promotion to those in Executive branch were remote because of shorter length of service of the latter, not by itself a ground to quash the said provision—‘Rota’ rule—Permissible and was a matter within the domain of executive decision.

The Executive and Ministerial Class III services of the Delhi Administration were merged by a notification and the seniority in the integrated cadre was to be computed on the basis of total length of service in the respective services. Subsequently, Rule 26 of the Delhi Administration Subordinate Service Rules, 1967 was amended on 19-5-1989. Rule 26(3), as amended, provided for fixation of the seniority of Officers of Executive and Ministerial services in the integrated cadre on the basis of their seniority in their former cadre as on the date immediately preceding the date of integration and rotating the names of the Officers appointed under the same Rules. The petitioners filed a writ petition before this Court challenging the validity of the amended Rule 26(3).

A Dismissing the appeal, this Court

B HELD: 1. 1. The amendment made in Rule 26 of the Delhi Administration Subordinate Service Rules, 1967 does not depart from the principle of reckoning seniority computed on the basis of total length of service in the cadre. The principle of 'rota' incorporated in Rule 26(3) of the Rules is permissible and is a matter within the domain of executive decision. There is thus no vice in Rule 26 of the Rules as amended on 19-5-1989. [796-A-B]

C 1.2. The mere fact that on account of certain fortuitous circumstances, the Officers who belong to the Ministerial branch have got an unfair advantage over the Officers belonging to the Executive branch and the chances of promotion to those in Executive branch are remote because of shorter length of service of the latter in this cadre by itself is not a ground to strike down the settled principle of service jurisprudence for determining seniority. [796-C]

D CIVIL ORIGINAL/APPELLATE JURISDICTION : Writ Petition (C) No. 525 of 1990 Etc. Etc.

Under Article 32 of the Constitution of India.

E M.S. Ganesh, H.L. Aggarwal, Ms. Suruchi Aggarwal, Dr. M.P. Raju, (Ms. Mary Scaria) for S. P. Sharma, Ms. Binu Tamta, S.A. Matto, Raj Kumar Gupta, H.P. Sharma, Rajesh, (B. Krishna Prasad) (NP) and S. N. Terdol for the appearing parties.

F The Judgment of the Court was delivered by

G J.S. VERMA, J. The main point for decision in this writ petition and the connected matters is the constitutional validity of Rule 26 of the Delhi Administration subordinate Service Rules, 1967 (for short "Rules") as amended on May 19, 1989. A brief background of this challenge is necessary to indicate the narrow compass in which the controversy now survives.

H The Executive and Ministerial Class III services were merged by notification dated December 4, 1980 and the seniority in the integrated cadre was to be reckoned on the basis of their placement in the cadre. A writ petition was filed in the Delhi High Court to challenge this act of merger of the Executive and Ministerial branches as well as Rule 26 of the

said Rules which provided for determination of the seniority on merger of the two branches. The High Court by its judgment dated May 13, 1982 rejected the challenge to the merger of the Executive and Ministerial branches but it struck down Rule 26 as invalid. The decision of the Delhi High Court was upheld by this Court by dismissal of the special leave petition on August 12, 1985. Thereafter Rule 26 was amended on July 12, 1985. The amended Rule 26 was challenged before the Central Administrative Tribunal. The Tribunal by its judgment dated July 23, 1987 reaffirmed validity of the merger of the two branches but it quashed the amended Rule 26; and consequently the seniority list prepared on that basis was also quashed. The Tribunal's order was challenged in this Court by a special leave petition which was dismissed on February 12, 1988 but it was held that the amendment to Rule 26 made on July 12, 1985 is prospectively valid. An application for clarification of this Court's order was then made which was disposed of by order dated August 30, 1988. In that order it was clearly stated as under :

"Rule 26 which came into force from July 1985 recognised the principle of seniority to be computed on the basis of total length of service. Therefore, when this court made the order on 12.2.1988, it found that since the practice of total length of service being the determinative feature for seniority has been accepted, even without the rule, there was no justification to strike down the Rule and the Rule was, therefore, said to be made applicable prospectively from July 1985. There is no quarrel with that position by any of the parties."

Thus by the aforesaid order dated August 30, 1988 it was made clear that seniority computed on the basis of total length of service is an accepted principle and Rule 26 as amended from July 12, 1985 recognised that principle because of which there was no justification to strike down the rule as it was valid. It was, therefore, settled by that decision of this Court that a provision in the Rule providing for computation on the basis of total length of service is valid in the present case. The controversy to this extent, therefore, is to be treated as settled by that decision of this Court.

The present litigation is a sequel of a further amendment made in Rule 26 on May 19, 1989, even though Rule 26 as amended on July 12, 1985 was upheld in the earlier round of litigation as indicated above. Writ

A Petition No. 525 of 1990 has been filed under Article 32 of the Constitution in this Court challenging the validity of Rule 26 as amended on May 19, 1989. Challenge is also made in this writ petition to the validity of merger of the Executive and Ministerial branches. However, a fresh challenge to the merger of the two branches is no longer permissible on account of the earlier decisions on the point. The only question for decision in the writ
B petition is, therefore, the validity of Rule 26 as amended on May 19, 1989 in the above background. The connected matters also involve the same challenge and the same point of decision and they arise out of the unsuccessful challenge made to this effect before the Central Administrative Tribunal.

C Rule 26 as amended on May 19, 1989, is, as under :

D "26. (1) following principles shall be followed for fixation of seniority of persons appointed on regular or officiating basis to various grades under rules 6 and 19 prior to 12 th July 1985, namely :

E (a) The *inter se* seniority of direct recruits, and promotees who have been appointed in the grade on the recommendation of duly constituted Departmental Promotion Committee, shall be determined from the date of appointment in the respective grade. For the purpose of determining the seniority in a grade the date of appointment in respect of officers appointed to Grade-I of the service will be construed as the date of the order of appointment and in respect of officers appointed in grade-II or Grade-III or
F Grade-IV of the service, it will be the date of nomination for appointment in the respective grade if for any valid reason, a person having secured higher merit in the select list was nominated/appointed later, in such cases the date of nomination/appointment of his immediate junior will be assumed as the date of his nomination/appointment.

G (b) In respect of officials inducted to the cadre from ex-cadre, the seniority, unless otherwise specified, will count from the date of notification through which the official was inducted in a particular grade of the service.

H (c) In respect of persons appointed on compassionate grounds the

seniority will count from the date of appointment in the grade. A

(2) The seniority list of the officers of the Executive and Ministerial Cadres of the service appointed against any post in the cadres under Rules 5, 6 and 19 prior to 4th December 1980 shall separately be prepared showing the position of each officer in the respective grade as on 3rd December, 1980. B

(3)(a) The *inter se* seniority of officers appointed against various posts under rule 5, or rule 6, or rule 19 in the Executive and Ministerial Cadres of the Service prior to 4th December, 1980 shall be integrated on the basis of the date of their respective seniority as in the seniority list prepared under sub-rule (2) indicating the position of each officer in a particular grade of the service as on 4th December, 1980. C

(b) The integration shall be made by rotating the names of the officers appointed under rule 5, or rule 6, or rule 19 of the Executive cadre with that of officers appointed in the Ministerial cadre under rule 5, or rule 6, or rule 19. In the event of officers appointed under rule 5, or rule 6, or 19 in a particular cadre not being equal the names of officer in excess shall be placed below the officers appointed under rule 5, or rule 6, or rule 19, as the case may be. D E

(4) The seniority of persons appointed against various posts in a grade of the service by direct recruitment or by promotion in a regular or officiating capacity on or after 12th July, 1985 shall be determined in accordance with the principles laid down in the Delhi Administration (Seniority) Rules, 1965." F

The challenge to the validity of the aforesaid amended Rule is confined essentially to Clause 3 thereof.

It cannot be doubted that if this further amendment made in Rule 26 does not depart from the principle of reckoning seniority computed on the basis of total length of service in the cadre, then the challenge has to be rejected. That principle has already been upheld at the earlier stages of litigation between the two branches and, therefore, that issue no longer survives. The clear stand on behalf of the Delhi Administration is that the H

A same principle of determining seniority on the basis of total length of service in the cadre continues even under the latest amendment made in Rule 26. Nothing has been shown on behalf of the petitioners/appellants who belong to the Executive wing to indicate that this is not so. The principle of 'rota' incorporated in sub-clause (b) of Clause 3 of Rule 26 is also permissible in such a situation and is a matter within the domain of executive decision. There is thus no vice in Rule 26 as amended on May 19, 1989.

C Shri M. S. Ganesh learned counsel for the petitioners strenuously urged that on account of certain fortuitous circumstances, those who belong to the Ministerial branch have got an unfair advantage over persons belonging to the Executive branch and the chances of promotion to those in Executive branch are remote because of shorter length of service in this cadre. Suffice it to say that this by itself is not a ground to strike down Rule 26 which incorporates a settled principle of service jurisprudence for determining seniority. The legality of the merger having been upheld earlier D the logical consequence thereof in application of the well recognised rule for determination of seniority on the basis of total length of service in the cadre has to be accepted. At any rate this cannot be a ground to hold that Rule 26 as amended on May 19, 1989 is invalid for any reason.

E The only surviving challenge which arises for consideration in these matters being untenable, all these matters have to be dismissed. Consequently, the writ petition, civil appeals and special leave petition are dismissed.

V.S.S.

Petitions and appeals are dismissed.