

Union of India Vs Sushanta Kumar Bhattacharjee

Court: Gauhati High Court

Date of Decision: Jan. 1, 2005

Acts Referred: Constitution of India, 1950 " Article 226, 226

Citation: (2005) 4 GLT 330

Hon'ble Judges: D.Biswas, C.J. and B.P.Katakey, J

Bench: Division Bench

Advocate: K.Paul, D.C.Chakraborty, G.D.Paul, Advocates appearing for Parties

Judgement

B. R. Katakey, J.

This writ petition is directed against the order dated 22.8.2001 passed by the learned Central Administrative Tribunal,

Guwahati Bench, Guwahati in O. A. No. 227/2000 allowing the said application and setting aside the orders dated 9.4.1999 and 11.8.2000, both

passed by the Chief Conservator of Forests (Central), petitioner No. 2 herein and by directing the petitioners No. 1 and 2 to refix the

interseniority of the applicant (respondent No. 1 herein) visavis the petitioners No. 3 and 4, the respondents No. 2 and 3 in Original Application,

by holding that the past services rendered by the original applicant in the parent Department is to be counted for the purpose of fixing the seniority

in the borrowing Department after he was permanently absorbed in the said Department.

2. The facts leading to the filing of the writ petition is that the respondent No. 1 herein, who was initially appointed as Lower Division Clerk (LDC)

with effect from 16.1.1986 in the North Eastern Police Academy, Barapani, under the Ministry of Home Affairs, Government of India was sent on

deputation as LDC with effect from 15.6.1989 in terms of the offer of appointment dated 11.5.1989 in the office of the Chief Conservator of

Forests (Central), Regional Office, Shillong, Government of India, which was accepted by the respondent No. 1 herein. The respondent No. 1

herein accordingly joined the said post of LDC on deputation in the said office under the Ministry of Environment and Forests, Government of

India on 15.6.1989. Though the initial period of deputation was for three years, the said period was extended from time to time totalling for a

period of five years, during which period, he was even officiated as Upper Division Clerk (UDC). The respondent No. 1 (original applicant) in due

course of time requested for permanent absorption in the borrowing Department and though the parent Department initially issued a "No

Objection" for his permanent absorption in the borrowing Department, subsequently, they vide communication dated 11.11.1993 requested the

borrowing Department to repatriate him on expiry of the deputation period on 14.6.1994. The respondent No. 1, thereafter, moved the Central

Administrative Tribunal in O.A. No. 43/1994, which was disposed of vide order dated 3.10.1994 leaving it to the respondents therein to

sympathetically consider his request for permanent absorption. The parent Department, namely, North Eastern Police Academy, thereafter issued

a noobjection certificate for permanent absorption of the respondent No. 1 herein in the borrowing Department vide Memo dated 29.12.1994 in

response to the letter of the Deputy Conservator of Forests, Ministry of Environment and Forests dated 1.12.1994. The parent Department,

thereafter, vide order dated 13.5.1995 directed the respondent No. 1 to report to his parent Department immediately, which was assailed by him

by filing another O.A. being O.A. No. 68/95 before the Central Administrative Tribunal, Guwahati Bench, Guwahati wherein vide interim order

dated 22.2.1995, the learned Tribunal left it open to the applicant (Respondent No. 2 herein) to join his parent Department without prejudice to

his claim for absorption in the borrowing Department. The said OA came to be disposed of vide judgment and order dated 18.10.1995 directing

the respondents therein to consider the case of the applicant for absorption in the borrowing Department permanently in the light of the discussion

made in the said judgment. The respondents in the said O.A. vide Misc. Case No. 22/1996 filed before the learned Tribunal sought for extension

of time for compliance of the said judgment and order dated 18.10.1995 which was allowed by the learned Tribunal vide order dated 22.2.1996

extending time for compliance of the said order. The Deputy Conservator of Forests (C), Ministry of Environment and Forests, i.e. the borrowing

Department vide office order dated 20.3.1996 permanently absorbed the original applicant (Respondent No. 1 herein) against the vacant post of

LDC in the Regional Office at Shillong with effect from the date of issuance of the said order which was, however, been modified vide order dated

17.4.1996 to the effect that the order of permanent absorption would be operated from the date of joining his duty. The respondent No. 1 again

moved the learned Tribunal assailing the prospective absorption in the parent Department in O.A. No. 128/ 96 which was disposed of vide order

dated 21.1.1999 directing the respondents therein, i.e. the borrowing Department to consider the case of the applicant for permanent absorption

with retrospective effect. The Chief Conservator of Forests (Central), on the basis of the direction issued by the learned Tribunal in the said order

dated 21.1.1999, vide order dated 9.4.1999 held that the order of absorption of the original applicant (respondent No. 1 herein) was to be

determined with effect from 13.2.1995 i.e. the date on which the repatriation to the parent department was passed by the borrowing Department,

on the ground that the original applicant was absorbed in the borrowing Department not in public interest but as per his own request and, therefore,

his past service in the parent Department cannot be counted for the purpose of determining the seniority in the borrowing Department after

absorption in view of the office memorandum dated 29.5.1986 issued by the Government of India, Ministry of Personnel Public Grievances and

Pensions. However, taking the date of absorption as 13.2.1995 i.e. the date when the order of repatriation was passed by the borrowing

Department, the original applicant's seniority was fixed below the writ petitioner No. 3 and above the writ petitioner No. 4. The original applicant

being aggrieved filed an appeal against the said decision. Another appeal was also preferred by the writ petitioner No. 4 herein, which was

disposed of by the Ministry of Environment and Forests, Government of India and communicated by the Chief Conservator of Forests (Central)

vide memorandum dated 11.8.2000, holding that the applicant's seniority has to be fixed after both the present writ petitioner No. 3 and 4 and on

the basis of his date of absorption i.e. from 3.4.1996. Both the said orders were challenged in O.A. No. 227/2000 before the learned Central

Administrative Tribunal, Guwahati Bench, Guwahati, which was disposed of, vide order dated 22.8.2001. Hence, the present writ petition filed by

the Union of India as well as the Chief Conservator of Forests, Ministry of Environment and Forests and Smt. J. Lyngkhai and Shri M.P. Rimal

who were respondents in the said O. A. It will not be out of place to mention herein that though the writ petition has been filed by arraying Smt.

J. Lyngkhai and Shri M.P. Rimal, over whom the original applicant claims seniority, no power has been filed by the learned Central Government

counsel in preferring the present writ petition along with the Union of India as well as the Chief Conservator of Forests.

3. We have heard Mr. DC Chakraborty, learned Central Government Counsel appearing on behalf of the writ petitioners and also Mr. K. Paul,

learned counsel appearing on behalf of the respondent No. 1 who was original applicant before the learned Tribunal.

4. Mr. Chakraborty, learned Central Government Counsel has assailed the order passed by the learned Tribunal on the ground that the seniority of

the original applicant (Respondent No. 1 herein) above the writ petitioner Nos. 3 and 4 cannot be fixed in view of the fact that the original

applicant was permanently absorbed in the borrowing department i.e. in the office of the Chief Conservator of Forests (Central), Ministry of

Environment and Forests, Government of India on his own request and not in public interest, in view of the Office Memorandum dated 29.5.1986

issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, wherein it is stipulated that where the transfers are not

strictly in public interest, the transferred officers will be placed after the officers appointed regularly to the grade on the date of absorption.

According to the learned Central Government Counsel, though the initial order of transfer by way of deputation of the original applicant was in

public interest, he was subsequently permanently absorbed in the borrowing Department as per his own request and, therefore, it cannot be said

that he was permanently absorbed in public interest, and, hence, by applying the said office Memorandum dated 29.5.1986, his seniority has to be

fixed after the writ petitioner Nos. 3 and 4 and, accordingly, the seniority was rightly fixed by the Government of India, which was communicated

by the Chief Conservator of Forests (Central) vide order dated 11.8.2000. The learned counsel, therefore, submits that the learned Tribunal has

committed illegality in setting aside the orders dated 9.4.1999 and 11.8.2000 and directed fixation of seniority of the original applicant by taking

into account his past service in the parent Department.

5. Mr. Paul, learned counsel appearing on behalf of the respondent No. 1 has raised a preliminary objection as to the maintainability of the present

writ petition filed on behalf of the writ petitioner Nos. 3 and 4, over which the present respondent No. 1 claims seniority, on the ground that though

in the writ petition they have been arrayed as petitioners No. 3 and 4 along with the Union of India and Chief Conservator of Forests, filed by the

learned Central Government Counsel, no power has been filed by the learned Central Government counsel on behalf of the said petitioners No. 3

and 4 and, therefore, the writ petition can only be treated as the petition challenging the order passed by the learned Tribunal on behalf of the writ

petitioners No. 1 and 2 only i.e. the Union of India and the Chief Conservator of Forests (Central). On merit, the learned counsel has submitted

that since the respondent No. 1, who was original applicant before the learned Tribunal, was deputed to the Department of Environment and

Forests, Government of India in public interest and not on his own request, even by applying the office memorandum dated 29.5.1986, the past

services of the respondent No. 1 herein in the parent Department cannot be wiped out and said period of service has to be taken into

consideration for the purpose of fixation of seniority in the borrowing Department after his permanent absorption, even though he was permanently

absorbed on his own request. The further submission of the learned counsel is that as the respondent No. 1 on his deputation to the borrowing

department was serving in the equivalent cadre as in the parent department, the period of service rendered by him in the parent Department has to

be counted for the purpose of fixation of seniority in the deputed post after he is permanently absorbed in the borrowing Department and if the said

period is not counted for the purpose of fixation of seniority, the same would be violative of Articles 14 and 16 of the Constitution of India.

According to the learned counsel, the past services rendered by the respondent No. 1 in the parent Department cannot be taken away by issuing

an office memorandum i.e. office memorandum dated 29.5.1986 as the law requires that the previous service of a transferred official has to be

counted for seniority in the transferred post as both the posts are equivalent. The further submission of the learned counsel is that the borrowing

Department never at any point of time before his permanent absorption had informed the applicant that his past services in the parent Department

shall not be taken into consideration for the purpose of fixation of seniority and also about the existence of the office memorandum dated

29.5.1986 and had that been made known to the respondent No. 1, he would not have accepted the permanent absorption in the borrowing

Department. Therefore, according to the learned counsel, the learned tribunal has rightly passed the impugned order directing the respondent

authorities to refix the seniority by taking into account past services rendered by him in the parent Department and in setting aside the orders dated

9.4.1999 as well as decision of the Government of India communicated vide communication dated 11.8.2000. The learned counsel in support of

this contention has placed reliance on the decision of the Apex Court rendered in K. Madhavan and another vs Union of India and others,

reported in 1987 (5) SLR 725 [(1987) 4 SCC 566] as well as in S.L Rooplal and another vs Lt. Governor to Chief Secretary, Delhi and others,

reported in (2000) 1 SCC 644.

6. We have considered the submissions of the learned counsel for the parties and also perused the pleadings as well as the records of O.A. No.

227/2000 pertaining to the learned Central Administrative Tribunal, Guwahati Bench.

7. The main thrust of argument of the learned Central Government Counsel is that the respondent No. 1 "s permanent absorption in the office of

the Chief Conservator of Forests (Central), Ministry of Environment and Forests is on the basis of the request made by him and, therefore, such

absorption cannot be treated to have been made on public interest and, hence, the period of service rendered by him in the parent Department

prior to his absorption in the borrowing Department in view of the office memorandum dated 29.5.1986 cannot be taken into account.

8. There is no dispute that the respondent No. 1 was initially appointed as Lower Division Clerk under the North Eastern Police Academy,

Barapani under the Ministry of Home Affairs, Government of India with effect from 16.1.1986 and vide order dated 11.5.1989 offer of

appointment to the post of LDC in the office of the Chief Conservator of Forests (Central), Ministry of Environment and Forests, Government of

India, on deputation for three years was made to the respondent No. 1 who duly accepted the said offer and joined as Lower Division Clerk in the

borrowing Department on being released by the parent Department. There is also no dispute that the post held by the respondent No. 1 in the

parent Department and in the borrowing Department on deputation are equivalent. In fact, in the borrowing Department, the respondent No. 1

was given adhoc promotion to the post of Upper Division Clerk which promotional post he has relinquished on being informed by the borrowing

Department that his case for permanent absorption in the said Department can only be considered if he remains as LDC in the borrowing

Department.

9. The question which arose for determination before the learned Tribunal as well as before this Court is ""whether the respondent No. 1 is entitled

to get the benefit of his past services in the parent Department after he was permanently absorbed in the borrowing Department?

10. The respondent No. 1 was offered for appointment to the post of LDC in the borrowing Department on deputation vide order dated

11.5.1989 and on being accepted the said offer, the Director (Corpn.) Ministry of Environment and Forests, Government of India, requested the

respondent No. 1 to report for duties to the Chief Conservator of Forests (Central) on or before 15.6.1989. Accordingly, the petitioner, on being

relieved by the parent Department, joined the services in the parent Department on 15.6.1989. There is no dispute to the effect that the said offer

of appointment on deputation was issued in public interest. The parent Department, in fact on 14.6.1989 issued a No Objection Certificate for

permanent absorption of the respondent No. 1 in the borrowing Department, but subsequently, it has asked the borrowing Department to

repatriate the respondent No. 1 upon expiry of his deputation period on 14.6.1994. Though the respondent No. 1 "s deputation was initially for a

period of three years commencing from the date of joining i.e. 15.6.1989 expiring on 14.6.1992, as his services in the borrowing Department was

needed in public interest, the Chief Conservator of Forests vide communication dated 2.4.1992 addressed to the Secretary to the Government of

India, Ministry of Environment and Forests, requested for extension of the deputation of the respondent No. 1 as in the interest of works in the

Department his services were required. The Deputy Conservator of Forests (Central) also vide communication dated 23.4.1992 requested the

Assistant Inspector General of Forests, Government of India, Ministry of Environment and Forests, requested for extension of the deputation

period by two years as the respondent No. 1 "s services was required in public interest. Accordingly, the period of deputation of the respondent

No. 1 was extended by two years in public interest.

11. The Conservator of Forests (C) by taking into account the no objection given by the parent Department on 14.6.1989 and on the basis of the

order dated 2.5.1991 issued by the Government of India, Ministry of Environment and Forests, vide office order dated 30.10.1991 allowed the

respondent No. 1 to continue on deputation till finalization of the recruitment rules and his eventual absorption in service in the borrowing

Department. It is evident from the said office order dated 30.10.1991 that the permanent absorption of the respondent No. 1 in the borrowing

Department was actively under consideration, which could not be done because of nonfinalization of the recruitment rules. The Government of

India vide notification published in the Gazette framed a recruitment rules, namely, Regional Offices, Ministry of Environment and Forests GroupC

and GroupD, Recruitment Rules, 1992, wherein it provides that the post of Lower Division Clerk is to be filled up by direct recruitment failing

which by transfer on deputation. Therefore, service rules also contemplate the transfer on deputation being a mode of appointment to the post of

Lower Division Clerk in the present borrowing Department.

12. The respondent No. 1 earlier approached the learned Tribunal in O.A. No. 43 of 1994 praying for his permanent absorption in the borrowing

Department as no final order has been passed by the authority about his permanent absorption although the Department was sympathetically

considering his case for absorption. The said O.A. was disposed of vide order dated 30.10.1994 directing the respondents therein i.e. the

borrowing Department to sympathetically consider the case of the respondent No. 1 for absorption in the borrowing Department in the light of the

observation made in the said judgment. Pursuant to the said order, the parent Department issued a no objection certificate vide Memo dated

29.12.1994, but the borrowing Department vide order dated 13.5.1995 relieved the respondent No. 1 directing him to report for duty in the

parent Department immediately since no order for permanent absorption in the borrowing Department was passed. The respondent No. 1

challenged the same by filing O.A. No. 68 of 1995 wherein an interim order dated 22.2.1995 was passed to the effect that it is open to the

respondent No. 1 (applicant therein) to join the parent Department without prejudice to his claim for absorption in the borrowing Department. The

learned Tribunal vide judgment dated 18.10.1995 disposed of the said O.A. directing the respondent to consider the absorption of the respondent

No. 1 in the borrowing Department and ultimately the borrowing Department vide order dated 20.3.1996 permanently absorbed the respondent

No. 1 against vacant post of Lower Division Clerk with effect from the date of the order. However, the said order was modified vide order dated

17.4.1996 to the effect that the order of absorption shall come into effect from the date of joining of the duty. On being dissatisfied with the said

prospective absorption of the respondent No. 1 in the borrowing Department, O.A. No. 128/1996 was filed by him which was disposed of by the

learned Tribunal on 21.1.1999 directing the respondent No. 1 to consider his case for absorption with retrospective effect. Pursuant to the said

order, the Chief Conservator of Forests (Central) passed an order dated 9.4.1999 absorbing the respondent No. 1 with effect from 13.2.1995 i.e.

the date when he was released from the borrowing Department and fixing seniority between the writ petitioners No. 3 and 4. The said order was

modified in the appeal preferred by the respondent No. 1 as well as the present writ petitioner No. 4 by the Government of India by holding that

his date of absorption should be 3.4.1996 and his seniority is to be fixed after the writ petitioners No. 3 and 4.

13. The contention of the learned Central Government Counsel appearing on behalf of the writ petitioners is that the services rendered by the

respondent No. 1 in the parent Department cannot be treated for the purpose of computation of seniority after his absorption in the borrowing

Department in view of the Office Memorandum dated 25.9.1986 as his absorption in the borrowing Department was not in public interest but on

his own interest. For better appreciation, the said Office Memorandum dated 29.5.1986 is quoted below:

No. 20020/7/80ESTT(D)

Government of India/Bharat Sarkar

Ministry of Personnel, Public Grievances &

Pension Department of Personnel & Training

New Delhi, the 29th May, 1986

OFFICE MEMORANDUM

Subject: Seniority of persons absorbed after being on deputation.

The undersigned is directed to say that the existing instructions on seniority of transferees contained in para 7 of the Annexure to this Department's

O.M. No. 9/11/55RPS dated 22nd December, 1959 (copy enclosed) mainly deal with cases where persons are straight way appointed on

transfer. It is, however, observed that most of the cases of permanent absorption are those where the officers were taken on deputation initially

under the method of "transfer on deputation/transfer" contained in the relevant recruitment rules. This O.M. is intended to fill this gap in the existing

instructions.

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

principle 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 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 affect any regular promotions made prior to the date of absorption. Accordingly, it has

been decided to add the following subpara (iv) to para 7 of general principles communicated vide O.M. dated 22nd December, 1959: "(iv) In 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, however,

been holding already (in 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

fixation of seniority of a transferee in accordance with the above principle will not however, affect any regular promotions to the next higher grade

made prior to the date of such absorption. In other words, it will be operative only in filling up of vacancies in higher grade taking place after such

absorption. In case in which transfers are not strictly in public interest, the transferred officers will be placed below all officers appointed regularly

to the grade on the date of absorption"".

3) All the Ministries/Department are requested kindly to bring these instructions to the notice of all concerned in the Ministries/Departments and

attached and subordinate officers under them for their guidance and to ensure their compliance.

4) These orders will not be applicable to transfers within the India Audit and Accounts Department which are governed by orders issued by the C

& A G from time to time.

5) Hindi version is attached.

Sd/

K.S.R. KRISHNA RAO)

Deputy Secretary to the Govt. of India.

14. It appears from the said office Memorandum, as quoted above, that in case of a person who is initially taken on deputation and absorbed later,

for the purpose of fixation of his seniority in the grade, in which he is absorbed, the period of services rendered by him in the parent Department

shall be taken into consideration if he is holding the same or equivalent grade on regular basis in the borrowing Department. However, the said

provision was qualified by putting a rider to the effect that in case the transfers are not strictly in public interest, the transferred employee will be

placed below all the officers appointed regularly to the grade on absorption. It is the case of the writ petitioners that the writ petitioners No. 3 and

4 were appointed regularly as Lower Division Clerk prior to the date of absorption of the respondent No. 1 in the borrowing Department and as

he was absorbed strictly not in public interest but for his own interest, his seniority has to be fixed after the writ petitioners No. 3 and 4, though

there is no dispute to the fact that the respondent No. 1 before his deputation and absorption in the borrowing Department was holding an

equivalent regular post in the parent Department.

15. It is a fact that the respondent No. 1 has applied for his permanent absorption in the borrowing Department and the borrowing Department

though initially appointed him on deputation for three years, his deputation was initially extended by two years in public interest as his services were

required in the Department. As already observed above, there is no dispute regarding the initial appointment of the respondent No. 1 on

deputation in public interest and subsequently extension of the deputation in public interest. The respondent No. 1 "s claims is that his past services

in the parent Department cannot be wiped out as he was holding equivalent post in the parent Department on regular basis.

16. It is evident from the office order dated 30.10.1991 that the borrowing Department even during continuance of the petitioner's service on

deputation for first three years was actively considering the permanent absorption of the respondent No. 1 in the borrowing Department in terms of

the no objection given by the parent Department on 14.6.1989. It is also evident from the communication dated 2.4.1992 issued by the Chief

Conservator of Forests (Central) and dated 23.4.1992 issued by the Deputy Chief Conservator of Forests (Central) that the services of the

respondent No. 1 is required in the borrowing Department in public interest as there was no such efficient person in the said Department.

Accordingly, the period of deputation of the respondent No. 1 was extended by two years. The respondent No. 1 was permanently absorbed vide

office order dated 20.3.1996 issued by the Deputy Conservator of Forests (Central) which is quoted below:

Government of India

Ministry of Environmental Forests North Eastern Regional office Upland Road, Latumkhrah Shillong 793003

No. 1 I589/ERoNE/608187 Dated 20031996 OFFICE ORDER

With reference to letter No. 4189(RD) Part II dated 20031996 from the Ministry, New Delhi, Shri S.K. Bhattacharjee of North Eastern Police

Academy, Umsaw, is hereby absorbed against the vacant post of L.D. Clerk (Hindi Typist) in this Regional Office, Shillong in the scale of Rs.

950201150EB251500/ plus DA and other allowances as admissible to the Central Government employees with effect from 20031996.

Sd/K.R.LYNGDOH

Deputy Secretary of Forests (C).

17. The said order dated 20.3.1996 does not reflect that the respondent No. 1 was absorbed on his request and not in public interest. Moreover,

it is not the case of the petitioners that the respondent No. 1 was made known about the office Memorandum dated 29.5.1986 to the effect that if he

is permanently absorbed in the borrowing Department, in view of the application filed by him to that effect, his past services in the parent

Department will not be taken into consideration for the purpose of fixation of seniority in the borrowing Department, on being permanently

absorbed. Had that been made known to the respondent No. 1, he would not have opted for permanent absorption in the borrowing Department

to his detriment. The writ petitioners, therefore, after respondent No. 1's absorption permanently in the borrowing Department cannot take

recourse to the said office memorandum to deny the respondent No. 1 the benefit of his past service in the parent Department. Moreover, as

discussed above, it is not that the respondent No. 1 was permanently absorbed in the borrowing Department only on the basis of his request, but

also because his services are required in the borrowing Department in public interest. The Apex Court in the case of K. Madhavan (Supra) while

dealing with the matter which is similar in nature as in the present case, has held that it will be against all rules of service jurisprudence if a

government servant holding a particular post is transferred to same or an equivalent post in another Government Department, the period of his

services in the post before his transfer is not taken into consideration in computing his seniority in the transferred post as the transfer cannot wipe out

his length of service in the post from which he has been transferred. The Apex Court relying on the decision in R.S. Mokashi and others Vs I.M.

Meenon and others, reported in (1982) 1 SCC 379 as well as in Wing Comm. J. Kumar Vs Union of India and others, reported in (1982) 3 SCR

453 has further held that it is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new

service, their preexisting total length of service in the parent Department should be taken into account for determining their rank in the new service

cadre. The Apex Court in S.I. Rooplal (Supra) while considering a similar question has also held that in law it is necessary that the previous service

of transferred official is to be counted for seniority in the present post if the post held by him in the parent Department as well as in the borrowing

Department are equivalent. The Apex Court while dealing with the office Memorandum dated 29.5.1986 has also held that equity demands that

before applying the said memorandum, the officer must be made known about the conditions contained in the said memorandum before he is

permanently absorbed in the borrowing Department and if the same is not done, then it will go to show that the memorandum has in fact never

been acted upon. It has further been held that the period of service rendered by a deputationist in the parent Department cannot be arbitrarily

taken away and any rule, regulation or executive instruction which has the effect of taking away the service rendered by the deputationist in an

equivalent cadre in the parent Department while counting his seniority in the deputed post would be violative of Articles 14 and 16 of the

Constitution of India. The Apex Court in view of the facts involved in the said case has in fact struck down the words "which ever is later" as

appeared in the said memorandum in amended Clause (iv).

18. In the instant case, as observed above, the services of the respondent No. 1 were lent to the borrowing Department in public interest, his

deputation was extended from time to time in public interest and though he made a request for permanent absorption, in fact he was absorbed in

public interest in the borrowing Department. Had the borrowing Department's had no requirement for absorbing the respondent No. 1

permanently, he could have very well been told to that effect and repatriated to his parent Department after completion of his period of deputation,

which has not been done. Therefore, at this stage the borrowing Department cannot say that the order of absorption dated 20.3.1996 was passed

in view of the direction issued by the learned tribunal on 18.10.1995 in O.A. No. 68 of 1995 as the learned Tribunal by the said order only

directed the borrowing Department to consider absorption of the respondent No. 1 in Environment and Forests Department as LDC and there is

no direction to absorb. The borrowing Department upon consideration of the entire matter has passed the order of absorption dated 20.3.1996

and, therefore, it cannot subsequently say that there was no public interest involved in absorbing the respondent No. 1.

19. In view of the above, we are of the view that the learned Tribunal has rightly set aside the orders dated 9.4.1999 as well as the decision of the

Central Government communicated vide communication dated 11.6.2000 and directed the authorities to refix the inter-seniority of the respondent

No. 1 vis-à-vis the writ petitioners No. 3 and 4 by taking into account the past services rendered by the respondent No. 1 in the parent Department.

20. Before parting, we may also like to observe that the Union of India has filed the present writ petition on behalf of the writ petitioners No. 3 and

4 also, above whom the respondent No. 1 claims seniority, that too without filing any power on their behalf. The Apex Court in S.I. Rooplal

(Supra) has observed that in the matter of dispute relating to the service condition of its employees, the State should only play a role of impartial

employer in inter se disputes between his employees and if the matter is dragged to a judicial forum, the State should confine its role to that of an

amicus curiae by assisting the judicial forum to arrive at a correct decision and once a decision is rendered by a judicial forum, thereafter, the State

should not further involve itself in litigation and the matter thereafter should be left to the parties concerned to agitate further if they so desire. It has

further been observed that when a State, after the judicial forum delivers a judgment, files review petition, appeal etc. it gives an impression that it is

espousing the cause of a particular group of employees against another group of its own employees, unless of course there are compelling reasons

to resort to such further proceedings. In the instant case, as observed above, no writ petition in fact been filed by the persons above whom the

present respondent No. 1 claims seniority and the present writ petition filed on their behalf cannot be treated as a writ petition on their behalf in the

absence of any power executed by them in favour of the learned Central Government Counsel.

21. In view of the above, the writ petition has no merit and, hence, the same is dismissed. The order passed by the learned Central Administrative

Tribunal, Guwahati Bench in O.A. No. 227 of 2000 on 22.8.2001 is upheld.

No costs.