courtkutchehry.com

Company : Sol Infotech Pvt. Ltd.

Website : www.courtkutchehry.com

Printed For :

Date : 24/08/2025

Bharat Baruah Vs State of Arunachal Pradesh

Court: Gauhati High Court

Date of Decision: Aug. 3, 1993

Citation: (1998) 3 GLJ 475

Hon'ble Judges: S.K.Homchaudhuri, J

Bench: Single Bench

Advocate: A.C.Bora, A.B.Choudhary, A.Roy, A.Sharma, A.M.Majumdar, R.K.Jaitly, M.Hazarika , D.K.Bhattacharyya, B.M.Choudhary, Advocates appearing for Parties

Judgement

1. In this petition vexed question of fixation of inter se seniority between the petitioner (a promotee) and the respondent Nos. 4 to 9 (the direct

recruits) in the cadre of Grade II of Arunachal Pradesh Civil Service (Class I) is involved.

2. Petitioner"s case is that he was initially appointed as Base Superintendent in the then North East Frontier Administration, (now Arunachal

Pradesh) in the 1963. Subsequent to the appointment of the petitioner, the post of Base Superintendent was redesignated as Circle Officer. The

petitioner received commendation certificate in the year 1970 in recognition of his sincere and efficient discharge of duties. In the year 1974, the

President of India in exercise of power conferred by proviso to Article 309 of the Constitution framed the Arunachal Pradesh Civil Service Rules,

1974, hereinafter mentioned as "the Rules". As per Rule 5 of the Rules 50% of the posts in the service should be filled up by direct recruits and 50

% by promotion. Feeder posts to be filled up by promotion in the service has been mentioned in Schedule II of the Rules which are Circle Officer

and Deputy Director of Supply and Transport Department.

3. By the notification No.APTT. 14/77 dated 29.4.77 the petitioner along with 8 others were appointed to officiate in Grade II post of Arunachal

Pradesh ivil Service (Class I) on temporary basis with effect from the date of their taking over charge. The appointment was made under Rule 22

read with Rule 23 of the Rules. Since then the petitioner continued to work in the Grade II cadre of the Arunachal Pradesh Civil Services (Class I).

In the year 1981, the respondent Nos 4 to 9 were recruited directly in the Grade II cadre of the APCS (Class I). By notification dated 1.10.81

inter se seniority of the officers in Grade II of APCS (Class I) was published and the petitioner''s inter se seniority was shown below the

respondent Nos 4 to 9. The respondent Nos 4 to 9 were confirmed in the cadre with effect from 10.4.83 while the petitioner was confirmed with

effect from 1.5.83. The petitioner submitted a representation against fixation of seniority below respondent Nos 4 to 9 in the cadre of Grade II

APCS (Class I), but no order was passed on the representation. Again by notification dated 15.4.86 another seniority list was circulated without

making any modification of the seniority list published on 1.10.81. The petitioner made representation on 23.3.86 against fixation of his seniority

below the respondent Nos 4 to 9. On 7.11.89 the final seniority list was published showing the petitioner''s seniority in the Grade II APCS (Class

I) cadre correctly above the respondent Nos 4 to 9. Thereafter, the petitioner was placed in the Selection Grade of the APCS and was appointed

as Additional Deputy Commissioner, Roing by notification dated 24.10.89. The respondent Nos 4 to 9 were also placed in the Selection Grade in

the service at the same time. The petitioner''s appointment to the post of Additional Deputy Commissioner was extended from time to time by

subsequent notifications dated 9.2.90,3.5.90 and 4.9.90. While the petitioner was working as Additional Deputy Commissioner, the Govt of

Arunachal Pradesh, Appointment Department by the order dated 23.7.91, allowed him to officiate in the IAS cadre and posted him as Deputy

Commissioner, Anini, However, by the impugned notification dated 29.10.91 the Govt of Arunachal Pradesh, Appointment Department, cancelled

the seniority list circulated by letter dated 17.11.89, fixing the petitioner''s inter se seniority above the respondent Nos 4 to 9 and restored the

seniority list circulated by the Govt letter dated 15.4.86 with amendments, if any. Consequently the petitioner''s inter se seniority has been pushed

down below the respondent Nos 4 to 9. Feeling aggrieved, the petitioner has approached this Court in this writ petition.

4. Petitioner''s contention is that being appointed in the Grade II cadre of Arunachal Pradesh Civil Service (Class I), hereinafter referred to as

APCS, in April 1977, much earlier to respondent Nos 4 to 9, the petitioner''s inter se seniority was rightly fixed above respondent Nos 4 to 9 by

the seniority list circulated by the Govt letter No. APTT. 176/75/11 dated 17.11.89 and the impugned order dated 29.10.91 purporting to cancel

the said inter se seniority list, is arbitrary, illegal and cannot be sustained.

5. The respondent No. 1, has resisted the contentions by filing affidavitinopposition as well as additional affidavitinopposition. In the

affidavitinopposition the respondent No. 1 has contended that the petitioner was appointed in the cadre of Circle Officer on 12.11.63 and was

confirmed in the said post on 10.9.69. The petitioner along with other Circle Officers were appointed under Rule 22 of the Rules to officiate in the

post of Grade II APCS (Class I). The Selection Board constituted as per the provision of the Rules met on 21.1.80 for selecting the officers for

appointment to Grade II of APCS (Class I) in the substantive capacity by promotion, and the Selection Board recommended 28 officers out of

whom 17 officers in order of merit could be appointed against the existing substantive vacant post of Grade IIAPSC (Class I) by order dated

19.5.80, published in the Gazette dated June 16,1980. The Selection Board in its subsequent meeting dated 8.6.81 observed that out of 28

selected officers, who were left out, should be appointed in substantive capacity in the subsequent vacancies as and when would arise. Out of the

17 officers appointed in Grade II APCS by the order dated 19.5.80, serial Nos 2 to 17 were senior to the petitioner in the cadre of Circle Officer

and were officiating in the Grade II APCS before they were appointed. Shri NB Tamang, was at the relevant time was holding the post of Circle

Officer, but because of his merit and suitability, he was recommended by the Selection Board in its meeting held on 21.1.80 for appointment to the

Grade APCS (Class I). The petitioner was recommended but he having not found place amongst the first 17 in the select list, he was

accommodated in Grade II APCS (Class I) by order dated 25.2.84. The petitioner was confirmed by the said order with effect from 1.5.83 in the

Grade II APCS (Class I) as per the recommendation of the Selection Board made in its meeting dated 8th and 9th June, 1981. The respondent

No. 1 has further contended that the petitioner was not a member of Grade II APCS (Class I) service before he was accommodated by order

dated 25.2.84 with effect from 1.5.83 and, as such, he cannot claim seniority above respondent Nos 4 to 9, who became member of the service

before the petitioner.

6. Respondent Nos 4 to 9 have filed counter contending that they were appointed by order dated 26.3.81 in the Grade II of APCS (Class I)

directly against the posts reserved for direct recruits as probationer and after successful completion of probationary period they were confirmed in

the service with effect from 10.4.83. All of them were appointed in substantive capacity before the petitioner. The petitioner did not become a

member of the service till he was appointed in substantive capacity in the service by order dated 25.2.84 with defect from 1.5.83. As such, inter se

seniority circulated by letter dated 15.11.89 was apparently wrong and the Govt has rightly cancelled the order and restored their seniority above

the petitioner.

7. I have heard Mr. A. Sarma, learned counsel for the petitioner, Mr. AM Majumdar, learned Advocate General assisted by Mr. A. Roy, learned

Govt Advocate, Arunachal Pradesh and Mr. DK Bhattacharyya, learned counsel for the respondent Nos 4 to 9.

8. Mr. Sarma has submitted that admittedly the petitioner was confirmed in the post of Circle Officer in 1969. As per Schedule I of the Rules,

permanent strength of the service in APCS was 65. The petitioner being a confirmed Circle Officer, having rendered about 14 years service, was

eligible for selection and appointment in the cadre in the year 1977 when he was appointed temporarily in the cadre under Rule 22 read with Rule

23 of the Rules. The petitioner admittedly continued to serve in the cadre till he was confirmed with effect from 1.5.83 by order dated 25.2.84.

Mr. Sarma submitted that it is well settled that seniority of the officers is to be counted from the date of his appointment and not from the date of

confirmation. It cannot be said that the petitioner''s initial appointment in the service was not in accordance to the Rules. Services rendered by the

petitioner on and from the date of his appointment in Grade II of APCS (Class I) by order dated 29.4.77, is also not fortuitous, but regular. It is

not the case of respondents that at the time of appointment of the petitioner by order dated 29.4.77 there was no vacancy in the permanent

strength of service. On the other hand, the materials on records ie the inter se seniority list published from time to time clearly shows that there

were vacancies in the permanent strength of service when the petitioner was appointed in the year 1977. Mr. Sarma has placed reliance in a

decision of the Five Judges Bench of the Hon''ble Supreme Court in the case of Direct Recruit Class II Engineering Officers'' Association vs. State

of Maharastra, reported in AIR 1990 SC 1607. The principle enunciated by the Hon''ble Supreme Court in the said decision after taking into

consideration of the earlier decisions as regards fixation of seniority are amongst other :

(i) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according

to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and

made as a stopgap arrangement, the officiation in such post cannot be taken into account for considering the seniority:

(ii) If the initial appointment is not made by following procedure laid down by the rules but the appointee continues in the post uninterruptedly till

the regularisation of his service in accordance with the rules, the period of officiating service will be counted;

(iii) When appointment are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if the

rules are framed in this regard they must ordinarily be followed strictly;

(iv) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation.

In case, however, the quota rule is not followed for a number of years use it was impossible to do so the inference is irresistible that the quota rule

had broken down.

9. Mr. Sarma has further submitted that it is not the case of the respondents that existing quota rule was strictly adhered to. It is apparent from the

record that the quota rules was not followed continuously for a number of years and as such, as per the law laid down by the Hon''ble Supreme

Court in the case of Direct Recruit Class II Engineering Officers'' Association (supra) for the purpose of fixation of inter se seniority, services,

rendered by the petitioner on and from the date of appointment in the Grade II APCS (Class I) by order dated 29.4.77 is to be counted.

10. The learned Advocate General, Arunachal Pradesh on the other hand, has drawn my attention to Rule 2 (d) of the Rules which provides that

''member of the service'' means a person appointed in a ''substantive capacity'' to either grade of the service and includes persons appointed on

probation to Grade II of the service. The petitioner was appointed on substantive capacity by order dated 25.2.84 with effect from 1.5.83. The

petitioner for the first time was selected by the Selection Board for appointment in substantive capacity in the service in the year 1980 and that his

position in the select list being much lower, he could not be appointed in the substantive capacity in 1980 against the vacancies to be filled up by

promotion and he was appointed substantively after retirement of one KV Chari. The respondent Nos 4 to 9 were appointed in substantive

capacity in the service as direct recruits before the petitioner and were confirmed in the cadre with effect from 10.4.83. As such, seniority of

respondent Nos 4 to 9 have been rightly fixed above the petitioner. There was obvious mistake in the seniority list circulated in the letter dated

17.11.89 and the mistake was ractified by the impugned order dated 29.10.91.

11. Mr. DK Bhattacharyya, learned counsel for the respondent Nos 4 to 9 in adopting the submissions made on behalf of the respondent No.l has

submitted that the petitioner was not a member of the service before he was appointed in substantive capacity by order dated 25.2.84 whereas the

respondent Nos 4 to 9 were appointed in the respective quota for direct recruit in the year 1981 initially as probationer and thereafter they were

confirmed in the service with effect from 10.4.83, much earlier to the petitioner. Mr. Bhattacharyya, has further submitted that the period of service

rendered by the petitioner in officiating capacity till he was appointed in substantive capacity cannot be counted for fixation of inter se seniority

inasmuch as the service rendered by the petitioner during that period was fortuitous and cannot be counted towards inter se seniority.

12. Mr. Bhattacharyya has submitted that the ratio decidendi in the case of Direct Recruit Class II Engineering Officers'' Association (supra) is

distinguishable on the facts of the present case and the points involved in the present case is covered by the latest decision of the Hon''ble Supreme

Court in the case of AN Sehgal vs. Raja Ram Seo Ram, reported in 1992 Suppl (1) SCC 304, as well as the decision in the case of SL Chopra

vs. State of Haryana, reported in 1992 Suppl (1) SCC 391.

13. In the case of AN Sehgal (supra) on the question of fixation of inter se seniority between the direct recruits and promotees for the Haryana

Services Engineers Class IPWD (Roads and Building Branch) Rules, 1969, the Hon''ble Supreme Court has held that promotees officiating against

excadre posts does not become member of the service till appointed substantively to that cadre post and that his service prior to membership is to

be treated as fortuitous and cannot be counted for seniority. Seniority of promotee is to be reckoned only from the date of availability of the cadre

post. The officiating period of service from the date of initial promotion to the date of availability of the cadre post, would thus be rendered

fortuitous and stand excluded. In the case of SL Chopra (supra) on the question of fixation of inter se seniority between the direct recruits and

promotees as per provision of Punjab Service Engineers Class I, PWD (Public Health Branch), the Hon''ble Supreme Court amongst other held

that seniority of direct recruits in the cadre would be from the date of their initial appointment as Assistant Engineer, while the period of service

rendered by the promotees from the date of initial promotion till date of availability of the cadre post would be fortuitous. Direct recruits though

promoted later would become senior to the promotees and would be entitled to promotion to the next higher post of Superintending Engineer

within their quota.

14. I have considered the submissions made on behalf of the petitioner as well as on behalf of the respondents. It is apparent from the admit of

facts, that the petitioner possessed the requisite qualification for appointment to Grade II APCS (Class I) service in substantive capacity when he

was appointed temporarily by order dated 29.4.77 in the service under Rule 22 of the Rules. Rule 22 of the Rules contemplates that officiating

appointment in the service should be made on the basis of selection made by the Selection Board constituted under Rule 6 of the Rules. Authorised

permanent strength of the service at the initial constitution, as can be gathered from Schedule I, was 65. It is not the case of the respondent No. 1

that at the time of appointment of the petitioner by order dated 29.4.77 in Grade II APCS (Class I), no post in the authorised strength of the

service was lying vacant. Rule 22 of the Rules provides that when the Administrator was of the opinion that number of the officers available in the

list referred to in subrule (3) of Rule 13 for appointment in the Grade II APCS (Class I) was not adequate having regard to the existing vacancies

in the service, he might direct the Board to consider the case of the officers who have officiated for a period not less than 3 years in any of the post

mentioned in Schedule II of the Rules and to prepare the select list. It is neither the case of the respondent No. 1 nor it is available from the

records that the select list under subrule (3) of Rule 13 of the Rules for appointment to Grade II APCS (Class I) in substantive capacity was made

by the Selection Board prior to appointment of the petitioner in the service by order dated 29.4.77. The petitioner was confirmed in the post of

Circle Officer (a feeder post for recruitment to Grade II APCS) in the year 1969 and rendered about 14 years service as Circle Officer when he

was temporarily appointed in Grade II APCS by order dated 29.4.77. It is also not the case of the respondents that the quota rule as regards

appointment to Grade II APCS (Class I) was followed soon after framing of the Rules. Stand of the respondent No. 1 in this regard is illusory.

Had the quota rule had been adhered to soon after constitution of the service, then it would have been possible to consider whether the petitioner

was appointed to officiate against post falling within the quota of direct recruits, or not. From the records it appears that after absorbing the

incumbents who held posts equivalent to post of Grade II and Grade I of APCS at the initial constitution of the service as per Rule 15 of the Rules,

no selection either under Rule 7 or Rule 13 was made till 1980 and 1981 respectively. It is apparent that either the quota rule was not followed or

it was not possible to adhered to the quota rule till 1981 when for the first time the respondent Nos 4 to 9 were appointed as direct recruits in the

Grade II APCS. The respondents are silent as to whether the posts in the permanent strength in Grade II APCS was available at the time when the

petitioner was appointed temporarily by order dated 29.4.77. However, from the provisional seniority list published in the year 1981 it can be

gathered that against authorized permanent strength of 65 in the service, 34 incumbents were absorbed in the service at its initial constitution leaving

as many as 31 posts in the permanent strength of service vacant. As such it can safely be held that the petitioner''s temporary appointment in Grade

IIAPCS was made against vacant post in the permanent strength of the service and not against excadre post. It is also not the case of the

respondent No. 1 that the petitioner was appointed to officiate against the vacant post which fell within the quota of direct recruit. Stand of the

respondent No.l is that before passing of the order dated 25.2.84, confirming the petitioner in Grade II APCS with effect from 1.5.83, the

petitioner did not become a member of the service. But the confirmation in service and appointment in the service in substantive capacity is not

same. Appointment in substantive capacity means, appointment against substantive post in a service. Confirmation in service may take place later.

15. Undisputedly, the petitioner was qualified for appointment in Grade n APCS against existing vacant post in permanent strength of service when

he was appointed temporarily in the service by order 29.4.77. It is also found that at that time vacant posts in the permanent strength of service

was available and the petitioner''s appointment was against vacant post in the permanent strength of service.

16. Rule 18 of the Rules contemplates that every person appointed under Rule 5 and 15 of the Rules to Grade II of the service shall be on

probation for a period of 2 years and that the Administrator in case of any person may extend or reduce the period of probation. As per Rule 33

of the Rules the Administrator is empowered to relax any provision of the Rules, if in his opinion, it is expedient to do so in respect of a particular

case. As already observed by order dated 25.2.84, the petitioner was confirmed in the Grade II APCS with effect from 1.5.83. As such, on the

facts and circumstances of the case, it is to be presumed that the Administrator in the exercise of power under Rule 33 of the Rules, relaxed the

provision of Rule 18 of the Rules in the case of the petitioner.

17. The ratio decidendi in the case of AN Sehgal (supra) as well as SL Chopra (supra), in my opinion, has no application on the facts and

circumstances of the case inasmuch as, in both the cases the quota rule for filling up vacant posts in the respective services by direct recruits and

promotees were followed and that the promotee in question was officiating either against excadre post or against the post which fell in the quota of

direct recruits. In my opinion, the ratio decidendi in the case of Direct Recruit Class II Engineering Officers'' Association (supra) squarely applies

on the fact of the present case. Although the petitioner''s initial appointment was not made under subrule (3) of Rule 13 of the Rules, he having get

requisite qualification for appointment in the Grade II APCS (Classs I) service in substantive capacity at the time of his temporary appointment by

order dated 29.4.77 and having rendered uninterrupted continuous service till his confirmation in the service with effect from 1.5.83 by order dated

25.2.84, the period of service rendered by the petitioner from the date of his appointment (29.4.77) till his confirmation in the service is to be

counted towards fixation of inter se seniority in Grade II APCS (Class I).

18. For the reasons stated above, the petition, is allowed. The petitioner shall be deemed to be senior to respondent Nos 4 to 9 in cadre of Grade

II of Arunachal Pradesh Civil Service (Class I). The respondents are directed not to give effect to the impugned notification dated 29.10.91 so far

as it purports to affect the petitioner''s inter se seniority above respondent Nos 4 to 9. I make no order to costs.