A

G. R. BAQUAL

v.

STATE OF JAMMU & KASHMIR

March 4, 1970

B

[M. HIDAYATULLAH, C.J., J. C. SHAH, K. S. HEGDE, A. N. GROVER, A. N. RAY AND I. D. DUA, JJ.]

Civil Service—Officer, junior to others, selected for a post equivalent to a higher post—Whether amounts to seniority over others—Scope of such selection.

C

The appellant and respondents 2, 3 and 4 were superintendents in the State Secretariat service, the appellant being junior to the three respondents. In 1959, the appellant was appointed as Personal Assistant to the Chairman of the Legislative Council, and shortly thereafter, the three respondents were promoted as Under Secretaries. In 1963, the appellant was transferred to the Secretariat as Under Secretary. In 1964, the three respondents were promoted as Deputy Secretaries.

D

On the question, whether by appointment as P.A. to the Chairman of the Legislative Council the appellant was senior to the respondents, and hence, was entitled to be also appointed as Deputy Secretary,

HELD : Under the Jammu and Kashmir Legislative Council Secretariat (Regulation and Conditions of Service) Rules, 1959, a P.A. to the Chairman of the Legislative Council is equated to a P.A. to a Minister who is equated to an Under Secretary. But, in the present case, the appellant was not promoted to the post of P.A. to the Chairman. He was only selected to serve as P.A. and such selection did not confer on him any privilege beyond holding that post as long as the Chairman would have him. Under r. 24 of the Rules also, it is the substantive post that matters and there the appellant was junior to the respondents. [879 E-F, G-H; 880 A-B]

E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1584 of 1968.

F

Appeal from the judgment and order dated December 21, 1966 of the Jammu and Kashmir High Court in Writ Petition No. 40 of 1965.

A. S. R. Chari, K. R. Chaudhuri and *K. Rajendra Chaudhuri,* for the appellant.

G

N. S. Bindra, R. N. Sachthey and *B. D. Sharma,* for respondent No. 1.

The Judgment of the Court was delivered by

H

Hidayatullah C.J. This appeal arises from the judgment and order of the Jammu & Kashmir High Court, December 21, 1966, dismissing a petition under Art. 32(2-A) of the Jammu & Kashmir Constitution filed by the petitioner/appellant G. R. Baqual

A for certain reliefs on the ground that he has been discriminated against and punished without recourse to statutory provisions and procedure. The facts of the case are as follows :

The appellant who is a Graduate of the Punjab University entered the Secretariat service of the Jammu & Kashmir State on
B November 8, 1946 as a clerk. Later he was promoted as Superintendent on September 26, 1957 and was holding a grade of Rs. 150-15-300 (revised 200-20-300-25-400). He was then appointed as Personal Assistant in gazetted rank in the grade of Rs. 200-400 (revised 250-25-350-30-500) and became P.A. to the Chairman of the Legislative Council by his order dated Octo-
C ber 23, 1959. The appellant was then transferred to the Civil Secretariat as an Under-Secretary on September 30, 1963 under Government orders in the same grade of Rs. 250-500. He claimed seniority against other Under-Secretaries when on April 14, 1964, the Government promoted four Under-Secretaries to the post of Deputy Secretaries in the pay scale of Rs. 450-800 which included three of the respondents in this appeal. He was not
D promoted and he claimed that he was so entitled both on his seniority and under the statutory rules.

The case of the appellant is almost entirely based upon his appointment as Personal Assistant to the Chairman of the Legislative Council which is equated with an Under-Secretary under
E the Jammu & Kashmir Legislative Council Secretariat (Regulation and conditions of Service) Rules, 1959. Under these rules, a P.A. to the Chairman of the Legislative Council is equated to a P.A. to a Minister and he is in his turn equated with an Under-Secretary and enjoys the same scale of pay. This scale of pay is certainly higher than the scale of pay which the Superintendent
F gets.

It was admitted before us that the appellant was not senior to the other Superintendents in the substantive post of Superintendent. In other words, if everything had been equal, he would be junior to respondents Nos. 2, 3 and 4 and would take his turn for promotion after them. He claims seniority on the basis of his
G deputation as P.A. to the Chairman of the Legislative Council and his supposed equation to an Under-Secretary. As a matter of fact, he was not promoted as Under-Secretary. He was only selected to serve as P.A. and that carried the pay and the gazetted rank. It happens frequently in service that such selections are made particularly in Secretarial line by Ministers, Chairman of
H Legislative Council or Speaker. Even in this Court such selections are made of persons to serve as Secretaries to the Hon'ble Judges. This selection carries more pay while it lasts and gives a rank which the holder enjoys as a gazetted officer, but it does

not confer any more privilege. In matters of promotion and ranking, the substantive posts matter, and here, the appellant admits that he was junior to the others. His appointment to a post which in emoluments was equal to that of an Under-Secretary was not in the regular line. It was by selection and could not therefore confer on him any privilege beyond holding that post as long as the Chairman of the Legislative Council would have him as his Personal Assistant. The appellant tried to prove his case by reference to rule 24 of the Jammu & Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956. But that rule also says that the seniority of a person has reference to the service, class, category or grade with reference to which the question had arisen and that such seniority shall be determined by the date of his first appointment in such class, service, category or grade as the case may be. Here the service on which emphasis should be placed is the post of Superintendent and there, the appellant admits that he is junior to respondents 2, 3 and 4. Therefore, neither on the basis of the statutory rule nor on the basis of any practice or convention is he entitled to seniority from the post of Superintendent to the next grade. He must take his turn in accordance with his seniority as Superintendent which was his substantive post when his deputation began. We see no force in this appeal which shall be dismissed. There shall be no order as to costs.

A B C D

V.P.S. *Appeal dismissed*