A RAM JANAM SINGH AND ANR. ETC. ETC.

*v.*

STATE OF UTTAR PRADESH AND ANR. ETC. ETC.

JANUARY 25, 1994

B [K. RAMASWAMY AND N.P. SINGH, JJ.]

*Uttar Pradesh Non-technical (Class-II) Service (Reservation of vacancies for Demobilised Officers) Rules, 1973—Rules 3(1) and 6—Validity of.*

C *Uttar Pradesh Non-technical (Class-II/Group 'B') Services (Appointment of Demobilised Officers) Rules 1980: Rules 3(b) & 5—Validity of.*

*Constitution of India, 1950: Article 14—Demobilised Defence Officers—Officers recruited during emergency and officers recruited during normal times—Classification for the purpose of preferential seniority in State*
D *Service to former only—Held not arbitrary.*

*Article 136—Special Leave Petition—Locus standi to file—Affected party though not impleaded in High Court proceedings—Can file petition.*

E **Rule 3(1) of the Uttar Pradesh Non-Technical (Class-II) Service (Reservation of Vacancies for the Demobilised Officers) Rules, 1973 as well as Rule 3(b) of the Uttar Pradesh Non-Technical (Class-II/Group 'B') Services (Appointment of Demobilised Officers) Rules, 1980 provided for special seniority for Disabled Defence Service Officers Emergency Commissioned Officers and the Short Service Commissioned Officers of the**
F **Armed Forces, who were commissioned on or after November 1, 1962 but before January 10, 1968 and again those who were commissioned on or after December 3, 1971 and released at any time thereafter.**

**Respondent-2, who had been recruited for Short Service Commis-**
G **sion in the Army on 6th September, 1970 and released on 3rd December, 1975 joined the U.P. State Civil Service on 16th July, 1982, filed a writ in the Allahabad High Court without impleading the appellant who had entered into State Service before the respondent - contending that Rule 3(1) 1973 Rules and Rule 3(b) of 1980 Rules were violative of Article 14 of the Constitution as they arbitrarily denied the benefit of special seniority**
H **to Demobilised Officers commissioned to Armed Forces after January 10,**

1968 and before December 3, 1971. The High Court allowed the petition directing the authorities concerned not to give effect to the provisions of Rule 3(1) of the 1973 Rules and Rule 3(b) of 1980 Rules for excluding the period from 11.1.1968 to 2.12.1971 in the matter of determination of the seniority of the respondent and to grant him the benefit of Army Service while fixing his seniority. Similar orders had been passed by the High Court in other cases also against which State preferred appeals in this Court.

In appeal to this Court it was contended on behalf of the appellant that officers commissioned during the period of emergency being a class by themselves, there was justification to give them a preferential treatment in matter of seniority. But, there was no conceivable reason to extend the same benefit in matters of seniority to persons who had been commissioned during normal times. The State also supported the stand of the appellant.

Allowing the appeals, this Court

HELD: 1. The High Court was in error in treating the respondent who had been commissioned on 6th September, 1970 after the revocation of emergency, to belong to the same class as those who had been commissioned after November 1, 1962 but before January 10, 1968. The plea that even persons, who joined army service after cessation of foreign aggression and revocation of emergency, have to be treated like persons, who have joined army service during emergency, due to foreign aggression, is a futile plea and should not have been accepted by the High Court. Therefore, the respondent is not entitled to the benefit of Rule 3(1) of 1973 Rules or Rule 3(b) of 1980 Rules. [325-E-G; 326-A]

2. The seniority of an officer in service is determined with reference to the date of his entry in the service, which will be consistent with the requirement of Articles 14 and 16 of the Constitution. Of course, if the circumstances so require, a group of persons can be treated a class separate from the rest, for any preferential or beneficial treatment while fixing their seniority. But whether such group of persons belong to a special class for any special treatment, in matters of seniority, has to be decided on objective consideration and on taking into account relevant factors which can stand the test of Articles 14 and 16 of the Constitution. Normally, such classification should be by statutory rule or rules framed

A under Article 309 of the Constitution. [323-C-E]

*Direct Recruit Class-II Engineering Officers' Association* v. *State of Maharashtra,* [1990] 2 S.C.C. 715 and *State of West Bengal* v. *Aghore Nath Dey,* [1993] 3 S.C.C. 371, referred to.

B

2.1. The framers of the Rules 1973 and 1980, while treating the persons, who had been commissioned on or after November 1, 1962 but before January 10, 1968 and again on or after December 3, 1971, took into account the circumstances and the background in which such persons were commissioned in Armed Forces i.e. when the nation was faced with foreign C aggressions and the cry of the time was that persons should join the Armed forces to defend the integrity and sovereignty of the nation. It is well-known that many persons in such situation are not inclined to join Armed Forces and only those with feeling for the honour of the nation rise to such occasions. In this background, if such persons have been treated as a separate class for extending any benefit in the matter of seniority, none D can make any grievance and their classification can be upheld even in the light of Articles 14 and 16 of the Constitution. [323-G-H; 324-A-B]

2.2. Therefore, persons, who joined after the emergency was over i.e. after January 10, 1968 and before December 3, 1971, when another emer- E gency was imposed in view of the foreign aggression, can not be treated at par or on the same level. [324-B-C]

*Dhan Singh* v. *State of Haryana,* [1990] Suppl. 3 S.C.R. 423; *Union of India* v. *Dr. S. Krishna Murthy,* (1990) 1 S.L.J. 67 and *Narender Nath Pandey* F v. *State of Uttar Pradesh,* A.I.R. 1988 S.C. 1648 = [1988] 3 S.C.C. 527, referred to.

3. In view of the fact that the appellant has entered into Civil Service of the State Government before the respondent, it is not in dispute that he is affected in the matter of seniority by the impugned judgment. The G appellant has a *locus standi* to challenge the said judgment, although he was not party to the same and the petition filed on his behalf cannot be rejected on that ground. [321-G, 322-C]

*Prabodh Verma* v. *State of Uttar Pradesh,* A.I.R. (1985) S.C. H 167 = [1984] 4 S.C.C. 251, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 354 of 1994. A

From the Judgment and Order dated 25.4.1990 of the Allahabad High Court in W.P. No. 7409 of 1986.

P.P. Rao, S. Markandeya, Ajay Singh, Ms. C. Markandeya, Harbansh Chaturvedi and H.B. Sharma for the Appellants. B

D.V. Sehgal, T.N. Singh, Gorab Banerjee and R.B. Misra for the State.

Yogeshwar Prasad, Sunil K. Jain, S.C. Gupta, D.K. Garg, Dr. B.S. Chauhan, Manoj Swarup, Ms. Lalitha Kaushik and Devendra Singh for the Respondents. C

The Judgment of the Court was delivered by

**N.P. SINGH, J.** Leave granted. D

1. This appeal has been filed on behalf of the appellant, who belongs to the Uttar Pradesh State Civil Service, for setting aside the judgment of the High Court, allowing the writ application filed on behalf of Respondent No. 2. Vinod Kumar Kharbanda (hereinafter referred to as "the respondent"), directing not to give effect to the provisions of Rule 3(1) of Uttar Pradesh Non-Technical (Class-II) Service (Reservation of Vacancies for Demobilised Officers) Rules, 1973 and Rule 3(b) of Uttar Pradesh Non-Technical (Class-II/Group 'B') Services (Appointment of Demobilised Officers) Rules 1980, for exclusion of the period from 11.1.1968 to 2.12.1971, while determining the seniority of the said respondent in the State Civil Service. E F

2. In exercise of the power under the proviso to Article 309 of the Constitution, the Uttar Pradesh Non-Technical (Class-II) Services (Reservation of Vacancies for the Demobilised Officers) Rules, 1968 were framed. These Rules were to remain in force for a period of five years from the date of their commencement. Rule 2(1) provided that 20% of the permanent vacancies in a Non-Technical (Class-II) Services to be filled up by direct recruitment through competitive examination in any year, shall be reserved for being filled in "by the Emergency Commissioned Officers and the Short Service Commissioned Officers of the Armed Forces of the G H

A Union, who were commissioned on or after November 1, 1962, and who are released at any time thereafter." Rule 4 provided the manner in which the seniority of candidates, who were appointed against the aforesaid reserved vacancies, was to be determined.

B 3. The aforesaid Rules were substituted by the Uttar Pradesh Non-Technical (Class-II) Services (Reservation of Vacancies for Demobilised Officers) Rules, 1973. These Rules were also to remain in force for a period of five years from the date of their commencement. Rule 3 reserved 10% of the permanent vacancies in all Non-Technical (Class-II) Services, to be filled substantively by direct recruitment through competitive ex-
C amination in any year for "the Disabled Defence Service Officers, Emergency Commissioned Officers and the Short Service Commissioned Officers of the Armed Forces of the Union, who were commissioned on or after November 1, 1962, but before January 10, 1968, and again on or after December 3, 1971 and released at any time thereafter." Regarding the
D seniority of candidates appointed against aforesaid reserved vacancies, it was said in Rule 6 that seniority "shall be determined on the assumption that they entered the service concerned at their second opportunity, of competing for recruitment, and they shall be assigned the same year of allotment as successful candidates of the relevant competitive examination."

E 4. The aforesaid Rules were again substituted by the Uttar Pradesh Non-Technical (Class-II/Group 'B') Services (Appointment of Demobilised Officers) Rules, 1980, which came into force with effect from August 6, 1978. In Rule 3(b) "Demobilised Officer" was defined to mean Disabled Defence Service Officer, Emergency Commissioned Officer and
F the Short Service Commissioned Officer, of the Armed Forces of the Union who was commissioned on or after November 1, 1962 but before January 10, 1968 or on or after December 3, 1971 and released at any time thereafter. In Rule 5 it was said that seniority of such persons shall be determined on the assumption that they entered the service concerned at the second opportunity of competing for recruitment, and they shall be
G assigned the same year of allotment, as to successful candidates of the relevant competitive examination.

5. The respondent filed the connected writ application alleging that he had been recruited for Short Service Commission in the Indian Army
H on 6th September, 1970 and was released from army on 3rd December,

1975. Later he was selected by the Public Service Commission and joined State Civil Service on 16th July, 1982. According to him, Rule 3(1) of the Uttar Pradesh Non-Technical (Class-II) Services (Reservation of Vacancies for the Demobilised Officers) Rules, 1973 as well as Rule 3(b) of the Uttar Pradesh Non-Technical (Class-II/Group 'B') Services (Appointment of Demobilised Officers) Rules, 1980, were discriminatory in nature and violative of Article 14 of the Constitution, inasmuch as they provide for special seniority for Disabled Defence Service Officers and the Short Service Commissioned Officers of the Armed Forces, who were commissioned on or after November 1, 1962 but before January 10, 1968 and again those who were commissioned on or after December 3, 1971, but deny the same to persons commissioned after January 10, 1968 and before December 3, 1971, without there being any rational basis for the same. According to the said respondent, there was no justification to exclude the same benefit to persons, who had been commissioned to the Armed Forces after January 10, 1968 and before December 3, 1971, because they also belong to the same class.

6. The writ application of the respondent was allowed on a finding that the exclusion of the period from 11.1.1968 to 2.12.1971 was wholly arbitrary and discriminatory in nature. A direction was given not to give effect to the provisions of Rule 3(1) of the 1973-Rules and Rule 3(b) of 1980-Rules for excluding the period from 11.1.1968 to 2.12.1971 in the matter of determination of the seniority of the respondent in the State Civil Service and to grant the benefit of Army Service to the said respondent while fixing his seniority in the State Civil Service.

7. The appellant, admittedly, was not impleaded as a party to the said writ application, but as he is directly affected like many other officers, who had entered into the State Civil Service before the respondent, filed the connected Special Leave Petition, challenging the validity of the judgment aforesaid. In view of the fact that the appellant had entered into Civil Service of the State Government before the respondent, it is not in dispute that he is affected in the matter of seniority by the impugned judgment. It was held by this Court in the case of *Prabodh Varma* v. *State of Uttar Pradesh,* A.I.R. 1985 S.C. 167 = [1984] 4 S.C.C. 251, that a writ application in which the necessary parties likely to be affected have not been impleaded, the High Court should not proceed with such writ application, without insisting, on such persons or some of them in representative

A capacity being made respondents. It was further held that if petitioner refuses to join them, the High Court ought to dismiss the petition for non-rejoinder of necessary parties. Admittedly, none was impleaded even in a representative capacity, But, it can be urged on behalf of the respondent that he had not sought any relief against any individual. He had sought the intervention of the High Court to declare Rule 3(1) of 1973-Rules and B Rule 3(b) of 1980-Rules as *ultra vires,* so far they made applicable the benefit of those Rules to only specified class of persons and restricted to others who were similarly situated. As such respondent was not required to implead private respondent, who might be affected by the verdict of the Court. Even if this stand is accepted, can it be said that persons who have C been affected by the judgment of the High Court in the connected writ application, cannot challenge the correctness thereof either by filing a Review Petition before the High Court or by filing a Special Leave Petition before this Court? According to us, the answer is in negative. The appellant has a *locus standi* to challenge the said judgment, although he was not party D to the same and the Special Leave Petition filed on his behalf cannot be rejected on that ground. The delay in filing the Special Leave Petition has also been fully explained in the facts and circumstances of the case, which is condoned.

8. On behalf of the appellant, it was pointed out that as it is, with the E reservation for and appointment of demobilised officers who had been commissioned on or after November 1, 1962 but before January 10, 1968 and those who had been commissioned after December 3, 1971, during the periods of emergency, the seniority of the members of the State Civil Services has been affected, but such demobilised officers being a class by F themselves, there was justification to give them a preferential treatment in matter of seniority. But, there cannot be any conceivable reason to extend the same benefit in matters of seniority to persons who had been commissioned during normal times i.e. after January 10, 1968 when the emergency had been lifted and before December 3, 1971 when another emergency was imposed. The State also supported the stand of the appellant and pur- G ported to justify as to how Rule 3(1) of 1973-Rules and Rule 3(b) of the 1980-Rules covered a class of persons, who cannot be treated at par with those appointed after January 10, 1968 and before December 3, 1971.

9. From time to time controversy regarding *inter se* seniority is raised H between persons recruited from different sources to the same service. In

past, notional seniority used to be given to one group of officers, purporting to mitigate their hardship or to rectify any alleged wrong done to them in the process of recruitment or promotion. Ultimately, it was realised that if liberty is given to fix seniority of an officer or group of officers belonging to a particular category with reference to a notional date, that will lead to great uncertainty in public service. The date of entry into a particular service was considered to be the most safe rule to follow while determining the *inter se* seniority between one officer or the other or between one group of officers and the other recruited from the different sources. After referring to different judgment of this Court, a Constitution Bench in the case of *Direct Recruit Class-II Engineering Officer' Association* v. *State of Maharashtra,* [1990] 2 S.C.C. 715, came to the same conclusion. The same has been reiterated in the case of *State of West Bengal* v. *Aghore Nath Dey,* [1993] 3 S.C.C. 371. It is now almost settled that seniority of an officer in service is determined with reference to the date of his entry in the service, which will be consistent with the requirement of Articles 14 and 16 of the Constitution. Of course, if the circumstances so require a group of persons, can be treated a class separate from the rest, for any preferential or beneficial treatment while fixing their seniority. But, whether such group of persons belong to a special class for any special treatment, in matters of seniority, has to be decided on objective consideration and on taking into account relevant factors which can stand the test of Articles 14 and 16 of the Constitution. Normally, such classification should be by statutory rule or rules framed under Article 309 of the Constitution. The far-reaching implication of such rules need not be impressed, because they purport to affect the seniority of persons, who are already in service. For promotional posts, generally the rule regarding merit and ability or seniority-cum-merit is followed in most of the services. As such the seniority of an employee in the later case is material and relevant to further his career, which can be affected by factors, which can be held to be reasonable and rational.

10. It appears that the framers of the Rules 1973 and 1980, while treating the persons, who had been commissioned on or after November 1, 1962 but before January 10, 1968 and again on or after December 3, 1971, took into account the circumstances and the background in which such persons were commissioned in Armed Forces i.e. when the nation was faced with foreign aggressions and the cry of the time was that persons should join the Armed Forces to defend the integrity and sovereignty of

A the nation. It is well-known that many persons in such situation are not inclined to join Armed Forces and only those with felling for the honour of the nation rise to such occasions. In this background, if such persons have been treated as a separate class for extending any benefit in the matter of seniority, none can make any grievance and their classification can be
B upheld even in the light of Articles 14 and 16 of the Constitution.

11. But, we fail to understand as to how persons. who joined after the emergency was over i.e. after January 10, 1968 and before December 3, 1971, when another emergency was imposed in view of the foreign aggression, can be treated at par or on the same level. It need not be
C pointed out that such persons were in look out of a career and joined the Armed Forces of their own volition. It can be presumed that they were prepared for the normal risk in the service of the Armed Forces. Those who joined Armed Forces after November 1, 1962 or December 3, 1971, not only joined Armed Forces but joined a war which was being fought by
D the nation. If the benefits extended to such persons, who were commissioned during national emergencies, are extended even to the members of the Armed Forces who joined during normal times, members of the Civil Services can make legitimate grievance that their seniority is being affected by persons recruited to the service after they had entered in the said service without there being any rational basis for the same.

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12. In the case of *Dhan Singh* v. *State of Haryana,* [1990] Supp. 3 S.C.R. 423, this Court considered as to whether persons, commissioned before November 1, 1962 were entitled to add the period of army service, which admittedly included their service during the period of emergency,
F was answered in the negative. It was held that the relevant rule only extended the benefit of army service, to persons who joined army on or after November 1, 1962 after declaration of emergency, because such persons belonged to a separate class for preferential treatment. In the case of *Union of India* v. *Dr. S. Krishna Murthy,* (1990) 1 S.L.J. 67, it was said
G that persons, who had joined after the declaration of emergency, had voluntarily offered their services for the defence of the country during the period of emergency. They belonged to a separate class and there was no question of discrimination in giving any benefit in matters of seniority by the rules which were under challenge. The Rules, with which we are concerned, were considered by this Court in the case of *Narender Nath*
H *Pandey* v. *State of Uttar Pradesh,* A.I.R. 1988 S.C. 1648 = [1988] 3 S.C.C.

527, and it was held that benefits by the Rules aforesaid had been given to persons, who were either Emergency Commissioned Officers or Short Service Commissioned Officers of the Armed Forces of the Union of India, who had been commissioned on or after November 1, 1962 during the Indo-Chinese War and were demobilised from Armed Forces in or about 1968; such persons had rendered services to the country during the emergency when the nation's security was in peril due to external aggression. A B

13. Can it be said that the persons who had joined army after the declaration of emergency due to foreign aggression and those who joined after the war came to an end, stand on the same footing? Those who joined Army after revocation of emergency joined army as a career. It is well-known that many persons, who joined army service during the foreign aggression, could have opted for other career or service. But the nation itself being under peril, impelled by the spirit to serve the nation, they opted for joining Army where then risk was writ large. No one can dispute that such persons formed a class by themselves and by Rules aforesaid an attempt has been made to compensate those who returned from war if they compete in different services. According to us, the plea that even persons, who joined army service after cessation of foreign aggression and revocation of emergency, have to be treated like persons, who have joined army service during emergency, due to foreign aggression, is a futile plea and should not have been accepted by the High Court. It need not be impressed that whenever any particular period spent in any other service by a person is added to the service to which such person joins later, it is bound to effect the seniority of persons who have already entered in the service. As such any period of earlier service should be taken into account for determination of seniority in the later service only for some very compelling reasons, which stand the test of reasonableness and on examination can be held to be free from arbitrariness. C D E F

14. The High Court was in error in treating the respondent, who had been commissioned on 6th September, 1970 after the revocation of emergency, to belong to the same class as those who had been commissioned after November 1, 1962 but before January 10, 1968. The High Court was not justified in directing, not to give effect to Rule 3(1) of 1973-Rules and Rule 3(b) of 1980-Rules, so far respondent was concerned, for excluding the period from 11.1.1968 to 2.12.1971 while determining the seniority of the said respondent. G H

A 15. Accordingly, this appeal is allowed. The impugned judgment of the High Court is set aside. The respondent is held to be not entitled to the benefit of Rule 3(1) of 1973-Rules or Rule 3(b) of 1980-Rules. If, in the light of the judgment of the High Court, the seniority of respondent has been fixed, the State Government shall refix the seniority, in view of the judgment of this Court. In the facts and circumstances of the case, there B will be no order as to costs.

Civil Appeal Nos. 355-59/94.

Leave granted.

C 16. These appeals have been filed on behalf of the State of Uttar Pradesh for setting aside the judgments and orders passed by the High Court in different writ applications filed on behalf of the respondents of the appeals, for direction similar to the direction given by the High Court in favour of the aforesaid Shri Vinod Kumar Kharbanda. Some of the writ D applications were allowed in terms of the Judgment of the High Court, in the case of Shri Kharbanda. The other writ applications were disposed of directing the State Government to consider the representations filed by writ petitioners in the light of the judgment of the High Court Court in the case of Shri Kharbanda. As we have set aside the Judgment of the High Court in the case of Shri Kharbanda, these appeals are allowed and different judgments and orders of the High Court are set-aside.

T.N.A. Appeals allowed.