

R.S. RAWAT
v.
UNION OF INDIA AND ANR.

APRIL 19, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Service Law :

Deputation of employee—Absorption of—Havaldar in Indo-Tibetan Border Police—Deputed to Intelligence Bureau—Absorption in I.B.—Protection of Rank and seniority—Held, absorption as Junior Intelligence Officer Grade-II rightly done since substantive post held in I.B. is the criteria and not the post held in the parent department—Letter from I.B. regarding protection of rank and seniority—Order passed directing I.B. to place before the Court the action taken pursuant to the letter—Not complied with despite adjournment of the case on that ground—I.B. directed to take appropriate action to protect the seniority and past service of the appellant.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7847 of 1996.

From the Judgment and Order dated 3.12.94 of the Central Administrative Tribunal, New Delhi in O.A. No. 1486 of 1990.

Kailash Vasdev for the Appellants.

A.S. Nambiar, C.B. Babu and P. Parmeshwaran, for the Respondents.

The following Order of the Court was delivered :

Leave granted.

We have heard learned counsel on both sides.

The appellant, while working as Havildar in Indo-Tibetan Border Police, had come on deputation to the intelligence Bureau (IB). He was absorbed in the IB on February 26, 1982 in the rank of Junior Intelligence Officer (JIO), Grade II. His case is that on the date of absorption, he was

A already holding higher rank as JIO, Grade I and, therefore, the respondents would have confirmed him as JIO, Grade I instead of JIO, Grade II. The Tribunal has rejected his claim by its order dated December 3, 1994 made in O.A. No. 1486/90. Thus this appeal by special leave.

B The only question is : whether the appellant would be entitled to be confirmed on his officiating position as JIO, Grade I in the IB. It is seen that when the appellant was given option, he had opted for absorption in terms of the conditions prevailing as on the date. One of the conditions specified in the option form was that his substantive rank held in the parent Department, i.e., ITBP would be the criteria for absorption in the equivalent post in the IB. Admittedly, the equivalent post is JIO, Grade II.

C The respondents, therefore, have rightly absorbed him on February 26, 1982 as JIO, Grade II. It is contended that the IB has adopted double standard, one based on the executive instructions and the other on the Rules. Rules not having been published in the Gazette, they were kept

D secret and the employees are unaware of the Rules but acted upon the contra executive instructions. The appellant, therefore, would have been considered for absorption as JIO, Grade I Since one of the terms mentioned in the executive instructions is equivalent post in the IB. It would appear that it is misunderstanding of the instructions. It would clearly envisage that whatever position he was holding in the parent Department

E would be the equivalent position in the absorbing Department, viz., IB. The five years' service in the IB as consideration mentioned therein is only with reference to his entitlement for consideration in the IB and not with reference to his rank in the parent Department. Since he has already completed five years period in the IB, he was rightly absorbed in JIO,

F Grade II. But in the light of the letter written by the Department to him on July 26, 1989 stating that the recent judgment of the Central Administrative Tribunal in which case is filed by the absorbed officers will not apply in his case, it was assured that "the possibilities of protecting the rank and seniority of similarly placed absorbtees are engaging our attention. Decision as and when taken, will be intimated to all concerned, including Sri Ram

G Singh Rawat". On the last occasion on March 29, 1996, when the matter had come up for hearing, we passed an order directing them to place before us the action taken pursuant to the above letter and directed to place on record the decision so taken. In spite of adjournment of the case, they have failed to do the same. It is highly regrettable that a disciplinary

H Department like IB has not complied with the orders of this Court. They

are directed to take appropriate action to protect the seniority and past A
service of the appellant within four weeks from the date of receipt of this
order and communicate to him the decision so taken protecting his
seniority and other benefits.

The appeal is accordingly disposed of. No costs.

G.N.

Appeal disposed of.

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