

SENIORITY

Subject:-Reckoning of seniority of those persons who have been exempted from qualifying the Senior Assistant Grade Test under Government order dated 2.5.1985 issued vide No. 4/26/84-2PP/6352, dated 3.5.1985.

I am directed to refer to Government order dated 2.5.1985 issued vide No. 4/26/84-2PP/6352, dated 3.5.1985, exempting from qualifying the Assistant Grade Test, all such persons who had, prior to the coming into force of the Punjab State Senior Assistant Grade Examination Rules, 1984, been appointed by promotion on provisional basis to the post of Assistant (now called Sr. Assistant) or to any higher post as defined in rule 2(c) and rule 2(d) of the aforesaid rules. This exemption was subject to the orders of judicial courts passed in cases, decided or pending, of individual departments.

2. The Hon'ble Supreme Court of India in its order dated 9.11.1994 in C.A. No. 788/1991 - Charan Singh and others vs. State of Punjab and others has decided the question of reckoning the seniority of those officials, who have been granted exemption from passing the Assistant (now called Senior Assistant) grade test vide order dated 2.5.1985 referred to in para 1 above. A copy of the order of the Hon'ble Supreme Court of India is enclosed for your information and compliance in similar cases. No. 6/37/90-IPP1/7566, dated 8.5.96 Department of Personnel and Administrative Reforms (P.P. I Branch).

Subject:-Fixation of seniority of Government employees--Principles to be followed.

Will the Financial Commissioners, Punjab and Administrative Secretaries to Government Punjab kindly refer to the subject noted above ?

2. It has been observed that much of the time of the departments is spent either in examining the cases of dispute of seniority of Government employees or arranging defence of such cases in law courts. These disputes can be eliminated or atleast minimised if the rule relating to seniority lays down an unambiguous principle for the purpose.

3. In order to facilitate the departments in framing departmental service rules, Model Service Rules were framed and circulated among all departments, vide U.O. No.6780-DSSII(2)-73, dated the 5th November, 1973. Rule 10 of these Rules, which relates to seniority, is as below :-

"The seniority inter se of members of the Service is to be determined by the length of continuous service on a post in the Service :

Provided that where there are different cadres in a Service, the seniority shall be determined separately for each cadre :

Provided further that in the case of members recruited by direct appointment, the order of merit determined by the Commission, the Board or other recruiting authority, as the case may be, is not to be disturbed in fixing the seniority :

Provided further that in the case of two members appointed on the same date, their seniority is to be determined as follows :

(a) a member recruited by direct appointment is to be senior to a member recruited otherwise;

- (b) a member appointed by promotion shall be senior to a member appointed by transfer;
- (c) in the case of members appointed by promotion or transfer, seniority is to be determined according to the seniority of such members in the appointments from which they are promoted or transferred; and
- (d) in the case of members appointed by transfer from different cadres, their seniority is to be determined according to pay, preference being given to a member, who was drawing a higher rate of pay in his previous appointment; and if the rates of pay drawn are also the same, then by their length of service in those appointments, and if the length of such service is also the same, an older member is to be senior to a younger member."

According to the above rule, length of continuous service is the basic consideration for determining seniority and those joining service on the same date from different sources viz. direct recruitment, promotion and transfer, a direct recruit is to be placed above a promotee and a promotee above a transferee. If the provision, as quoted above is followed by all departments and is incorporated in the respective rules, there would be least chances of dispute about seniority. They are, therefore, requested to take immediate steps to amend the departmental service rules, wherever necessary, on the above lines.

4. Some of the disputes regarding seniority arise when a post actually meant to be filled by direct recruitment under the relevant service rules is given to a promotee and a subsequent vacancy to be given to a promotee is filled by direct appointment or through some other source. Since seniority is a condition of service and is to follow the actual appointment, it cannot be linked with the post. There is, therefore, no question of assigning seniority to a direct recruit on the basis of the post earmarked for him or vice versa. For purposes of seniority, the date of appointment has to be the deciding factor. It is, however, incumbent upon the departments to ensure that in future the ratio/rotation fixed in the respective Service Rules, for filling posts from different sources is always adhered to, to avoid any complications of the type mentioned above. Copy of U.O. Circular letter No. 1745-SII-76, dated the 2nd April, 1976.

Subject:--Determination of seniority of the Government employees who are recruited by transfer from other Departments.

I am directed to invite a reference to Punjab Government Circular No.946-4GS-62/8282, dated the 6th March, 1962 stating that the seniority of the candidates recruited by the Subordinate Services Selection Board, should be determined with reference to the date of issue of the Board's recommendation. It has, however, come to the notice of Government that in some Departments these instructions have also been made applicable to determine seniority of candidates recruited by transfer from other Government departments. To set at rest the doubts entertained by certain Departments and to elucidate the position it is clarified that the instructions under reference apply only to the candidates who are recruited by the S.S.S. Board. In the case of the candidates appointed by the Departments themselves by transfer from other departments of course with the approval of the Board, seniority shall be determined in accordance

Seniority when recruitment is by rotation of the vacancies: When the recruitment rules fix the vacancies reserved for direct recruitment and promotion in a particular order and the general seniority rules provide that between direct recruits and promotees, appointed on the same day all the direct recruits would be senior to all the promotees, the recruitment rules should be held to lay down a special rule of seniority and the seniority has to be fixed in the following manner:

- (i) The seniority should be fixed in the order the vacancies are reserved for the promotees and direct recruits even if appointed on the said date.
- (ii) If the promotions are made against vacancies reserved for promotion in the first instance and direct recruitment is made to the direct recruitment vacancies on a later date, the promotees promoted earlier to the promotion vacancies are to be treated as seniors.

Therefore, in a case where the vacancies are earmarked for direct recruitment and promotion, and promotions were made only as against the vacancies reserved for promotion earlier and direct recruitment is made later, giving seniority to the latter above the earlier promotees is illegal.¹⁰²

Seniority between direct recruits on probation and candidates absorbed in

Duke

Seniority - Once the services of ad hoc Lecturers were regularised under the Rules they were required to be treated as CMOs holding the post equivalent to the post of lecturers - Seniority of Lecturers to be counted from the date of regularisation in service. *Dr. J.S. Chhabra vs. State of M.P. and others, 1997(2) RSJ 748 (SC) : 1997(1) SLR 132*

Seniority - Whether Rule 6 of the 1936 Rules dealing with the determination of seniority of the post of Inspector is ultra vires Articles 14 and 16 of the Constitution of India? - Determination of seniority of Inspectors who were appointed prior to the promulgation of 1980 Rules under Rule 6 of the 1936 Rules is not in any way illegal. *Bhim Sain Gupta vs. The State of Haryana and others, 1997(2) RSJ 809 (DB)*

Seniority - Whether the seniority of the petitioners who were appointed as Inspectors in the Haryana Co-operative Department prior to promulgation of the Rules known as Haryana Co-operative Group-C (Reserve) Rules, 1980 is to be determined under the said Rules or the Punjab Co-operative Subordinate Services Rules, 1936, which were repealed by the 1980 Rules? - Held - Seniority of Inspectors who were appointed prior to March 14, 1980, the date of promulgation of the 1980 Rules would be determined by the provisions of 1936 Rules. *Bhim Sain Gupta vs. The State of Haryana and others, 1997(2) RSJ 809 (DB)*

Seniority and promotion - Direct recruits and promotees - Rules silent - Open to State Government to lay down the principles for fixation of seniority by an administrative order. *R.S. Ajara and others etc. vs. State of Gujarat and others, 1997(2) RSJ 560 (SC)*

Seniority - Ordinarily seniority would have been determined on the basis of the date of absorption of the employees in the regular establishment. *State of Maharashtra vs. Purshotam and others, 1997(2) RSJ 343 : AIR 1996 SC 2228 : 1996 Lab.IC 1822 : 1996(2) SLJ 14 : JT 1996(6) 672 : 1996(4) SLR 558*

Seniority - It is settled legal position that confirmation is an inglorious uncertainty. Continuous length of service; if appointed according to Rules on consideration of claims of eligible persons as on that date as per rules accords seniority and gets counted from the date of initial appointment by direct recruitment promotion/transfer to the cadre/post. Under Rule 11, the inter se seniority of the members of the service shall be determined by the length of continuous service in a post in the service. As soon as a person is appointed to a cadre/grade he starts discharging the duties of his continuous length of service from the date of appointment to the post and his seniority is determined on the basis of that date unless he is appointed only as a stop gap arrangement or on adhoc basis and de hors the Rules. In case of regular appointment, the appointing authority is enjoined to put him on probation and on successful completion of the probation period of one year, unless the probation is extended upto a maximum of three years, one becomes a member of the service from the initial date of appointment by promotion in the promoted post. On availability of permanent post, he gets appointed to the post and thereafter ceases to be member of the feeder/lower cadre. Thus, his confirmation dates back to his initial date of appointment by promotion by operation of Rule 11 and the proviso thereunder, the seniority stands determined from the date of his appointment to cadre/grade. The principle is applicable equally to the general as well as reserved candidates. *Jagdish Lal and others vs. State of Haryana and others 1997(3) RSJ 1 (S.C.)*

Seniority - Promotion - Continuous length of service - It is settled principle in the service jurisprudence that mere chance of promotion are not

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cadre of the Service shall be determined by the length of continuous service on such post in that cadre of the Service :

Provided that in the case of persons recruited by direct appointment who join within the period specified in the order of appointment or within such period as may be extended from time to time by the appointing authority subject to a maximum of four months from the date of order of appointment, the order of merit determined by the commission or the Board, as the case may be, shall not be disturbed :

Provided further that in case a person is permitted to join the post after the expiry of the said period of four months in consultation with the commission or the Board, as the case may be, his seniority shall be determined from the date he joins the post :

Provided further that in case any person of the next selection has joined a post in the cadre of the concerned Service before the person referred to in the preceding proviso joins, the person so referred shall be placed below all the persons of the next selection who join within the time specified in the first proviso :

Provided further that in the case of two or more persons appointed on the same date, their seniority shall be determined as follows :---

- (a) a person appointed by direct appointment shall be senior to a person appointed otherwise ;
- (b) a person appointed by promotion shall be senior to a person appointed by transfer ;
- (c) in the case of person appointed by promotion or transfer, the seniority shall be determined according to the seniority of such persons in the appointments from which they were promoted or transferred ; and
- (d) in the case of persons appointed by transfer from different cadres their seniority shall be determined according to pay, preference being given to a person who was drawing a higher rate of pay in his previous appointment ; and if the rates of pay drawn are also the same, then by their length of service in these appointments and if the length of such service is also the same, an older person shall be senior to a younger person.