DIRECTOR GENERAL GEOLOGICAL SURVEY OF INDIA AND ORS. A

v.

GEOLOGICAL SURVEY OF INDIA EMPLOYEES ASSOCIATION.

JULY 11, 1991 B

[K. JAGANNATHA SHETTY AND YOGESHWAR DAYAL, JJ.]

Civil Service—Exploration Wing of the Indian Bureau of Mines and Geological Survey of India—Merger—Whether with effect from 1.1.1966 or from 4/6.2.1969—Provisional seniority list and statement of introduction to the compilation—Whether constitute proof of merger. C

In Civil Appeal No. 855(N) of 1979 and Civil Appeal No. 2665 of 1991 the issue raised was common and relating to the date of merger of the two departments of the Government of India, in the field of mines and minerals, namely (i) Exploration Wing of the Indian Bureau of Mines (IBM) and (ii) Geological Survey of India (GSI). D

Between 1.1.1966 to 4.2.1969 thirty nine Lower Division Clerks belonging to GSI were promoted as Upper Division Clerks against the vacancies that arose in the GSI. They were juniors to their counterparts in the IBM. Being aggrieved by the said promotions, the respondents who originally belonged to the IBM, preferred Special Civil Application in the Bombay High Court for setting aside the seniority list and for a direction to consider their cases of promotion with effect from 1 January, 1966 contending that the merger of the two departments took place with effect from 1 January 1966 and not from 4 February 1969 and therefore, there cannot be two separate channels of promotions from 1 January 1966—one from the employees of the Exploration Wing of IBM and another for the employees of GSI. E F

The appellants contended that the Officers of GSI were promoted on the ground that the actual merger took place not on 1 January 1966 but on 4 February 1969. G

The High Court allowed the petition against which Civil Appeal No. 855(N) of 1979 has been preferred.

A Senior Technological Assistant (Geology) of the erstwhile IBM moved the Karnataka High Court for similar relief contending *inter* H

A *alia* that his case ought to have been considered for promotion in the merger cadre with effect from 1 January 1966. The Karnataka High Court also allowed his claim with a direction to consider him for promotion with effect from 1 January 1966 in the merged cadre. That decision was not implemented by the GSI. In the contempt proceedings taken for disobedience of the judgment, the High Court allowed six weeks time B for compliance, against which, SLP(C) No. 4906 of 1991 has been preferred.

Respondents relying on the letters dated 10 December 1965 and 29 November 1966 contended in support of the decision of the High Courts that the merger took place on 1 January 1966, whereas the appellants C took assistance from the terms of the letter dated 4/6 February 1969 in support of the counter plea.

Allowing the appeals, this Court,

HELD: 1. The statements in the letter make it abundantly clear D that it was only administrative control of the relevant wings of IBM that were transferred to GSI with effect from 1 January 1966. The letter does not refer to the decision of merger of the two departments. [902E]

2. The decision taken on the merger of the posts was communicated by subsequent letters dated 28 June 1967 and 4/6 February E 1969. By letter dated 28th June 1967 the Government communicated the sanction of merger of class I & II posts in the drilling divisions of Exploration Wing of IBM and GSI (Proper) with immediate effect. The letter also contains certain instructions to department about service conditions and seniority of persons in the amalgamated cadres of class I & II posts. The decision with regard to merger in respect of other F categories of posts which include are concerned in these cases is contained in the letter dated 4/6 February 1969. [902F-G]

3. The letter dated 4/6 February 1969 further provides that the *inter-se* seniority of the incumbent in the merged cadres will be governed in accordance with the principles laid down in the earlier letter dated G 28th June 1967. The merger/revision of the scales of pay does not involve any change in the nature of duties of the respective posts. The Officers concerned in the merged cadre will be given options in writing for opting the new scales of pay in the merged cadre. In case an individual concerned fails to exercise the option within the time limit, he will be treated to have accepted the new scale of pay. It will be apparent H from the terms of the letter dated 4/6 February 1969 that the posts

referred to in the letter were merged with GSI wih effect from 4 February 1969, if such a decision had been taken on 1 January 1966, the letter dated 4/6 February 1969 would be unnecessary and uncalled for. [903A-C] A

4. Provisional seniority list and the statement of introduction to the compilation are no evidence of the date of merger do not reflect the decision of the Govt. of India. [905E] B

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 855 (N) of 1979.

From the Judgment and Order dated 22nd October, 1975 of the Bombay High Court in Special Civil Application No. 985 of 1969.

WITH

Civil Appeal No. 2665 of 1991. C

M. Chander Sekhar, Additional Solicitor General (NP), A. Subba Rao and C.V. Subba Rao for the Appellants.

R.K. Garg, R.P. Singh, Rakesh Khanna, P.C. Kapur and Raj Kumar Gupta for the Respondents. D

The Judgment of the Court was delivered by

K. JAGANNATHA SHETTY, J. In the field of mines and minerals, the Government of India has two departments, (i) Exploration Wing of the Indian Bureau of Mines (IBM) and (ii) Geological E Survey of India (GSI). The GSI is responsible for geological mapping and exploratory drilling calculated to delineate mineralised zones in the country. The IBM counducts detailed probing operations in selected blocks of mineralised areas. The functions of these two departments were found to be overlapping. The Government of India, therefore, decided to merge the Exploratory Wing of IBM with the F GSI to eliminate overlapping works and rationalise the functions of the two departments. To accomplish this purpose, different cadres of the Exploration Wing of IBM were merged with the GSI from different dates. There is no dispute that the posts concerned in these cases also came to be merged with the GSI. The question, however, for consideration is about the date of that merger; whether it was from 1 G January, 1966 or from any subsequent date. The Government of India contends that the merger took place on 4/6 February 1969 while the contesting respondents claim that it was with effect from 1 January 1966.

The dispute as to the date of merger has arisen because of the H

following circumstances. That between the period from 1 January 1966 to 4 February 1969, thirty nine persons in the cadre of Lower Divison Clerks belonging to GSI were promoted as Upper Division Clerks against the vacancies that arose in the GSI. They were apparently juniors to their counterparts in the IBM. Being aggrieved by the said promotions, the Association of the Officers who originally belonged to the IBM preferred Special Civil Application No. 985/69 at Nagpur Bench of the Bombay High Court for setting aside the seniority list and for a direction to consider their cases of promotion with effect from 1 January 1966. It was contended before the High Court that the merger of the two departments took place with effect from 1 January 1966 and not from 4 February 1969 and therefore, there cannot be two separate channels of promotions from 1 January 1966–one for the employees of the Exploration Wing of IBM and another for the employees of GSI. The Government of India sought to justify the promotions exclusively given to the Officers of GSI between the period from 1 January 1966 to 4 February 1969 on the ground that the actual merger took place not on 1 January 1966 but on 4 February 1969. The High Court, however, did not accept the submission of the Government of India. The High Court summarised its conclusion thus:

> "It is also to be noted that after 1.1.1966 the petitioners did not get any promotion or were not considered for promotion by the Indian Bureau of Mines because they were treated under the administrative control of Geological Survey of India. If the contention of the respondents is accepted then it will have to be held that for three years the cases of the petitioners cannot be considered by the Geological Survey of India and they were not considered by the Indian Bureau of Mines because they were not under the administrative control of Indian Bureau of Mines. This will result into absurdity and, therefore, such a contention cannot be accepted. We are, therefore, inclined to hold on consideration of the annexures produced along with this petition that the merger in the two wings has taken place on 1.1.1966. Therefore, the seniority of Upper Division Clerks will have to be considered and made in this light after taking into consideration the fact that the petitioners merged and became the part of Geological Survey of India on 1.1.1966 and, therefore, for the purpose of counting their seniority, their past service rendered with the Indian Bureau of Mines will have to be treated as service rendered with the Geological Survey of India. This

is the correct effect of the letter R-2 relied upon by the respondents. We, therefore, direct the respondents Nos. 1, 2, & 4 to prepare a fresh seniority list in the light of the observations made above as if the merger has taken place on 1.1.1966 and after determining inter seniority give an appropriate relief to the petitioners."

Civil Appeal No. 855(N) of 1979 has been preferred against the above decision of the Bombay High Court.

A Senior Technological Assistant (Geology) of the erstwhile IBM moved the Karnataka High Court for similar relief contending *inter-alia* that his case ought to have been considered for promotion in the merged cadre with effect from 1 January 1966. The Karnataka High Court also allowed his claim with a direction to consider him for promotion with effect from 1 January 1966 in the merged cadre. That decision was not implemented by the GSI, perhaps on the ground that the dispute as to the date of merger is already pending consideration before this Court. In the contempt proceedings taken for disobedience of the judgment, the High Court however, did not accept that excuse put forward by the GSI and Government of India, but allowed six weeks time for compliance. SLP(Ç) No. 4906 of 1991 has been preferred against that direction issued by the Karnataka High Court. Since the issue raised in both the matters is common, we grant special leave in this case also.

The issue as to the date of merger of the Exploration Wing of IBM with the GSI turns on the contents of some of the letters written by the Government of India to the Director General of GSI. Both the parties depend upon the same letters but with different contentions and constructions. We will now draw attention to the letters one by one.

(i) "LETTER DATED 10 DECEMBER 1965 GOVERNMENT OF INDIA MINISTRY OF STEEL AND MINES, DEPARTMENT OF MINES AND METALS.

To

The Director,
Indian Bureau of Mines,
Nagpur.

(For the attention of Sh. K.N. Murthy,
Deputy Director, IBM)

A Sub: Reorganisation of the IBM and GSI.

Sir,

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B After careful consideration of all these matters and in consultation with the Director General, GSI and IBM, the Government have decided to transfer the following from the IBM to the administrative control of the GSI w.e.f. 1st January 1966:

C (i) All the posts and personnel in the Prospecting Drilling and Mining Divisions of the Bureau will be transferred to the GSI as detailed in Appendices I & II.

(ii) The workshop and Mineral Technology and Physical Analysis Laboratories will be transferred to the GSI along with the posts in these laboratories as detailed in Appendix II.

D

(iii) The posts in the common cadres in the Administration and Accounting Divisions as have been divided on the basis of actual work load as detailed in Appendix II. The personnel holding the posts will be allocated to the GSI and the IBM on the basis of options indicated by them, the principal guideline being exigency of public service.

E

(iv) The equipment, vehicles and stores, will be transferred by the IBM to the GSI according to the distribution made on the basis of equipment etc. being required by the organisations as per statement in Appendix III.

F

2. The headquarters of the Prospecting, Drilling and Mining Divisions, as also the workshop and the Mineral Technology and Physical Analysis Laboratories, which are being transferred from the Bureau to the GSI, will continue to be at Nagpur. On transfer of these Divisions, these will work as separate entity of the GSI under the administrative control of the DG, GSI. Headquarters of the Mineral Technology Laboratory at Delhi will continue to remain at Delhi.

G

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3. The service conditions of the personnel to be transferred to the GSI such as status, emoluments, seniority etc. will be governed by the existing recruitment rules until further orders.

4. The IBM will be responsible for the administration of Mines (Control and conservation) collection of statistical data of minerals and Ore Dressing Laboratory as here to before.

5. With effect from 1.1.1966 the GSI will provide in their budget the expenditure connected with the work transferred to them from the IBM and put up a Supplementary demand. Correspondingly IBM will surrender the (equivalent) amount from its budget."

(ii) LETTER DATED 28 JUNE 1967 GOVERNMENT OF INDIA MINISTRY OF STEEL MINES & METALS, DEPARTMENT OF MINES AND METALS.

To
The Director General,
Geological Survey of India,
27, Chowringhee Road,
Calcutta-13

Sub: Merger of Class I and II posts in the Drilling Divisions of the Geological Survey of India (Proper and Exploration Wing) and combined seniority lists.

Sir,

In partial modification of the Ministry of Steel and Mines (Department of Mines & Metals) letter No. 20/4/65-MIII dated 10 December 1965, I am directed to convey sanction of the Government to merge class I and II posts in the Drilling Divisions of the Exploration Wing and the Geological Survey of India (Proper) with immediate effect. Heretofore, the service conditions of the class I and II officers of Drilling category of the merged Drilling Division would be governed in accordance with the revised recruitment rules which are under issue separately.

2. In drawing up the combined seniority lists of the officers in different grades in the amalgamated cadres of Class I and II posts para 3 of the annexure to the Ministry of Home Affairs O.M. No. 9/11/55-RPS dt. 22.12.1958 according which permanent officers of the grade are senior to temporary officiating officers of that grade, is not applicable. In such cases, seniority is determined with reference to the date of continuous appointment to that grade on a regular basis in accordance with the other principles prescribed in the Ministry of Home Affairs O.M. No. dt. 23.12.1959 referred to above lists so drawn may please be sent for approval of Government.

Yours faithfully,

Sd/-
(A. Sethumadhavan)
Under Secretary to the Govt. of India

(iii) LETTER DATED 4/6 FEBRUARY 1969 GOVERNMENT OF INDIA MINISTRY OF STEEL, MINES AND METALS (DEPARTMENT OF MINES AND METALS)

No. 1/16/68-MIII

To

The Director General,
Geological Survey of India,
Calcutta.

Sub: Merger of Posts/scales of pay in the GSI (Proper) and the Exploration Wing transferred from the Indian Bureau of Mines to the Geological Survey of India.

Sir.

I am directed to invite your attention to this Ministry's letter No. 3/17/67-MIII, dated 28.6.1967 and to say that the President is pleased to sanction merger of the posts and to prescribe the scales of pay for the merged cadres as shown in the enclosed statement with immediate effect. Orders regarding merger of the remaining posts will be issued separately.

2. The inter-seniority of the incumbents in the merged cadres will be governed in accordance with the principles laid down in para 2 of the Ministry's letter referred to above.

3. The merger/revision of the scales of pay does not involve any change in the nature and duties of the respective posts. The fixation of pay in the revised scales of pay may be done under FR-23, read with audit instruction 1 under FR-22.

4. The officers concerned should be asked to exercise their option in writing so as to reach the authority concerned within four months of the issue of this letter, provided that:

(i) in the case of a Government servant who is on that date out of India on leave, deputation or foreign service or active service, the said option shall be exercised in writing so as to reach the prescribed authority within four months of the date of his taking over charge of his post in the GSI and

(ii) Where a Government servant is under suspension the option may be exercised by him within four months of the date of his return to duty, if that date is later than the date prescribed here.

In case the individual concerned fails to exercise the option within the time limit, he will be treated to have accepted the new scale of pay."

In between these correspondence, the Government of India wrote one more letter to the Director General of GSI. It was dated 29 November, 1966 which will be referred later.

Mr. Garg and Mr. Vaidyanathan, counsel for the contesting respondents rely on the first letter dated 10 December 1965 and also on the subsequent letter dated 29 November 1966 in support of the decision of the High Courts that the merger took place on 1 January 1966. Mr. Subba Rao, counsel for the Union of India wants to take assistance from the terms of the letter dated 4/6 February 1969 in support of the counter plea. It may be significant to note that the letter dated 10 December 1965 does not indicate the date of merger. It is

A stated therein that after consultation with the Director General of GSI and IBM, the Government has decided to transfer to the administrative control of GSI with effect from 1 January 1966 the posts and personnel in the prospecting drilling and mining divisions of the Bureau with the workshop, mineral technology and physical analysis laboratories. The letter further states that the posts in the common cadres in the administration and accounting divisions as have been divided on the basis of actual work load (as detailed in Appendix II) with the personnel holding the posts will be allocated to GSI and IBM on the basis of options indicated by them. The equipment, vehicles and stores will be transferred by IBM to GSI according to the distribution made as per requirements of the two organisations. The most important statements in the letter are these: (i) on transfer of the divisions they will however work as separate entity of the GSI under the administrative control of the Director General, GSI and (ii) the service conditions of the personnel to be transferred to GSI such as status, emoluments, seniority etc. will be governed by the existing recruitment rules until further orders. It is further directed in the letter that with effect from 1 January 1966, the GSI will provide in their budget the expenditure connected with the work transferred to them from the IBM and put up a supplementary demand. Correspondingly, IBM will surrender the (equivalent) amount from the budget. These statements in the letter make it abundantly clear that it was only administrative control of the relevant Wings of IBM that were transferred to GSI with effect from 1 January 1966. The letter does not refer to the decision of merger of the two departments.

The decision taken on the merger of the posts as rightly submitted by Mr. Subba Rao was communicated by subsequent letters dated 28 June 1967 and 4/6 February 1969. By letter dated 28 June 1967 the Government communicated the sanction of merger of class I & II posts in the drilling divisions of Exploration Wing of IBM and GSI (Proper) with immediate effect. The letter also contains certain instructions to department about service conditions and seniority of persons in the amalgamated cadres of class I and II posts. The decision with regard to merger in respect of other categories of posts is contained in the letter dated 4/6 February 1969. Thereunder it is expressly stated that "the President is pleased to sanction merger of the posts and to prescribe the scales of pay for the merged cadres as shown in the enclosed statement with immediate effect." The categories of posts set out in the statement accompanying the letter include the posts with which we are concerned in these cases and there is no dispute on this matter.

The letter dated 4/6 February 1969 further provides that the *inter-se* seniority of the incumbents in the merged cadres will be governed in accordance with the principles laid down in the earlier letter dated 28 June 1967. The merger/revision of the scales of pay does not involve any change in the nature of duties of the respective posts. The officers concerned in the merged cadre will be given options in writing for opting the new scales of pay in the merged cadre. In case an individual concerned fails to exercise the option within the time limit, he will be treated to have accepted the new scale of pay. It will be apparent from the terms of the letter dated 4/6 February 1969 that the posts referred to in the letter were merged with GSI with effect from 4 February 1969. It may be remembered that if such a decision had been taken on 1 January 1966, as contended for the respondents, the letter dated 4/6 February 1969 would be unnecessary and uncalled for.

Counsel for the respondents however, placed strong reliance in support of the counter point on the letter dated 29 November 1966 which reads as follows:

GOVERNMENT OF INDIA

No. 8/39/66-MIII NEW DELHI 29TH NOV. 1966

To

The Director General,
Geological Survey of India,
27, Chowringhee Lane,
Calcutta 13

Sub:- Absorption of Shri B.K. Chatterjee, Stenographer (Selection Grade) of the Indian Bureau of Mines, in Geological Survey of India (Exploration Wing).

Sir,

I am directed to refer to your letter No. 832/8 (N)/115/65/15 dated 4.11.1966 on the subject mentioned and to say that the transfer in question cannot be termed as transfer from one department to the other department, since it place on a result of the reorganisation of the Indian Bureau of Mines and transfer was effected on the recommenda-

tions of the Merger Committee when there was a vacancy in the GSI. The transfer was made in the public interest and it is considered not necessary to approve the transfer in question in relaxation of the recruitment Rules as proposed. The transfer of Shri Chatterjee may be treated as in order.

Further, the inter-seniority of Stenographer and other categories of posts transferred from the Bureau to the Geological Survey of India as a result of the reorganisation of the former may be decided taking into account the fact that such transfers have been made in the public interest and such cases may be examined on the basis as if the individual concerned were originally appointed in the Geological Survey of India.

Yours faithfully,
Sd/-
(A. Sethumadhavan)
Under Secy. to the Govt. of India

We do not find any support from this letter to the submission of the respondents. The letter concerns with the transfer of one Stenographer called Shri B.K. Chatterjee from IBM to the GSI. The transfer was made in the public interest. Consequently, it was held that the person trensferred was entitled to seniority as if he were originally appointed in the GSI. That is a normal incident of transfer from one department to another and there is nothing strange in it. But it may be noted that the respondents were not transferred from IBM to GSI with effect from 1 January 1966. They were neither transferred to GSI, nor their posts were transferred to GSI with effect from 1 January 1966. They were only brought under the administrative control of the Director General of GSI. The result is that the posts and personnel remained in their own department and they would continue to be governed by their own service conditions. This would indeed be the consequence of one department being brought under the control or supervision of another departmental head. This point has also been made clear in the letter dated 1 January 1966 in which it has been provided "that the service conditions of the personnel to be transferred to the GSI such as status, emoluments, seniority etc. will be governed by the existing recruitment rules until further orders". In other words, the service conditions which the respondents were entitled to, in their parent department would continue to be available to them until further orders.

The Bombay High Court has however, observed that it will lead to absurdity if the contesting respondents are not considered for promotion in the GSI from 1 January 1966 since they could not get any promotion in or were not considered for promotion by IBM because they were treated under administrative control of GSI. It is difficult to accept this view. This conclusion is based more on equitable consideration than on law. It is the result of failure to focus on the difference between the terms of letters dated 1 January 1966 and 4/6 February 1969. It may be emphasised that non-consideration of the contesting respondents for promotion in the IBM during the period from 1966 to 1969 even assuming it to be true is however no ground for them to seek promotion in GSI. They must seek their promotion during the interregnum only in their parent department.

Reference is made to the combined provisional seniority list of persons in class III cadres of IBM and GSI prepared as on 1 December 1968. It is submitted that if the merger took place with effect from 4 February 1969 there was no necessity for GSI to prepare the provisional seniority list of officers of the combined cadre as on 1 December 1968. Reference is also made to the "Introduction to the Compilation Vol. 100 Part I, Records of the GSI", in which it is mentioned that on 1 January 1966, the Mining Divisions of the IBM have been merged with the GSI. The said provisional seniority list and the statement of introduction to the compilation, in our opinion, are no evidence of the date of merger and indeed, they do not reflect the decision of the Government of India which we have earlier discussed.

For the foregoing reasons, we accept the appeals and set aside the impugned judgment and order.

In the circumstances of the case, however, there should not be any order as to costs.

V.P.R. Appeals allowed.