

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITINGS: BILASPUR

Original Applications Nos.203/00902/2012 & 203/00026/2015

Jabalpur, this Friday, the 07th day of February, 2020

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

(1) ORIGINAL APPLICATION NO. 203/00902/2012

Rabin Biswas, S/o Shri Rupchand Biswas,
Aged about 47 years, Working as Chief Office Superintendent,
O/o Sr. DME (Mechanical Deptt.),
S.E.C.Railway, Bilaspur-495004 (CG),
R/o Qr. No. 543/4, RTS Colony, Bilaspur-495004 (CG)
(By Advocate –**Shri B.P.Rao**)

V e r s u s

1. Union of India, through the General Manager,
S.E.C. Railway, Bilaspur Zone, G.M. Office,
Bilaspur-495004

2. The Sr. Divisional Personnel Officer,
S.E.C.Railway, Bilaspur Division,
DRM Office, Bilaspur-495004

(By Advocate –**Shri R.N.Pusty**)

(2) ORIGINAL APPLICATION NO. 203/00026/2015

L.Prabhakar Rao, working as COS, SECR, Raipur,
37 years, r/o House No. 296, Panchsheel Nagar,
West Charodha BMY-490025

(By Advocate –**Shri A.V.Shridhar**)

V e r s u s

1. Union of India, Through the Secretary,
Railway Board, Rail Bhawan,
Raisena Road,
New Delhi 110001

2. General Manager, South East Central Railway,
New GM Building, Bilaspur,
Chhattisgarh 495004

3. Senior Divisional Personnel Officer,
South East Central Railway,
Raipur-492008

(By Advocate –**Shri Vijay Tripathi**)

(Date of reserving the order:-07.01.2019)

ORDER

By Navin Tandon, AM:-

The applicants in both these Original Applications were selected through Limited Departmental Competitive Examination (LDCE) and empanelled on 12.06.2008. After undergoing training, they were promoted as O.S.-II in September/October 2008 and subsequently promoted as Chief Office Superintendent in 2011/2012. Respondents have reverted the applicants on the basis of Railway Board's RBE No. 107/2012 dated 26.09.2012. Hence this Original Application.

2. This Tribunal adjudicated the matter and allowed both the Original Applications through a common order dated 19.05.2015.

3. The respondents approached the Hon'ble High Court of Chhattisgarh, Bilaspur in WP(S) 3847 and 3852 of 2015. Hon'ble High Court of Chhattisgarh has remanded the matter to Tribunal for fresh decision vide its common judgment dated 02.03.2016.

4. The judgment of Hon'ble High Court reads as under:

"1. Learned Counsel for the Petitioners prays for and is permitted to delete the date 31.8.2008 in paragraph-8.9 of the Writ Applications to which the Respondents have no objection.

2. These two Writ Petitions arise out of a common order dated 19.5.2015 passed by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting: Bilaspur (hereinafter referred to as 'the Tribunal') in O.A Nos.902/2012 and 203/00026/15. The Respondent L. Prabhakar Rao was aggrieved by the rejection of his representation against his reversion from the post of Chief Office Superintendent to the Office Superintendent and the Respondent Rabin Biswas was aggrieved by his ineligibility to be considered for promotion as Office Superintendent against the 20% LDCE quota for promotion.

3. We are satisfied that the stage has not arrived for us to test the order of the Tribunal on merits as we are also satisfied that the Tribunal committed gross error in pre-judging the OA application without awaiting the opinion of the Railway Board after the matter was referred to it by the Petitioner evident from paragraph-7 of the order under challenge.

4. Appropriately, in our opinion once the Tribunal was apprised that the Railway Board was in seisin of the matter, it should have either disposed the OA application to abide by the opinion that the Railway Board leaving it open for the aggrieved to challenge it if dissatisfied or alternatively should have postponed the matter to enable the opinion of the Railway Board to be placed before it and then decided the matter in accordance with law. The Tribunal therefore erred in proceeding to decide the matter on merits without awaiting the opinion of the Railway Board. We reconsider the same as sufficient to hold that the order is not sustainable in its present form. It is accordingly set aside.

5. The matter is remanded to the Tribunal for fresh decision and consideration in accordance with law in the light of the opinion of the Railway Board dated 23.4.2015 rendered

much before the disposal of the OA applications by the Tribunal.

6. It will be open for the parties to bring on record the opinion of the Railway Board dated 23.4.2015. It is expected that the Tribunal shall deal with the matter as expeditiously as possible and dispose it by a fresh reasoned and speaking order in accordance with law. The status quo as on date to be maintained between the parties till then.

7. The Writ Petitions are disposed.”

5. Respondents through MA No. 457/2018 (OA 902/2012) and MA No. 176/2018 (OA 26/2015) have filed the opinion of Railway Board dated 23.04.2015 (Annexure IA/2). This opinion of Railway Board has been referred to in Para 5 of the judgment of Hon'ble High Court. These MAs are allowed and documents taken on record.

5.1 In OA 26/2015, the applicant has filed additional submissions (MA No. 464/2018) to which respondents have filed additional reply on 09.07.2018. These are taken on record.

6. Since the issue involved is similar, both the Original Applications are being adjudicated through this common order. For sake of convenience, the facts are taken from OA 902/2012 unless specifically mentioned otherwise.

7. The applicant has submitted as under:

7.1 He was appointed in Group-D post (2550-3200) on 24.12.1997, got selected as Junior Clerk (4000-6000) on 01.05.1999 and was further promoted as Senior Clerk (4500-7000) in June 2005.

7.2 Respondents issued notification dated 13.02.2008 (Annexure A-1) for filling up 59 posts of OS Gr-II (5500-9000 (RSRP)) against 20% LDCE quota. The applicant applied for the same and got empanelled on 12.06.2008 (Annexure A-2). Selected candidates were sent on 63 days training w.e.f. 16.07.2008 to 16.09.2008. Thereafter he was posted as OS Gr-II vide orders dated 23.09.2008 (Annexure A-3).

7.3 Respondents issued provisional seniority list of OS-II (Annexure A-4) as on 01.01.2009, wherein the name of the applicant figures at Sl. No. 5.

7.4 His name was considered for promotion to Chief OS vide order dated 05.05.2011 (Annexure A-5), was found suitable on 25.05.2011 (Annexure A-6) and posted as such on 26.05.2011 (Annexure A-7).

7.5 Thereafter, the respondents issued seniority list as on 01.01.2012 (Annexure A-8) where his name appears at Sl. No. 6 of Office Superintendent Gr.-I.

7.6 Subsequent to implementation of 6th Central Pay Commission (CPC) w.e.f. 01.01.2006, the grades of Head Clerk & OS-II were merged in Grade Pay 4200 and grades of OS-I & Chief OS was merged in Grade Pay 4600 respectively.

7.7 In view of aforesaid merger of grades, Railway Board has issued several circulars on the subject (Annexure A-12 to A-19).

7.8 In terms of Railway Board's (RBE 107/2012) letter dated 26.09.2012 (Annexure A-19), instructions have been issued regarding seniority for all the promotions held after 04.09.2008 (date of implementation of 6th CPC on Railways). Based on these instructions, the Respondents have placed him in the seniority list of Head Clerk vide memorandum dated 03/07.09.2012 (Annexure A-9) and show cause notice have been issued on 28.09/08.10.2012 (Annexure A-10) for reversion from the post of Chief OS.

8. The applicant(s) has prayed for the following reliefs:

8.1 Relief Sought in OA 902/2012:

“8. RELIEF SOUGHT:

In view of the aforesaid facts and grounds, the Applicant respectfully prays from the Hon'ble Tribunal as under :-

8.1 That, the Hon'ble Tribunal be pleased to allow the O.A and by calling entire relevant records from the possession of Respondents for its kind perusal to decide the Applicant's grievance.

8.2 That, the Hon'ble Tribunal be pleased to set aside the impugned Official Orders dated 3/7-09-2012 (Annexure A-9) and Order dated 28.9.2012/8.10.2012 (Annexure A-10) in the interest of justice.

8.3 That, the Hon'ble Tribunal be pleased to pass an Order directing the Respondents to continue the Applicant to the Post of Chief Office Superintendent in the Pay Scale of Rs. 9300-34800/- with GP Rs.4600/- and to restore his seniority in the said Post i.e, to maintain Applicant's Seniority position in the Seniority List dated 1.1.2012 (Annexure A-8) in the interest of justice.

8.4 That, the Hon'ble Tribunal be pleased to pass any other order direction deem, fit and proper in the interest of justice."

8.2 Relief sought in OA 26/2015:

"8.1 That, the learned Tribunal may kindly be pleased to quash the order dated 01/05.01.2015 (Annexure A/1).

8.2 That, the learned Tribunal may kindly be pleased to quash the Estt Rule 200/2012 dated 23.11.2012 holding it to be being unconstitutional (Annexure A-2).

8.3 That, the learned Tribunal may kindly be pleased to direct the respondents not to alter/disturb the seniority positioin of the applicant and further not to revert the Applicant to the post of OS-II.

8.4 Any other relief which the learned Tribunal deems fit and proper may be awarded."

9. Respondents have filed their reply, wherein following submissions have been made:

9.1 Notification dated 13.02.2008 (Annexure A-1) was issued and applications invited to fill up the posts of Office Superintendent Gr-II in the scale of 5000-9000 (RSRP) against

20% LDCE quota. The applicant applied, was selected and after completion of prescribed training was posted on 23.09.2008.

9.2 Meanwhile recommendations of 6th CPC were implemented. To resolve further complications, Railway Board issued RBE No. 127/2008 on 23.09.2008 (Annexure A-12), wherein it has been directed that promotions within the merged grade (i.e. from lower grade to next higher grade of 5th CPC) or within upgraded and merged in higher grade pay should not be made.

9.3 Railway Board vide RBE 70/2009 dated 24.04.2009 (Annexure A-13) issued further instructions for staying the selection process, panels/suitability list where two or more scales have been merged into a single grade pay or upgraded grade pay.

9.4 Hierarchy of posts in Ministerial cadre before implementation of 6th CPC was Junior Clerk (3050-4500), Senior Clerk (4500-7000), Head Clerk (5000-8000), OS-II (5500-9000) and OS-I (6500-10500).

9.5 After implementation of 6th CPC, the Senior Clerks were given pay scale of 5200-20200 Grade Pay 2800. The posts of Head Clerk and OS-II were merged in pay scale of 9300-34800 Grade Pay 4200. Further, OS-I and Chief OS were merged in pay scale of 9300-34800 Grade Pay 4600.

9.6 In the instant case, applicant was promoted from Senior Clerk (4500-7000) to the OS-II (5500-9000). However, with implementation of 6th CPC, the scales of Head Clerk to OS-II were merged. Therefore, as per Railway Board's instructions, he was reverted and there is nothing arbitrary or illegal about the same.

10. Heard argument of learned counsel of all the parties and perused the pleadings available on record.

11. The sole issue is regarding legality of canceling the promotions made after 04.09.2008 (date of implementation of 6th CPC on Railways).

12. Learned counsel for the applicant(s) argued that the promotions were granted by following all the procedures. Now at a later date, the applicant(s) cannot be denied the said promotion with retrospective effect.

12.1 It was also highlighted that the said LDCE selection was conducted at Headquarter level. Applicant in OA 902/2012 and OA 26/2015 are posted in Bilaspur and Raipur Division respectively. In Raipur Division, promotion to OS-II under 80% DPQ was carried out and panel declared on 08.07.2008. Promotions were affected immediately as there was no training involved. As per Para 306 of Indian Railway Establishment Manual (IREM), the candidates of

earlier selection shall be senior to those selected later. Therefore, the applicant of Raipur Division would be senior to 80% DPQ. The promotion of 80% DPQ have been protected as they were promoted on 08.07.2008 i.e. prior to 04.09.2008, whereas the applicant's promotion has not been protected.

12.2 Reliance was also placed on **Chairman, Railway Board vs. C.R. Rangadhamaiah**, (1997) 6 SCC 623 to demonstrate that rights once accrued cannot be taken away.

13. Learned counsel for the respondents placed reliance on **State of Sikkim & Ors. vs. Adup Tshering Bhutia & Ors.**, Civil Appeal No. 2446 of 2014 decided on 18.02.2014, wherein their Lordships have held that seniority is not a vested right and state rules can affect it. It also brought out that in the integration of cadres, affecting the larger public interest, seniority of some members of the service could get affected.

13.1 Regarding the relative seniority with 80% DPQ selected candidates, it was averred that the issue of seniority will arise only after one is promoted. In this case the promotion itself has not protected, hence the issue of seniority does not arise.

13.2 It was vehemently argued that the various orders of Railway Board issued regarding seniority in merged posts subsequent to

implementation of 6th CPC are very logical and are meant to avoid complications of seniority. Therefore, the OAs deserve to be dismissed.

FINDINGS

14. The extracts of relevant communications are given below:-

14.1 R.B.E. No. 102/2005 dated 17.06.2005 (Annexure A-11):

“Subject : Introduction of LDCE quota in the categories of OS-II scale Rs.5,500-9,000 and Personnel Inspector scale Rs.6,500-10,500.

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4. Training of successful candidates :- *All such persons who are selected as OS-II or PI against LDCE quota will be required to undergo three months' training in a Personnel Training School followed by 15 days' tour to other Zonal Railways/PSU, etc. All such candidates will have to successfully complete the training/course before they are put on a working post, for which a prescribed examination at the end of the training course will be conducted. Exact modalities of the training, etc., will follows.”*

14.2 R.B.E No.107/2012 dated 26.09.2012 (Annexure A-19):

“Sub : Status of promotions, made between date of effect and date of implementation of recommendations of 6th CPC, and seniority of Staff in merged grades in pursuance of Recommendations of 6th CPC.

The issue of status of promotions made between date of effect and date of implementation of 6th CPC and seniority of staff in case where two or more pre-revised grades were merged and placed in a common grade pay, in consonance with the recommendations of 6th CPC, was under consideration of Ministry of Railways in consultation with Department of Personnel & Training (DoP&T).

2. The matter has since been examined and it has been decided that status of promotions and seniority of staff holding

post in grades which have been merged in pursuance to recommendations of 6th CPC will be determined as under:-

(I) The promotions made between 01.01.2006 to 04.09.2008 (date of implementation of 6th CPC on Railways) will be protected as the same were made as per the provisions of statutory rules existing at that time. The merger of the pay scale(s) of the post(s) as recommended by 6th CPC have been made effective w.e.f. 01.01.2006; the seniority of government servant which existed on 04.09.2008 will be maintained, i.e., the holder of post having higher pay scale or post which constituted promotion post for the posts in the feeder grade, will rank enblock senior to those holding post having lower pay scale or the posts in feeder grade.

(II) Where posts having different pay scales prior to 6th CPC recommendations and now after merge have come to lie in the same Pay Band with same Grade Pay, the inter-se seniority of all the employees will be fully maintained with employee in a higher pre-revised pay scale being placed higher vis-à-vis an employee in a lower revised pay scale being placed higher vis-à-vis an employee in a lower pay scale. Within the same pre-revised pay scale, seniority which existed prior to revision would continue.

(III) Where recruitment for the posts in different pre-revised pay scale(s) was initiated separately for each posts, prior to acceptance of recommendations of 6th CPC, i.e., prior to 04.09.2008 but selected individual joined duty on or after 05.09.2008 in the revised pay scale(s) against the posts which have been granted same Grade Pay, such staff will be assigned seniority enbloc below those who were in position as on 04.09.2008.

(IV) The availability of staff nominated on the basis of panel of promotion given by DPC or Select List given by Selection Board will be decided as on 04.09.2008. In case a staff from the panel given by DPC or Select List given by the Selection Board has joined on or prior to 04.09.2008, then status of all the staff included in panel given by DPC or Select List will be protected and all staff will be considered available and their seniority determined by following the basic principle of seniority, i.e., order of panel given by DPC or merit list given by Selection Board joins after 04.09.2008, then the seniority of such staff within a grade, will be determined by placing them below all available staff as on 04.09.2008 but maintaining their inter-se seniority in order of panel of DPC or merit list given by Selection Board.

3. *All the cases of determination of seniority except merged MTS posts will be decided accordingly. The issue of seniority of merged MTS (erstwhile Group 'D') posts would be taken up separately."*

14.3 Letter dated 19.08.2014 (Annexure A-6 in OA 26/2015) written by Chief Personnel Officer/South East Central Railway (CPO/SECR) to Railway Board seeking clarifications regarding review of seniority of candidates selected against 20% LDCE quota:

“.....

The affected staff of Raipur division have represented against such an anomaly. They have contended for the following points in the matter:-

(a) *As per para 306 of IREM-I, candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of posting. In the instant case, LDCE panel was formed prior to DPQ. Hence, they should have assigned seniority over and above DPQ candidates despite their date of joining is later due to involvement of training.*

(b) *Seniority in recruitment grade is assigned as per merit in Training, if training is involved in the post. OS-II is not a recruitment grade but an intermediate grade. The prescribed training for OS-II is a promotional training and not initial training for appointment. Hence, seniority should be assigned from the date of empanelment i.e. 12.06.2008 not after completion of training.*

(c) *RBE No. 107/2012 is also silent about the situation of pre-promotional training involved.*

(d) *Seniority of staff of a panel dated 08.07.2008 (DPQ panel of OS-II) is being protected due to joining before cut off date 04.09.2008, whereas seniority of staff of an earlier panel dated 12.06.20008 (of LDCE quota for OS-II) is not being protected due to joining after cut-off date 04.09.2008, as pre-promotional training of 61 days was prescribed and which was even started before the cut-off date.*

Keeping in view the peculiar situation particularly in the category of OS-II due to involvement of training and hardship caused to affecting staff, the matter is being referred to Board for guidelines for the following two issues:-

(1) Whether as per the provisions of Para 306 of IREM-I, seniority in case of staff selected against LDCE quota in OS-II can be assigned over and above the staff promoted in a later panel against DPQ, despite joined later due to prescribed promotional training.

(2) Guidelines for such cases where the panel was formed before cut-off date 04.09.2008 but the staff joined after this date due to prescribed promotional training. Whether their seniority can also be protected at par with staff joined before cut-off date."

14.4 Letter dated 23.04.2015 (Annexure IA-1) from Railway

Board to CPO/SECR:

“Sub: Review of Seniority of candidates empanelled before 04.09.2008 to the post of OS-II from Head Clerk against 20% LDCE Quota.

This has reference to South East Central Railway's D.O. letter No. P-HQ/RUL/103/1/5142 dated 19.12.2014 and letter No. P-HQ/RUL/103/1/2994 dated 19.08.2014 on the above subject.

2. The matter has been examined and it is advised that Railway may connect Board's letter No. E(NG)I-2008/PM/15 dated 23.09.2008, vide which promotions in merged grades of 6th CPC were stopped till further orders. Subsequently, Board's letter of even number dated 24.04.2009 further clarified that where two or more existing scales have been merged or allotted common grade pay, in such cases selection and promotion from existing lower scale to the existing higher scales should not be made. In such cases, action on selection etc. already in progress should be stayed and the panels/suitability lists already existed should also not to be operated.

3. Railway's action of conducting selection for the post of OS-II and assigning seniority to staff of such selection is in gross violation of Board's extant instructions. It may be explained why such lapse occur and why the instructions were not followed.

4. As regards the issue raised by the Railway through letters under reference, it is advised that the same stands clarified vide

Board's letter No. E(NG)I-2009/PM1/4 dated 26.09.2012. The Railway may settle the issue in the light of this instruction. Please acknowledge receipt of this letter."

14.5 Letter dated 04.06.2015 from CPO/SECR to Railway Board:

“Sub: Review of seniority of candidates empanelled before 04.09.2008 to the post of OS-II from Head Clerk against 20% LDCE quota.

Ref:- Board's letter No. E(NG)I-2009/PM1/4 dated 23.04.2015

In reference to para 2 & 3 of Board's above cited letter, following remarks are offered:-

“Prior to issuance of Board's letter dated 23.09.2008 (RBE No. 127/2008), there were no instructions for stopping the promotions within the merged grades or within upgraded & merged in higher grade pay.

In the instant case the panel for OS-II against LDCE quota was published on 12.06.2008. The prescribed promotional training was completed on 16.09.2008. The panel was operated on 22.09.2008, as one of the staff joined to the working post of OS-II in Raipur division w.e.f. 22.09.2008, i.e. well before issuance of Board's instructions dated 23.09.2008. Hence, other staffs in panel were also allowed to join to the post. Seniority was also assigned to them as per existing rules during the material time.”

However, corrective measures have been taken to revise the seniority in this case as per the directives given vide para 4 of Board's letter under reference. This is for information of Railway Board.”

15. The applicant has brought out that the selection for the post of OS-II was completed by issue of panel on 12.06.2008 (Annexure A-2), which was well before 04.09.2008 (date of implementation of 6th CPC on Railways). In the scheme of

selection under RBE 177/2003, it is nowhere mentioned that completion of training is part of the said selection under LDCE.

16. Perusal of RBE No. 102/2005 (Annexure A-11) clearly indicates that an element of direct recruitment to the extent of 20% of the posts in OS Gr-II were introduced as per RBE No. 177/2003 dated 09.10.2003. However, in order to motivate the serving graduates amongst ministerial staff, it was decided to do away with direct recruitment and in lieu introduce a Limited Departmental Competitive Examination (LDCE) quota to the extent of 20% (RBE No. 102/2005). Para 4 (extracted in para 14.1 above) stipulates that training is to be successfully completed before they are put on a working post. This clearly establishes that training is very much a part of the process before promotion is to be effected.

17. It is undisputed that 6th CPC was implemented by Railways on 04.09.2008, though it was w.e.f. 01.01.2006. There were mergers of several levels in ministerial cadre as has been detailed above, both by applicants and respondents. The post of OS Gr-II was also one such case, where the post of Head Clerk was merged. The first of the letters regarding stopping of all promotions of merged grades was issued on 23.09.2008 (Annexure A-12) followed by another on 24.04.2009 (Annexure A-13).

18. Perusal of communications exchanged between CPO/SECR and Railway Board on 19.08.2014, 23.04.2015 and 04.06.2015 (extracted in para 14.3, 14.4, 14.5 above) indicate that SECR had taken appropriate steps as directed by Railway Board. There was no irregularity in promoting the applicants, when it was done, as all the directives of Railway Board were followed by SECR.

19. The letter dated 23.04.2015 (Annexure IA-1) of Railway Board has clarified that SECR may settle the issue of promotion to OS-II as per Railway Board's letter dated 26.09.2012 (Annexure A-19).

20. From the above deliberation, it is evident that the respondents have taken decisions as per the circumstances prevalent at the said time. The status of promotions made between date of effect and date of implementation of 6th CPC, and seniority of staff in merged grades have been decided in consultation with Department of Personnel and Training (DoPT) and communicated via RBE 107/2012 (Annexure A-19).

21. Hon'ble Supreme Court in the matters of **Adup Tshering Bhutia** (supra) dealt with the issues emanating out of integration of three different services into one. The opening paragraph of the judgment reads as under:-

“2. Integration of services means the creation of a homogenous service by the amalgamation or merger of service personnel belonging to separate services. Integration is a policy matter as far as the State is concerned. In evolving a proper coalescence of the services, there are various steps:

(i) Decide the principles on the basis of which integration of services has to be effected;

(ii) Examine the facts relating to each category and class of post with reference to the principle of equivalence;

(iii) Fix the equitable basis for the preparation of common seniority list of personnel holding posts which are merged into one category.

The State is bound to ensure a fair and equitable treatment to officers in various categories/cadres of services while preparing the common seniority list. Being a complicated process, integration is likely to result in individual bruises which are required to be minimised and if not possible, to be ignored. These first principles on integration are to be borne in mind whenever a dispute on integration is addressed.”

(Emphasis supplied)

21.1 Further, it states:-

*“19. The Apex Court in *Tamil Nadu Education Department Ministerial and General Subordinate Services Association and Others v. State of Tamil Nadu and Others*, (1980) 3 SCC 97, held that integration is a complicated administrative process and it is likely to affect certain individuals. To quote:*

“7. In service jurisprudence integration is a complicated administrative problem where, in doing broad justice to many, some bruise to a few cannot be ruled out. Some play in the joints, even some wobbling, must be left to government without fussy forensic monitoring, since the administration has been entrusted by the Constitution to the executive, not to the court. All life, including administrative life, involves experiment, trial and error, but within the leading strings of fundamental rights, and, absent unconstitutional “excesses”, judicial correction is not right. Under Article 32, this Court is the constitutional

sentinel, not the national ombudsman. We need an ombudsman but the court cannot make-do.

8. ... *Maybe, a better formula could be evolved, but the court cannot substitute its wisdom for Government's, save to see that unreasonable perversity, mala fide manipulation, indefensible arbitrariness and like infirmities do not defile the equation for integration.* We decline to demolish the order on this ground. Curial therapeutics can heal only the pathology of unconstitutionality, not every injury.”

(Emphasis supplied)

The same view has been followed in *Indian Airlines Officers' Association v. Indian Airlines Limited and others*, (2007) 10 SCC 684, *Kerala Magistrates' (Judicial) Association and others v. State of Kerala and others*, (2001) 3 SCC 521, *Life Indian Corporation of India and Others v. S. S. Srivastava and Others*, 1988 Supp. SCC 1 and *New Bank of India Employees' Union and Another v. Union of India and Others*, (1996) 8 SCC 407.

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24. *In Prafulla Kumar Das and others v. State of Orissa and others*, (2003) 11 SCC 614, it was held that :

“33. Under Article 309 of the Constitution of India, it is open to the Governor of the State to make rules regulating the recruitment, and the conditions of service of persons appointed to such services and posts until provision in that behalf is made by or under an Act of the legislature. *As has been rightly pointed out by the Court in Nityananda Kar case², the legislature, or the Governor of the State, as the case may be, may, in its discretion, bestow or divest a right of seniority. This is essentially a matter of policy, and the question of a vested right would not arise, as the State may alter or deny any such ostensible right, even by way of retrospective effect, if it so chooses (sic) in public interest.*”

(Emphasis supplied)

22. Though the instant case is about seniority in the same cadre and the matters of **Adup Tshering Bhutia** (supra) is regarding integration of different services, what is common is the right of the State to take decision in public interest, even by way of retrospective effect. It is possible that some individuals may be adversely hit, but if the measures taken are not with malafide intention and have a sound rationale, the same should not be interfered with.

23. In the instant case, the issues arose after the 6th CPC recommendations were implemented by Railways on 04.09.2008 and certain grades of 5th CPC era were merged into one grade. The issue of seniority arising out of promotions between 01.01.2006 (effect of 6th CPC) and 04.09.2008 (date of implementation) from one grade to another, but which have been merged after implementation of 6th CPC have been addressed by the Railways vide RBE 107/2012 in consultation with DoPT. The promotions done after 04.09.2008 have not been protected by the said directive. We do not find any malafide in issuing such a directive and, even though the present applicants have been adversely hit, it has been done to ensure the larger public interest of various cadres overall Indian Railways. The selection of date 04.09.2008 is not

irrational, as that is the date when 6th CPC recommendations were implemented by Railways.

24. Since the entire promotion panel for 20% LDCE in this case has been set aside by the respondents following the directives of Railway Board (RBE 107/2012), comparison of seniority vis-à-vis 80% DPQ in case of Raipur Division does not arise.

25. Hon'ble Supreme Court in the matters of **C.R. Rangadhamaiah** (supra) was seized with the issue involving "the question regarding validity of Notifications Nos. GSR 1143 (E) and GSR 1144 (E) dated 5-12-1988 issued in exercise of the power conferred on the President of India under the proviso to Article 309 of the Constitution whereby Rule 2544 of the Indian Railway Establishment Code, Volume II (Fifth Reprint) has been amended with retrospective effect. By Notification No. GSR 1143 (E) the said rule was amended with effect from 1-1-1973 and by Notification No. GSR 1144 (E) the amendment was made with effect from 1-4-1979." The said appeals and Special Leave Petitions preferred by the Railways, were dismissed by the five Judges Constitution Bench of the Hon'ble Supreme Court.

26. The conclusion in **C.R. Rangadhamaiah** (supra) is distinguishable as in that case accrued benefits to a class of people were withdrawn retrospectively. In the instant O.As, the accrued benefits of a few have been withdrawn in larger public interest and measures taken cannot said to be malafide. If such steps were not taken, it would have resulted in greater chaos and larger number of litigation.

27. In conclusion, we do not find any irregularity or illegality in the steps taken by the respondents. Accordingly, both the Original Applications are dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member
am

(Navin Tandon)
Administrative Member