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CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 1133/1994

Date of Decision: 7-2-97

Shri. Manoj Mahajan

Petitioner/s

Shri. G.C. Paunikar

Shri G.S. Walia.

Advocate for the
Petitioner/s

V/s.

Shri K. Balakesari Secretary, Respondent/s
Railway Board and another.

Shri V.G. Rege.

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri M.R. Kolhatkar, Member (A)

Hon'ble Shri D.C. Verma, Member (J)

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to
other Benches of the Tribunal ?


(D.C. Verma)
Member (J)

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(19)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY:1

C.P. 57/96 in
Original Application No. 1133/94.

pronounced the 7th day of February 1997.

CORAM: Hon'ble Shri M.R. Kolhatkar, Member(A)
Hon'ble Shri D.C. Verma, Member(J)

Manoj Mahajan
G.C. Paunikar
... Applicants.
By Advocate Shri G.S. Walia.

V/s.

Shri K. Balakesari / or
his successor in office
Secretary,
Railway Board,
Ministry of Railways
Govt. of India
Rail Bhavan,
New Delhi.

Shri Suresh Kumar / or
his successor in office
Dy. Chief Personnel Officer
Central Railway,
Head Quarters Office,
C.S. Terminal
Mumbai.

... Respondents.

By Advocate Shri V.G. Rege.

O R D E R
(Per Shri D.C. Verma, Member(J))

Applicants of O.A. (1133/94) have
filed this C.P. against the respondents for non-
compliance of interim order passed by the Tribunal
in the said O.A. on 21.12.95. It has been submitted
that inspite of the interim relief, the respondents
have issued notification dated 11.6.96 making promotion
to Group 'A' post to the extent of more than 40 %.

2. The brief fact is that the applicants filed an O.A. for quashing the orders dated 25.4.92 and 10.2.94 by which promotion to Group 'A' service (Junior scale) of Group 'B' officers belonging to Indian Railway Service of Electrical Engineers (in short IRSEE) was made in excess of 40% of the quota prescribed in the recruitment Rules. The Tribunal initially passed the following interim relief on 29.5.95" All the promotions made hereafter during the pendency of this petition would be subject to the result of the petition." Subsequently the applicants have moved an M.P. No. 832/95 without furnishing a copy of the same to the respondents. The said M.P. was disposed of by order dated 21.12.95 after hearing the counsel for the parties. Following interim relief was granted.

" The respondents are hereby directed to restrict their promotion to Group 'A' post to the extent of 40% and balance by direct recruitment, as per the extant rules and their seniority to be determined in accordance with the recruitment rules and further promotion shall be made on the basis of inter-se seniority fixed in Group 'A' post.

Secondly, the applicant is directed to implead necessary parties/affected parties as Party Respondents before the hearing of the O.A. and copy of the same may be given to the respondents.

Thirdly, as stated in the Principal Bench decision, the principle of weightage in seniority will be limited to promotees appointed against their quota.

Fourthly, all vacancies will have to be filled in accordance with Rule 4.

Since the prayer made in the O.A. as well as M.P. is rather similar, the above direction would suffice for the present, and if need be, the respondents could file their reply to the M.P. and the matter be placed for hearing in its turn.

The above direction is issued on the basis of observations made in the Principal Bench decision and the stand taken by the official respondents in their reply."

3. After the above interim ~~order~~ was passed on 21.12.95, the respondents issued notification dated 11.6.96 (Exhibit 'B', Page 18 of C.P.) by which promotion of Group 'B' officer to Group 'A' ~~post~~ has been made. This notification has been issued in supersession of the earlier notifications. It has also been mentioned in this notification that appointments made by this notification will be subject to the final result of O.A. 1133/94 in the case of Manoj Mahajan and 2 others V/s. Union of India and others as well as the orders of the Hyderabad Bench of the Tribunal dated 2.2.96 in OA 991/94 in the case of Rahul Gautam and others V/s. Union of India and others.

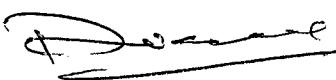
4. The main contention of the learned counsel for the applicant is that the respondents have given promotion to Group 'B' officers of the IRSEE to Group 'A' enbloc in excess of the stipulated quota of promotion i.e. 40 % of the vacancies. The learned counsel for the applicant further submitted that in view of the decision of the Supreme Court in the case of Makar Dhwaajpal and others V/s.

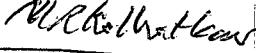
Neera Yadav (Smt) and another reported in 1994 SCC (L&S) 752. Share of direct recruits and promotees should have been determined for each year when substantive posts became available and direct recruits be treated as seniors and promotees be placed enbloc junior to them.

5. The learned counsel for the respondents on the other hand submitted that by order dated 21.12.95, the Tribunal had given direction to restrict the promotions to Group 'A' post to the extent of 40%. The learned counsel for the respondents further submitted that the directions of the Tribunal were issued on the basis of observations made by the Principal Bench in the case of Anil Kumar Sanghi v/s. Union of India in O.A. No. 574/93. The learned counsel for the respondents further referred to para 26 and para 34 of Principal Bench judgement, and quoted in reply to the C.P. filed by the respondents on 24.10.96. The submission made by the learned counsel for the respondents is that the modalities for filling up the 40% vacancy for succeeding year is given in para 26 of the Principal Bench judgement and as the interim relief passed by this Bench is based on Principal Bench judgement, the respondents have issued the revised notification dated 11.6.96 in compliance with the directions issued by this Bench and in conformity with the modalities laid down in the Principal Bench judgement. The learned counsel for the respondents further submitted that the promotions made by notification dated 11.6.96 had been made subject to the final decision of the O.A. No. 1133/94. A

6. We have heard the learned counsel for the parties and we are of the view that the issue raised in the C.P. of modality in calculating the 40% vacancy for promotion of Group 'B' officer to Group 'A' post are inexplicably linked up with the issues raised in O.A. for which a detailed investigation will have to be undertaken in terms of proper interpretation of the judgement of the Principal Bench relied on by the Tribunal in the order dated 21.12.95 as well application of the relevant Supreme Court judgements.

7. We are, therefore, of the view that this C.P. be linked up with O.A. 1133/94 and be finally heard along with the said O.A. in its turn.


(D.C. Verma)
Member (J)


(M.R. Kolhatkar)
Member (A)

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Attd 7/2/97
order/Judgement despatched
to Applicant Respondent (s)
on 21/2/97


21/2/97

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 11133/1994

DATED: _____ this, the 13TH DAY OF NOVEMBER, 2000

Shri Manoj Mahajan Applicant.

(Applicants by Shri G.S. Walia, Advocate)

Versus

Union of India & 8 Ors Respondents
(Respondents 1 to 3 by Shri S.C.Dhawan, Advocate with
Shri V.D.Vadhavkar, Adv.)

(Res. 4 to 7 by Shri Suresh Kumar, Adv. & Res. 8 by Shri
B.S.H.Rao, Advocate.)

CORAM

Hon'ble Shri B.N. Bahadur, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

(1) To be referred to the Reporter or not? Yes

(2) Whether it needs to be circulated to No
other Benches of the Tribunal?

(3) Library. Yes



(B.N. Bahadur)
Member (A)

sj*

THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No.1133/94

Dated this 13th Day of November, 2000.

Coram: Hon'ble Shri B.N. Bahadur, Member (A)
And
Hon'ble Shri S.L. Jain, Member (J)

1. Shri Manoj Mahajan
2. Shri G.C. Paunikar
3. Shri D.N. Mahajan Applicants.

All the above applicants
are working as Divisional
Electrical Engineers,
Central Railway,
Bombay V.T.

(Applicants by Shri G.S. Walia, Advocate)

1. Union of India,
through The Secretary,
Railway Board,
Rail Bhavan,
New Delhi 110 001.

2. The Secretary,
Union Public Service Commission,
Shahjahan Road,
Dholpur House,
New Delhi 110 001.

3. G.M. Cen. Rly.
Bombay V.T.
Bombay 400 001.

(Resp. 1 to 3 by Shri S.C. Dhawan, Adv. with Shri V.D. Vadhavkar, Advocate)

4. Shri J.N. Tiwari,
Divl. Electrical Engineer.
5. Shri R.K. Sethi,
Sr. Electrical Engr.
6. Shri R. Rajgopalan
Sr. Electrical Engr.
7. Shri L.P. Pareba
8. Shri R. Chandra Sekharan,
C/o G.M. Cen. Rly,
Mumbai V.T. Respondents

(Res. 4 to 7 by Shri Suresh Kumar, Advocate.
Resp. 8 by Shri B.S.H. Rao, Advocate)



ORDER

[Per B.N.Bahadur, Member (A)]

The Applicants in this case are one Shri Manoj Mahajan, (2) Shri G.C. Pownikar, and (3) D.N. Mahajan all Divisional Electrical Engineers Central Railway, who seek the relief from this Tribunal as follows:

"a) This Hon'ble Tribunal will be pleased to call for the records and proceedings which led to the passing of the impugned orders dated 25-04-1992 and 10-2-1994 and after going through its validity, constitutionality, propriety, quash and set aside the same.

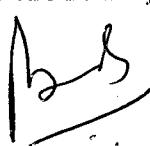
b) This Hon'ble Tribunal will be pleased to hold and declare that promotees cannot be granted seniority over the applicants in Group "A" Service (Junior Scale) over and above 40% quota referable to a given recruitment year and assign seniority to applicants vis-a-vis promotees.

c) All the future promotions be made only on the basis of freshly cast promotion and seniority lists.

d) Cost of this Application be provided for.

e) Joint application be allowed to be filed."

2. The case made out by the Applicants is as follows: They are direct Recruits to Indian Railway Service of Electrical Engineers (I.R.S.E.E.) Group A, belonging to the 1985 and 86 Examination Batches. Their dates of appointments are, respectively, 15.3.1988, 16.5.1988, and 16.7.1987. As per Recruitment Rules, 60% of the vacancies in I.R.S.E.E. Group A have to be filled in Direct Recruitment, and upto 40% by promotion of Gp. B. Class I officers of I.R.S.E.E. Further, the Rules state that if the promotees quota is not fully utilised, the remaining vacancies are filled in by Direct



Recruitment. It is the grievance of the applicant, that 79 officers of Gp. B were promoted to the Junior Scale (A), with effect from 3.3.1983 vide impugned orders dated 25.4.1994, whereas only 24 Direct Recruits were appointed through the Examination of Recruitment Year 1992. Thus as per Rules only 16 promotees would have been appointed in 1992 and the remaining 63 Officers (79-16) were promoted without the authority of rules. In consequence, the Applicants are also aggrieved in that the seniority of the aforesaid 79 officers and 4 more (i.e. total 83) promotees has been fixed above the seniority of the applicants, 81 of them being granted seniority with effect from 3.3.1987 and the remaining 2 from 21.2.1998. Thus aggrieved, the Applicants are before the Tribunal seeking the Reliefs as described in para 1 above. In further paragraphs in the O.A. other details considered relevant by the Applicants are being provided and certain grounds taken up in support of the prayers made for relief.

3. The Official respondents have filed a Reply Statement. There are six other (private) Respondents and Replies are filed on behalf of Respondent No.8.

4. The Official Respondents have resisted the claim of the Applicants, first taking the point that there are about 77 persons whose seniority is involved and that they should have been made private Respondents. This point can be dealt with at the outset here only since it is a well established principle that where a large number of persons are involved in a case of seniority it suffices to make a few of them party, specially where a principle is being challenged which is common to all. Here this is the case. And admittedly some six persons have been made private Respondents. Hence this ground taken by the Respondents does not hold water.



5. The Respondents have further, state that Applicants require 8 years of Service in Group A for being considered for promotion to posts of Junior Administrative Post (JAG) of I.R.S.E.E. Respondents take the stand that since none of the Applicants had these required years of Service at the relevant time, they are not entitled to agitate for the reliefs claimed. The Respondents have described the hierarchy of service, the channels of promotion, and have then spelt out how promotions for 99 vacancies were considered in the DPC convened by UPSC on 17th, 18th and 20th February, 1992 for considering the promotions to these 99 vacancies. The chart given in this regard is as follows:

Recruitment Year	Direct Recr. Quota	Promotion Quota
1989	35 (60%)	23 (40%) +3 (carry forward vacancies 73 (70% approx) (including addl. 52 posts decided by the Govt. in consultation with UPSC)
1990	31 (30% approx.)	
	Total: ----- 99 =====	

6. The Respondents have, in their Written Statement, further explained the position with regard to the Chart above, and state that in 1990, only 52 additional posts were decided to be filled up by promotion of eligible group B Officers, in relaxation of the normal prescribed quota, in consultation with UPSC, in exercise of the powers conferred by Rule (4) (b) of the relevant Recruitment Rules. The rational and justification for this action/decision is then described in para 4.7 of the Written Statement with reference to the Rules etc. Certain stands and grounds have been taken in the Written Statement which have also been taken during arguments by the learned Counsel on behalf of



Respondents/private Respondents and will be discussed later.

7. In the Reply statement filed by Shri R. Chandrasekaran Respondent No.8 (R-8) the stand has been taken as follows: R.8 contests his claim of the Applicant, and states that the action of the Official Respondents has been upheld by the Madras Bench of the Tribunal in O.A.784/93. Both promotee officers and Direct Recruits discharged the same duties and responsibilities and held interchangeable posts. But the promotions take 9 to 14 years, for promotion, in normal course. In short, R.8 basically supports the stand taken by the official Respondents, and states that a number of private Respondents were already working in Senior Scale Posts even before Applicants entered service. It is also averred that promotee Group A Officers constitute only 40% of the Senior Scale as against 86% being manned by Direct Recruits even though the Rule provides a 14% quota. In the further portion of the reply statement parawise replies have been given by R-8.

8. We have heard learned Counsel on the respective sides. The Counsel for the Applicant Shri G.S.Walia took us over the facts of the case and stated that while the 60:40 ratio of direct recruits and promotees was always maintained, there was a major departure, in 1979, when some 83 people were promoted and later given seniority w.e.f. 3.3.1997. It was argued by learned Counsel, that Recruitment Rules provides for promotion upto the ratio of 40% or less, and no relaxations can be given since such relaxation will amount to an amendment of the Rule, which will be illegal. Appointment of excess persons even if made cannot give a claim to seniority. Shri Walia drew attention to the case of *Anil Kumar Sanghi & Ors. vs. UOI (O.A. No.574/93) decided by*

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the Principal Bench of CAT cited in the Interim Orders provided in this case to buttress this argument. It was alleged that the Applicant had to come up in a CP, since the Order providing I.R. dated 21.1.1995 was not followed. Learned Counsel cited a number of judgements in his support, for the various arguments made by him. These cases are as follows:

- (1) *T.R.Prasad vs R. Rosain* [1988 SCC L&S 658]
- (2) *Makardwajpa vs. Meera Yadav* [1994 SCC L&S 752]
- (3) *K. Kuppuswamy & Anr. vs State of Tamil Nadu*
[1998 SCC L&S 1694]
- (4) *UDI vs. Mhathung Kithan* [1997 SCC L&S 328 para 7]
- (5) *M.S.I.Patil, ACF Solapur (Mah) vs. St. of Maha.*
[1997 (1) SCSLJ 304]
- (6) *A.B.Mishra & Ors. vs. UDI* in O.A.617/91 of this Bench

9. Learned Counsel, Shri Walia, further reiterated the point that there could be no carry over of the vacancies since the Recruitment Rule itself provided that any part of the quota of promotees left unfilled would automatically pass on to the Direct Recruits.

10. Arguing the case on behalf of the Official Respondents, their learned Counsel Shri S.C.Dhawan, with Shri Vadhavkar, first took the point regarding limitation/delay and laches, contending that an order dated 24.9.1982, was being challenged in this O.A. filed in October, 1994 and that the subsequent order challenging seniority also got affected. He contended that this was enough ground for dismissal of the O.A. citing the case of *R.C. Sharma vs.Udham Singh Kaml & Ors.* [2000 (1) ATJ 178] in support of his contention. It was argued that the order, of 1994, regarding seniority, came about only as a consequence of the promotion orders and hence could not be challenged itself. It was


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contended that there were no imminent threats to the rights of the Applicant and hence the O.A. displays no cause of action.

11. Learned Counsel for the Respondent drew attention to the Interim Relief Order dated 21.12.1994 and to the Order in *Anil Kumar Sanghi's* case (supra) and made the point that Respondents have already complied with the direction given, Order through its order dated 16.6.1996 and reviewed the lists published on 6.12.1996. These orders have been accepted and therefore nothing survives now in the O.A., since the Respondents cannot now cancel the Order of 6.12.1996. Learned Counsel drew attention to the judgement of the Hyderabad Bench of the Tribunal made in the case of *Ranul Goutam & Ors. vs. Govt. of India [O.A.No.991/94 of Hyderabad Bench]* and stated that the situation was totally similar here and the case decided by Hyderabad Bench would apply here.

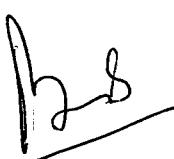
12. It was also argued by Counsel for Respondents that the Recruitment Rule, which provided 40% quota for promotees, also provided for a variation being possible in this percentage by stating that the percentage could be varied. 60% quota has not been fixed for Direct Recruits specifically but only as a residuary percentage. UPSC had been approached formally, and 52 additional posts have been allowed. This has been really a case of a relaxation having been allowed. And that too it was a relaxation sought as a one time measure and not as a permanent change. The learned Counsel had reiterated the detailed facts of the situation arising out of the shortage of Direct Recruits as discussed in detail in the O.A. itself. The learned Counsels cited the case of *A.K.Nigam vs. Susil Misra & Ors. 94 (4) SLR SC 203* to state that weightages were upheld.



13. The learned Counsel for the Respondent No.8, Shri D.S.H.Rao argued the case in detail, quoting a number of judgements in his favour. He straight away took the point that the situation that was obtaining at that time need to be considered, and the action taken to make the promotions as a one time exception needs to be viewed in that background. He contended that because of low recruitment of Direct Recruits over long years, a situation has arisen where promotees went on getting ad hoc promotions, as described. He took strong support from the cases decided by the Madras Bench, Jabalpur Bench and Principal Bench of this Tribunal and further took us over the Rules as mentioned in detail in the Written Statement of the Respondent No.8. The fact that 40% promotions were not given on an year to year basis had worked against the interests of the promotee officers.

14. Shri Rao also made the point that R.8 was not party to the Interim Order referred to, and that this was made behind his back. He contended that the observations quoted therein are from the Jabalpur Bench Case and not Sanghi's case. Shri Rao sought to distinguish the Hyderabad Bench judgement, and said that there was no Rule of 60:40 ratio beyond the first stage for promotions.

15. Shri Suresh Kumar had also appeared for private Respondents 4 to 7 and argued the case although admittedly no separate Written Statement was filed on behalf of these Respondents. He supported the arguments made by Learned Counsel for Official Respondents, Shri Dhawan. It was contended by Shri Suresh Kumar that if a DPC did not meet every year, then it was necessary that separate yearwise selection be made, whenever DPC met and 40% quota provided to the promotees. It was contended by



Shri Suresh Kumar that the diversion of quota of promotees "not utilised" to the Direct Recruits could only be done, if and, after all efforts were made to utilise the quota. It was argued, that the variation clause in 40% quota and that the low presence of promotees in the overall systems were sufficient justification for a one time action that was taken in the present case. This amounted to relaxation with UPSC approval, and could not be faulted. Shri Suresh Kumar cited the case of *Sultana Begum vs Prem Chand Jain* [(1997) 1 SCC 373]. It was also argued by Shri Suresh Kumar that the present Applicants had no *locus standi* in the matter and in fact, were not competent in legal terms to challenge the promotions made prior to their entry in service. He drew support from the case of *A.K. Nigam vs. Susil Misra & Ors.* [(1994 (4) SLR SC 201].

156). Shri Walia Counsel for Applicant reargued the case briefly, specially on the point of limitation stating that his grievance could arise only when the question of seniority came up. The seniority order is dated 10.2.1994 and it is this order, which is the cause of action, since it was through this order that, for the first time, the Respondents were granted Seniority above applicants. It was reiterated by Shri Walia that the Jabalpur Bench, had not approved the plea for relaxation of Rules. It was argued that the plea of one time correction being taken came under the prayer under equitable jurisdiction and such jurisdiction is not vested in Tribunals. He cited the case of *State Bank of India & Ors. vs. Samarendra Kishore Endow and Anr.* (para 12) [(1994 SCC L&S 687] and also the case of *C.M. Singh vs. H.P. Krishi Vishva Vidyalaya & Ors.* [(2000 SCC L&S 164]. He stated that it could be agreed that no one is demoted, but no seniority could be provided above the Applicants. The case of *Dharampal* [(1985 SCC L&S 471] was cited in this regard.



16. Now the first point that needs to be considered is the position in regard to the rules which provides for fixed percentages of direct recruitment and recruitment by promotion. The Rules reads as follows:

"4. Methods of Recruitment: Recruitment to the Service shall be by the following methods:

(a) By competitive examination held in accordance with Part II of These Rules.

(b) By appointment of Assistant Electrical Engineers recruited through the Commission, initially as temporary officers, to such extent as may be decided in consultation with the Commission from time to time.

(c) By promotion of specially qualified Class II Officers, including officiating Class II Officers of the Electrical Engg. Department.

Not more than 33 1/2 per cent of the vacancies will be filled by departmental promotion, this percentage is liable to be varied from time to time if found necessary."

The above Rules were later amended vide Notification Dated 17.3.1979 by the Ministry of Railways as under:

1. (1) These rules may be called the Indian Railway Service of Electrical Engineers Recruitment (Amendment) Rules, 1979.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In rule 4 of the Indian Railway Service of Electrical Engineers Recruitment Rules, 1962 -
(i) for clause (b) the following clause shall be substituted namely:

(b) By promotion of Class II Officers of the Electrical Engineering Department. Not more than 40 per cent of the vacancies shall be filled by departmental promotion. This percentage is likely to be varied from time to time, if found necessary.

(ii) for the Note, the following Note shall be substituted, namely:

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"Note:- If the quota of 40 per cent reserved for Class II officers for promotion to Class I is not fully utilised, the remaining vacancies shall be filled by direct recruitment under clause (a)."

17. Thus it is conscious decision of the Govt., made through Statutory Rules that 60% of the posts are to be filled by the process of Direct Recruitment via competitive examinations. It is then the second intention that not more than 40% of the vacancies can be filled in by promotion, in a given Recruitment Year. In the same paragraph, it is also stated that in case the quota of 40% reserved for promotion is not fully utilised, these are to be filled by Direct Recruitment. We would first deal with one argument made to say that stated that this percentage (of 40%) could be varied from time to time if found necessary. The argument sought to be made by learned Counsel Shri Dhawan & Shri Suresh Kumar was that this meant that the percentage could go above the stipulated 33% / 40% in respect of promotion quota. This is too far fetched an argument and holds no ground when the Rule is read in totality, and when this clause is viewed harmoniously with the other provisions. Obviously the variation refers to is within the limits of 33% / 40%. Thus it is clear that the variation has to be and can be only to a percentage below 33/40 per cent.

18. What ~~is~~ admittedly happened is that a peculiar situation has come about at that time, where a large number of posts had come to remain vacant, for whatever reasons. Now, in order to fill in these posts, adhoc promotions had been resorted to. This was not confined to a particular year or so, but continued to be resorted to perhaps over considerable years, with the result that a large number of promoted officers not only continued in the Group A Cadre but also continued to progress further. The background of the Govt. approaching UPSC and taking action has

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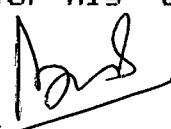
already been described. The ground taken is ~~taken was~~, that new posts have thus come ~~about~~ ^{to be} ~~have been~~ sanctioned and that in view of the peculiar situation, these ^{have} have to be filled in by promotion in toto. It was further sought to be argued that this action was valid not only in view of the peculiar situation obtaining, but also on the grounds that this was done in public interest, and with the concurrence of the UPSC. These are areas of facts and we see no reason to doubt them. However, the crucial point that remains is whether these reasons can provide enough justification for the Respondents to give a go-by to the Recruitment Rules.

19. The letter and spirit of the Recruitment Rules are clear in that, there is a fixed percentage for direct recruits, and the balance percentage for promotion is in the form of "not exceeding 40%". It is also clearly seen that there is a clear provision for diversion of the unutilised quota of promotion to direct recruits on a recruitment year basis. Thus, there is no doubt that the letter and spirit of the Rules is clear. It is also evident from the facts above that these Rules have been violated. Can it be said that the reasons for their violation can be gone into for any justification by the Executive. The reasons that have been given regarding the vacancies over a long period have obviously come out of the fact that no corrective steps were taken to make recruitment as per the Rules strictly. It would not be legally correct for any reasonable authority to come to the conclusion that this kind of situation or the grounds leading to it can justify the violation of Recruitment Rules which are statutory in nature and made under Article 309 of the Constitution, even as a one time measure.

20. The departure from Rules has not been of a technical nature nor has it been of a marginal nature. The action of the Respondents has really had the effect of amending of Recruitment Rules even if termed as all one time measure. The number of persons involved is around 80. UPSC has been consulted. This action cannot be depended by or allowed to be given approval to. It may be true that UPSC has been consulted and has given its approval but that cannot be something that can be held to save the Govt. from violation of Recruitment Rules. Neither the argument that no *malafide* was involved help in this regard.

21. Another argument taken by Respondents related to delay and laches. It was argued that it was in fact the order dated 24.9.1982, that was being challenged after some 14 years and that this delay/laches also apply to the regarding Seniority which is a subsequent order, Learned Counsel for the Applicant argued that the Applicant was contesting only the seniority order dated 10.2.1994, which is the cause of action, it was through this order that the Private Respondents were provided seniority above applicant. The argument taken by learned Counsel for Applicant is valid, specially in the face of the point made that it was not the action of promotion that was being challenged. What effects the Applicants is the seniority Order, and since the cause of action in this regard comes up only in 1994, this Application cannot be said to be hit by limitation/delay and laches. Similarly, the argument taken by Learned Counsel for Respondents that the Applicant face no imminent threats to their rights cannot be said to hold any water.

22. The learned Counsel for Respondent No.8 Shri Rao had referred to the judgements of the Madras Bench, the Jabalpur Bench and the Principal Bench of this Tribunal to seek support for his case. He had cited a number of other judgements.



Similarly a number of judgements were also cited by learned Counsels for the official Respondents Shri Dhawan and as also Shri Suresh Kumar. We have considered the judgements and shall comment upon those that are directly relevant. The Madras Bench judgement, delivered on 20.2.1994, referred to the Indian Railway Traffic Service. The case decided by the Jabalpur Bench in O.A.865/93 relates to the I.R.S.E.E. The order in the latter judgment is as follows:

"14. In the conspectus of the facts and circumstances stated above, the application succeeds partly. The respondent, Govt. of India is directed to treat the promotions made by the impugned order dated 19.2.1993 equal in number to the regular promotion quota vacancies attributable to Recruitment Years 1989, 1990, 1991, 1992 and 1993 as regular and the remaining promotions made in the impugned order dated 19.2.1993 adhoc for the purpose of granting seniority in the IRSE. The seniority list drawn on 7.3.1994 shall be recast accordingly.

The parties are left to bear their own costs."

In both cases however, the view taken is that as a one time measure the Respondent's action has been taken to be as justifiable and granted sanction.

23. The judgement by the Hyderabad Bench of the Tribunal has also been seen. This is made in O.A.No.991/94 decided on August, 26, 1994. In fact as a conscious decision the Bench has decided not to pass any orders in the O.A. and hence we will not refer to this judgement. The reference made to the I.R. in the present O.A. made by this Bench also will not be gone into since and I.R. order cannot bind a final decision in any case.

24. (a) We now turn importantly to the rulings of the Supreme Court cited by either side. In the case of M.S.L. Patil [1997 (1) SCSLJ 304] the Hon'ble Supreme Court had decided that promotees promoted in excess of quota were not entitled to seniority and that their seniority was to be considered from the



date the quota is available. It was also decided that the promotees had no rights to posts reserved for Direct Recruits. Here in fact, in the case before us there is a provision further that unutilised quotas for promotees will go to the Direct Recruits. Similarly, the hon'ble Supreme Court had decided in the case of *K.Kuppuswamy* 1998 SCC L&S 1694 that Statutory Rules cannot be over ridden by executive orders or executive practice, and only through an amendment of the Rules can any change be made and that too prospectively. In the case of *K.R. Prasad vs. Rosaian* (1988 SCC L&S 658) a similar reiteration has been made. We have also carefully seen the judgement in O.A. 574/93 on 4.8.1995 by the Principal Bench of this Tribunal. This judgement was sought to be relied upon in support of the Respondents by their learned Counsel Shri Dhawan. We note from the operative paragraph (39) to be as under:

(i) *It is not competent for the Railways to appoint as many as persons by promotions as they like, in disregard of the provisions of Rule 4 which stipulates the quota for promotion and direct recruitment. Repeated violent departures from the quota rule will lead to collapse of the quota rule (Direct Recruit's case - supra) and therefore, of the linked seniority rule (B.S. Gupta's case -supra).*

(ii) *The principle of weightage in seniority will be limited to promotees appointed against their quota.*

....16/-



(iii) As the rules stand at present, the maximum quota for promotes is only 40%. It cannot be raised further by relaxation, as Government has no such power.

(iv) Vacancies not filled in a year - whether in the direct recruitment quota or promotee quota - can be carried over, but all such vacancies have to be filled in the subsequent years by both methods on the basis of the quota mentioned in Rule 4.

(v) Out of the 127 appointments made by the Annexure A-1 order dated 15.9.1993, promotion should be deemed to have been made to the extent of 40% of the vacancies in 1992 which have been computed tentatively at 89 (para 34 supra) subject to departmental verification. They alone are entitled to weightage and seniority on the seniority principles (vii) and (ix).

(vi) The remaining 38 persons, subject to departmental verification, have been promoted in excess of the promotion quota and they are not entitled to weightage in seniority on the basis of the Annexure A-1 order. Their promotions shall be treated as ad hoc only. They can be treated as regularly promoted against the quota for promotees in 1993 and thereafter. In that case, such promotees can be given weightage from the dates their promotions are regularised.



...17/-

(vi) The Annexure A-1 order shall stand modified to the extent indicated above [24 (b)]. Now it is clear that there is no clear direction on the principle in the aforesaid judgements of the Madras and Jabalpur Bench. The main ground has been that the Tribunals have as it were acquiesced in the action taken by the Govt. to meet a certain situation as a one time measure. The Principal Bench has on the other had decided the issues clearly and have allowed appointments only upto 40% to be given weightage of seniority. Further it has not given any weightage in seniority to those promoted in excess of promotion quota. The ratios of the Supreme Court judgements have to be followed by us and it is more than clear that executive decisions cannot overwrite the Recruitment Rules no matter what the circumstances under which they are made.

Thus there is no clear direction on the principle in the aforesaid judgements of the Madras and Jabalpur Bench. *Babu*

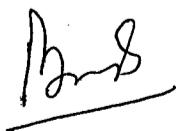
25. As there was no attempt by the respondents to utilise the quota of 40% meant for the promotees, it cannot be said that by the said inaction, the quota exceeding 60% is available to the applicants. In addition to it, there is no conscious decision by the Respondents that even after careful scrutiny of the records of the promotee officers there was none eligible for promotion to the Cadres. As stated earlier, it is the inaction on the part of the Respondents to take recourse to the implementation of the Rules in spirit. Such an action cannot be endorsed particularly

when the action of the Respondents affects the career prospects of the promotee officer.

26. The question of carry over also plays an important Role and the said question arises only when the vacancy remains unutilised. If no attempt is made to utilise the vacancy, no conscious decision regarding non availability of the eligible officers ~~can be~~ ^{is h} ~~then h~~ said to have been taken, and it cannot be said that the vacancy cannot be carried over to the next year. Further more, Rules do not debar the carrying over the vacancy for the next years in such situation.

27. The question of providing equitable relief to private Respondents does not arise as they are getting the relief only to which they are entitled as per Rules and not beyond the Rules. The observations of the Jabalpur Bench that even in such situation it is equitable relief will not apply in view of Supreme Court judgments referred to above. Hence, the authorities relied by the learned Counsel for the Applicants does not apply to the present case.

28. The Principal Bench has, on the other hand, decided the issues clearly and have allowed appointments only upto 40% to be given weightage of seniority. Further, it has not given any weightage in seniority to those promoted in excess of promotion quota. The ratios of the Supreme Court judgements have to be followed by us and it is more than clear that executive decisions cannot overwrite the Recruitment Rules, no matter what the circumstances under which they are made. Under the circumstances we respectfully agree with the conclusions arrived at by the Principal Bench of this Tribunal while disposing of O.A.No.574/96 on 4.8.1995.



...19/-

29. In view of the detailed discussions made above this O.A. is hereby disposed of with the following orders & directions:-

(i) It is held that Railways were not competent to appoint as many persons by promotions as they like, in disregard of the provisions of Rule 4 which stipulates the quota for promotion and direct recruitment.

(ii) vacancies not filled in a year - whether in the direct recruitment quota or promotee quota - can be carried over, but all such vacancies have to be filled in the subsequent years, by both methods on the basis of the quota mentioned in Rule 4.

(iii) If it is necessary, the seniority list should be revised and finalised based on the above principles.

(iv) Above order shall be implemented within a period of 4 months from the date of receipt of a copy of this Order.

(v) No recovery shall however, be made in respect of promotions already granted to the Officers on adhoc basis, or otherwise. Also no retrospective benefits shall be granted to the Applicant in respect of pay and allowances even if they become eligible to them.

30. No orders as to costs.

S.L.Jain
(S.L.Jain)
Member (J)
sj*

B.N.Bahadur
(B.N.Bahadur)
Member (A)