

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT SITTING, BILASPUR
(CHHATTISGARH)

Original Applications Nos. 768 & 857 of 2000

Bilaspur, this the 25th day of September, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Shri Anand Kumar Bhatt, Administrative Member

(1) Original Application No. 768 of 2000

1. Vishnunand Ram, aged about 31 Yrs.
S/o Shri Ram Sagar Ram, resident of
Electric Loco Shed, Bhilai, Post-Bhilai
Marshaling Yard, Dist.-Durg (M.P.).
2. N.Prasad Rao, aged about 30 Yrs. S/o N.Ram Murti,
resident of Electric Loco Shed, Bhilai, Post-
Bhilai Marshaling Yard, Dist.-Durg (M.P.) - APPLICANTS

(By Advocate- Shri M.K.Verma)

VERSUS

1. Union of India through Chairman, Railway
Board, New Delhi.
2. General Manager, South Eastern Railway,
11, Garden Reach Road, Calcutta-43.
3. Divisional Railway Manager, South Eastern
Railway, At/Post - Bilaspur (M.P.)
4. Senior Divisional Electrical Engineer (TBS),
S.E.Railway, PO-Bhilai Marshaling Yard,
Dist.-Durg (M.P.) - RESPONDENTS

(By Advocate Shri M.N.Banerji)

(2) Original Application No. 857 of 2000

1. Y.Chilkayya, aged about 49 years S/o Latyya.
2. S.Naik, aged about 47 years S/o Shiv Ram Naik
3. Nijadri Bahara aged about 47 years S/o
Ghanshyam Bahara.
4. N.Cinayyadu aged about 48 years S/o
N.Ramchandra Iyer
5. Amar Das aged about 36 years S/o Asha Ram
6. Bhogendrakanti aged about 40 years S/o Bonai Kanti
7. Niranjan aged about 48 years S/o Jagmohan.
8. S.N.Upadhyay, aged about 52 years S/o Prithvi Upadhyay

Contd....2/-

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9. Nathu aged about 49 years, S/o. Dhalgan
10. Pushpadas, aged about 53 years,
S/o Gopal Das.
11. Pralhad Das, aged about 49 years
S/o Udal Das.
12. Ashwani Kumar Singh, aged about
32 years S/o Sunhar
13. Chain Das, aged about 42 years
S/o Madhav Das
14. Rukdhar, aged about 43 years
S/o Laibona
15. Ramkrishna, aged about 40 years
S/o Govinda
16. R.K. Tiwari, aged about 40 years
S/o Loknath Tiwari
17. Din Dayal, aged about 40 years
S/o Umrao
18. P. Ramulu, aged about 40 years
S/o Yallayya
19. D. Pramod Kumar, aged about 38 Yrs.
S/o D.S. Prakash Rao
20. K. Mohan Rao, aged about 43 years
S/o K. Karrayya
21. P.V. Rao, aged about 42 years
S/o P.S. Rao
22. M.V. Prakash, aged about 38 years
S/o M. Chitti Babu
23. Jawahar Lal, aged about 35 years
S/o Biseswar
24. Tirath Ram, aged about 48 years
S/o Dewdhan
25. B.D. Mishra, aged about 50 years
S/o Surya Mishra
26. Sita Ram, aged about 53 years,
S/o Ghuna Ram
27. H. Shekhar, aged about 36 years,
S/o C.D. Mitra
28. Shiv Sagar, aged about 43 years,
S/o Jaysree
29. Sukhram, aged about 44 years
S/o Nathu
30. Arti Day, aged about 52 years
W/o Manoranjan Day
31. V. Babaji, aged about 32 years

32. Padam Singh, aged about 30 years
S/o Nandnilal
33. Ramadhar, aged about 40 years
34. A.K. Bakshi, aged about 49 years
S/o D.N. Bakshi
35. Amarnath, aged about 30 years
36. G.V.S. Prasad, aged about 34 years, S/o. G.S. Ramchandra Rao
37. Ganesh, aged about 50 years,
S/o. Karjau
38. Smt. P. Ramnamma, aged bout 48 years,
W/o P.R.K. Rao
39. K.Kaikayu, aged about 55 years,
S/o. Chamru.
40. Smt. B. Bharti, aged about 30 years
W/o B.B. Rao
41. Bhimseni, aged about 56 years
S/o Dukalu
42. D.P. Rao, aged about 47 years,
S/o Rama Rao
43. J.S.R. Murthy, aged about 48 years
S/o. J.S. Achyaya
44. Rushman, aged about 35 years
S/o. Dashru
45. T. Pattavi, aged about 45 years
S/o Gadenna
46. Lalchand, aged about 42 years
S/o Dina Ram
47. S.K.D. Mahapatro, aged about 48 yrs. S/o. B.B.D. Mahapatro
48. P.S. Narayana, aged about 48 years
S/o P. Narayanna
49. Baldev Sona, aged about 42 years
S/o Rai Singh Sona
50. S.G. Pali, aged about 37 years
S/o Gangadin Pali
51. H. Ishwar Rao, aged about 52 years
S/o Yerrappa
52. I. Tulsi Rao, aged about 47 years
S/o I. Appal Swami
53. Narsingh Rao, aged about 30 years
S/o Appa Rao
54. A. Nageshwar Rao, aged about 42 yrs
S/o A. Ramlu

55. V.Srinivas Reddy, aged about 28 years,
S/o Iripatiayya,
56. H.Choudhury, aged about 32 years,
S/o B.Choudhury,
57. Manindra Kumar, aged about 41 years,
S/o Bali Ram.

(By Advocate - Shri M.K.Verma)

Versus

1. Union of India through the
Chairman, Railway Board,
New Delhi.
2. General Manager,
South Eastern Railway, 11,
Garden Reach Road, Calcutta-43.
3. Divisional Railway Manager,
South Eastern Railway,
Bilaspur (M.P.).
4. Senior Divisional Electrical Engineer(TRS),
Marshalling Yard, Bhilai, Dist.-Durg(M.P.).

...Respondents

(By Advocate: Shri M.N.Banerji)

ORDER (ORAL)

Justice V.S.Agarwal:-

As both the applications, namely OA No.768/2000 and OA No.857/2000 raise similar questions of law and fact, we propose to dispose them of together by this common order.

2. Applicants are working as Senior Khalasi Helper with the Railways. The next promotion is to the post of Technician Grade-III (Fitter). It comes under the category of skilled artisan. The rules provide 50% quota for promotion to the post of Technician Grade-III (Fitter) from the staff in the

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lower grade. The recruitment rules in para 159 of the Indian Railway Establishment Manual (IREM) read:-

"159(1):- The vacancies in this category of skilled artisan grade-III in the scale of Rs.950-1500 (3050-4590) (revised pay scale after fifth pay commission). In various engineering departments will be filled as under:-

(i) 25% by selection from course completed act apprentices or ITI qualified could be considered against this quota allowing age relaxation as applicable to serving employees.

(ii) 25% from serving semi skilled and unskilled staff with educational qualifications as laid down in apprentices act; and

(iii) 50% by promotion of staff in the lower grade as per prescribed procedure."

The grievance of the applicants is that the respondents had issued a letter dated 11.8.2000 on the basis of earlier letter dated 9.11.1998 by which a panel had been issued for filling up the existing complete vacancies of Technician Grade-III (Fitter). They had reduced the promotion quota from 50% to 20% in contravention of para 159 of the IREM. By virtue of the present applications, the applicants seek quashing of the letter referred to above by virtue of which the percentage of promotion quota had been reduced. Needless to state that other pleas in the Original Applications were not pressed.

3. In the replies filed, the applications

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had been contested. It was contended that the Technical Employees Association of Railway (TEAR) Northern Railway had challenged the said letter. Therein, higher qualifications prescribed were under question. The Supreme Court had upheld the validity of the same. According to the respondents, the revised percentage and distribution of posts would be:-

"The revised percentage and distribution of posts as per revised methodology in Tech.Gr:III(F) in scale Rs.3050-4590(RP) in ELS/Bhilai is indicated below:-

	Sl. Distribution of per % posts	Sanct- ioned.	Actual Vacancy
a.	Direct Recruit- ment RRB (Open market)	60% 191	28 163
b.	Serving Employee quota	20% 63	14 49
c.	Promotion of staff from lower grade	20% 63	133 70 (Excess)
		317	175 142 "

4. We have heard the parties' learned counsel and seen the relevant record.

5. The basic controversy herein related to para 5 of the Railway Board letter of 28.9.1998. It points out that the Railway Board after the approval

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of the President had decided vide paragraph 5 as under:-

"5. In pursuance to the above changes, the revised methodology for filling up the posts of skilled Artisans in grade Rs.3050-4590 in diesel/electric/DMU maintenance trades will be as under:-

- (i) 60% by direct recruitment from successful course and matriculate from the open market;
- (ii) 20% from serving semi-skilled and unskilled staff with three years of regular service with educational qualifications as laid down in the Apprentice Act, as outlined in Railway Board's letter No.E(NG)I/96/PM7/56 dated 2.2.1990; and
- (iii) 20% by promotion of staff in the lower grade as per prescribed procedure."

We have already referred to above that earlier, the 50% quota was fixed for promotion of staff in the lower grade as per prescribed procedure. Presently, the quota had been reduced to 20% by promotion of staff in the lower grade with prescribed procedure.

6. It is this reduction in the quota which is the subject matter of controversy because, according to the applicants, without amending the relevant rules which we have reproduced above, the quota could not have been reduced. Admittedly till date, amendment to para 159 of the IREM has not been effected.

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7. As already pointed above, the respondents' answer in the first instance was that Technical Employees Association of the Railways had filed Writ Petition No.289/1999. It was decided by the Supreme Court on 31.3.2000. Perusal of the said decision indicates that the dispute before the Supreme Court was that Khalasis who were already in service and did not possess the required qualifications were purported to undergo the rigours of higher qualifications for promotion. The Supreme Court had only gone into that controversy and held that for maintaining efficiency in service, higher qualification is required for discharge of the duties in higher positions and, therefore, prescribing such qualifications cannot be held to be arbitrary or irrational. It was further noted that Railway Board had issued circular in consonance with the recommendations of the Pay Commission. The circular was upheld. It is obvious from the aforesaid that the question before us pertaining to paragraph 5 of the same circular was not the subject matter of dispute before the Supreme Court and the Supreme Court had not expressed any opinion in that regard. It cannot, therefore, be stated that the entire circular had been considered and opined to be valid.

8. Doctrine of severability is well-known. If a part of the statute is void and it can be severed

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from the rest, the other part of the statute need not be declared to be invalid. The same principle would apply in case of circulars that are being issued and are being implemented.

9. The Supreme Court in the case of R.M.D.Chamarbaugwalla and another v. Union of India and another, AIR 1957 SC 628 had considered this doctrine and held:-

"12. The question whether a statute which is void in part is to be treated as void in toto, or whether it is capable of enforcement as to that part which is valid is one which can arise only with reference to laws enacted by bodies which do not possess unlimited powers of legislation, as, for example, the legislatures in a Federal Union. The limitation on their powers may be of two kinds: It may be with reference to the subject-matter on which they could legislate, as, for example, the topics enumerated in the Lists in the Seventh Schedule in the Indian Constitution, ss.91 and 92 of the Canadian Constitution, and s.51 of the Australian Constitution; or it may be with reference to the character of the legislation which they could enact in respect of subjects assigned to them, as for example, in relation to the fundamental rights guaranteed in part III of the Constitution and similar constitutionally protected rights in the American and other Constitutions. When a legislature whose authority is subject to limitations aforesaid enacts a law which is wholly in excess of its powers, it is entirely void and must be completely ignored. But where the legislation falls in part within the area allotted to it and in part outside it, it is undoubtedly void as to the latter; but does it on that account become necessarily void in its entirety? The answer to this question must depend on whether what is valid could be separate from what is invalid, and that is a question which has to be decided by the Court on a consideration of the provisions of the Act."

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The same principle had again been gone into by the Supreme Court in the case of Harakchand Ratanchand Banthia and Ors. etc. v. Union of India and Ors. [1970] 1 S.C.R. 479. The principle enunciated was identical and, therefore, even if on a particular point, the Supreme Court had held the said circular to be valid and if the other part of the circular is not valid and the same can be severed from the rest, we find no legal impediment in dealing with the same and if the same is invalid, it could be quashed as such.

10. The circular in question referred to certain facets, prescribed pay scales and certain qualifications etc. It also fixed functions, duties and responsibilities. So far as paragraph 5 is concerned, as already pointed above, it simply prescribed the reduced promotion quota for the staff from the lower grade and increasing the quota of direct recruitment from the successful course. The said paragraph which is totally independent from the rest of the circular even if is held to be invalid, it will not affect the other part of the circular and, therefore, in the facts of the present case, the doctrine of severability would certainly come into play.

11. In that event, the learned counsel for the respondents had contended that earlier Technical Employees Association of the Railways of which the

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applicants are members had filed a petition and the matter was before the Supreme Court, but they did not raise this plea. Thus the applicants are debarred on the principle of constructive res judicata from raising this contention. A feeble attempt on behalf of the applicants was made to urge that they were not parties in that litigation.

12. So far this particular plea of the applicants is concerned, it must be negatived for the simple reason that they may not be parties in that earlier litigation, but in the representative capacity their Association was a party therein. When such is the situation, the principle of constructive res judicata would apply because herein there is no controversy raised before us that they in fact were not represented by their Association.

13. It is true that before this Tribunal, strict provisions of the Code of Civil Procedure are not applicable. Even if the same are not applicable, the principles of res judicata are based on propriety, reasonableness, fairness and to end the unnecessary litigation. The basic principles would still be applicable. Thus the plea of the respondents, therefore, that since the applicants were parties and they are bound by the said order must fail.

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14. Proviso 4 to Section 11 of the Code of Civil Procedure clearly in uncertain terms states that if a plea could have been raised and has not been raised, it would debar a person from raising it in a subsequent litigation and the principle of constructive res judicata would apply. We have no hesitation in accepting the said contention to that extent.

15. Can in the facts of the present case, the applicants still be permitted to adjudicate the same because as already pointed above, this question had never become the subject matter of any controversy before the Supreme Court nor the Supreme Court had adjudicated in this regard ? A Full Bench of the Bombay High Court in the case of The Province of Bombay v. The Municipal Corporation of Ahmedabad, AIR 1954 Bombay 1 was considering the controversy as to whether a decision on a point of law would operate as res judicata or not. It was held that a decision that was invalid did not bar the Government from contending in subsequent suit that similar tax on another piece of land was valid. It was held that a decision of law would only be binding between the same parties and operate as res judicata.

16. In the present case, as already pointed above, in fact no decision on the said question of law had been given or pronounced by any court.

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17. The Supreme Court in the case of Mathura Prasad Sarjoo Jaiswal and others v. Dossibai N. B. Jeejeebhoy, AIR 1971 SC 2355, the Supreme Court held:-

"10.... Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of the order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land."

In the present case when the controversy had not been adjudicated upon and as would be noticed hereinafter, it is a pure question of interpretation of law pertaining to the circular. It cannot, therefore, be termed that it was adjudicated upon and decided or that the earlier decision would operate as res judicata. It is in this back-drop that we venture to discuss the validity of the same.

18. Paragraph 159 of the IREM as referred to above admittedly is a statutory rule. By virtue of the circular that was issued, changes had been effected pertaining to the percentage of the promotion quota of the staff in the lower grade. Paragraph 159 has not been amended. Instructions can always be issued to supplement the statutory rules. If they are

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not inconsistent with the statutory rules, indeed such like instructions would be valid, but if they are inconsistent with the statutory rules, necessarily the ^{not} same will stand scrutiny. In the present case before us, we have already referred to above and reproduced the relevant portion of the same. The statutory rules prescribing a particular quota have undergone a change by virtue of paragraph 5 of the instructions in question. This could not have been so done without effecting amendment. In this view of the matter, paragraph 5 of the instructions dated 28.9.1998 must be held to be invalid. We hold accordingly.

19. For these reasons, we allow the present applications and quash paragraph 5 of the circular referred to above. But we make it clear that if deemed appropriate, the respondents may amend the rules in this regard. No costs.

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(Anand Kumar Bhatt)
Member (A)

18. Aug. 1908

(V.S. Aggarwal)
Chairman

(sns/

पृष्ठांकन सं. ओ/न्या..... जबलपुर, दि.....
प्रतिदिव्या १५५

(1) सतीष, जय वा जय नामक व्यक्ति, जलपुर
 (2) अवेदन श्री/श्रीमती/जी वा उनकी वार्ता
 (3) सत्यर्थी श्री/श्रीमती/जी वा उनकी वार्ता
 (4) वास्तविक वार्ता

वर्यपाल, रामेश्वर, उत्तरायण एवं दक्षिणायण
सूचना एवं आवश्यक लक्षण एवं विधि

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John G. Shadwell

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