

(2011) 02 SC CK 0082

In the Supreme Court Of India

Case No : Civil Appeal No. 4369 of 2006

Bharat Sanchar Nigam Limited

APPELLANT

Vs

Ghanshyam Dass and Others

RESPONDENT

Date of Decision : 17-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2012) AIRSCW 43 : (2011) AIRSCW 5130 : (2011) AIRSCW 1556 : (2011) 3 AWC 3027 : (2011) 2 JCR 217 : (2011) 2 SCALE 479 : (2011) 4 SCC 385 : (2011) 1 SCC(L&S) 685 : (2011) 1 UPLBEC 617

Hon'ble Judges : R. V. Raveendran, J;P. Sathasivam, J;A. K. Patnaik, J

Bench : Full Bench

Advocate : R.D. Agrawala and S.R. Singh, Pavan Kumar, Prithvi Pal, Abhish Kumar, Archana Singh, Pankaj Sharma, Sudershan Raajan, P. Narasimhan, Debasis Mukerjee, Neeraj Kr. Sharma, Vivek Sharma, Surya Kant, Ramesh Prasad Goyal, T.N. Bhat, Pankaj Gupta, Manoj K. Mishra, Pramod Kumar Yadav and S. Talukedar, for the Appellant;

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—These two appeals are against two separate but identical orders passed by a Division Bench of the High Court of Delhi on 22.05.2003 in C.W. No. 4555 of 2002 and C.W. No. 4556 of 2002.

2. The facts very briefly are that in the Department of Telecommunications of the Government of India there are four Grades of employees and these are:

Basic Grade [Telegraph Assistant / Telegraphist] = Pay Scale Rs. 975-1660.

Grade II [Section Supervisor / Telegraph Master] = Pay Scale Rs. 1400-2300.

Grade III [Senior Section Supervisor] = Pay Scale Rs. 1600-2660.

Grade IV [Chief Section Supervisor] = Pay Scale Rs. 2000- 3200.

3. Initially, promotions from one Grade to the higher grade were made on the

basis of seniority to the 2/3rd of the posts and on the basis of departmental examination to the 1/3rd of the posts. With effect from 30.11.1983, the Government of India, Ministry of Communications, Department of Telecommunications (for short 'the Government') introduced One Time Bound Promotion Scheme under which regular employees, who had completed sixteen years of service in a grade, were placed in the next higher grade. Thereafter, by a circular dated 16.10.1990 the Government introduced a new Scheme known as 'Biennial Cadre Review' (for short 'the BCR Scheme'). Under the BCR Scheme, those employees, who were on regular service as on 01.01.1990 and had completed 26 years of satisfactory service in the basic grades, were to be screened by a duly constituted Committee to assess their performance and determine their suitability for advancement and if they were found suitable they were to be upgraded in the higher scale. The circular dated 16.10.1990, however, limited such upgradation to 10% of the posts in the lower pay-scale and the review of the cadres for the purpose of such upgradation was to take place once in two years. The Government then issued clarifications on some points in its letter dated 11.03.1991 on the BCR Scheme. Point No. 10 and the clarification thereon in the letter dated 11.03.1991 are quoted hereunder:

Point raised by the field unit Clarification

10. Whether Officers The seniority of officials is already having pay scale of to be maintained with Rs.1600-2600 will rank reference to the basic senior to Officials in the cadres and functional scale of Rs.1400-2300 for promotional posts they the 10% quota (Rs.2000- hold and not merely with 3200) reference to the pay scales.

4. Some officers of Grade III who were senior in the basic grade but had lost their seniority in Grade III because of their later promotions and who were not considered for upgradation to Grade IV under the BCR Scheme, namely, Smt. Santosh Kapoor and others, filed O.A. No. 1455 of 1991 before the Central Administrative Tribunal, New Delhi, contending on the basis of clarification on Point No. 10 made in the letter dated 11.03.1991 that under the BCR Scheme, seniority in the basic grade was to be counted for the purpose of upgradation on completion of 26 years of service and this contention was resisted by the Government and other Respondents in the O.A. and the Tribunal in its order dated 07.07.1992 directed that promotions of 10% posts in the scale of Rs. 2000-3200 (Grade IV) would have to be based on seniority in the basic grade subject to fulfillment of other conditions in the BCR Scheme and further directed the Government to consider the applicants in the O.A. from due dates with consequential benefits. In the order dated 07.07.1992, the Tribunal, however, observed that employees who may be senior to the applicants in the O.A. in the scale of Rs. 1600-2660 (Grade III) and who may have already been given the scale of Rs. 2000-3200 (Grade IV) at the cost of those who were senior in the basic grades by any different interpretation of the BCR Scheme, may in the discretion of the Government instead of being reverted, be considered for

promotion to scale of Rs. 2000-3200 (Grade IV) by suitable adjustments in the number of posts by upgradation as necessary. The Government challenged the order dated 07.07.1992 of the Tribunal in Civil Appeal No. 3201 of 1993 but by order dated 09.09.1993 this Court held that the direction by the Tribunal cannot be faulted and accordingly dismissed the appeal.

5. Pursuant to the order dated 07.07.1992 of the Tribunal in O.A. No. 1455 of 1991 as affirmed by this Court in Civil Appeal No. 3201 of 1993, supernumerary posts were created in the scale of Rs. 2000-3200 (Grade IV) to adjust the employees who had already been given the scale of Rs.2000-3200 on the basis of their seniority in the scale of Rs.1600-2660 (Grade III). Moreover, after a review of the procedure for promotions from Grade III to Grade IV, the Government issued a fresh circular dated 13.12.1995 saying that promotion to Grade-IV may be given from amongst officials in Grade-III on the basis of their seniority in the basic grade, subject to fitness determined by the DPC and subject to the ceiling of 10% of the posts in Grade-III (scale Rs. 1600-2660) as provided in the BCR Scheme.

6. The Respondents in C.A. No. 4369 of 2006 Shri Ghanshyam Dass and others filed O.A. No. 2484 of 1997 and the Respondents in C.A. No. 4370 of 2006 Shri Chiddu Singh and others filed O.A. No. 2099 of 1997 before the Central Administrative Tribunal contending that employees who were juniors to them in the basic grade but otherwise senior in Grade-III, had been given promotion to Grade-IV earlier to the dates when the Respondents were given such promotion and by a common order dated 11.08.2000 the Tribunal allowed the O. As. and directed the Government to consider promoting them to Grade IV with effect from the dates their immediate juniors in the basic grade seniority were so promoted subject to their otherwise being found fit for promotion on such dates with consequential benefits including seniority and arrears of pay and allowances and retiral benefits in the case of those who had retired on superannuation. The Government filed writ petitions C.W. No. 4555 of 2000 and C.W. No. 4556 of 2000 in the High Court of Delhi, but by the two separate impugned orders the High Court found that the Tribunal, while allowing the applications, had directed the Government to follow its own circular dated 13.12.1995 which had been issued pursuant to the order of the Tribunal dated 07.07.1992 in O.A. No. 1455 of 1991 which had attained finality after dismissal of the appeals by this Court and accordingly dismissed the two writ petitions.

7. When these two Civil Appeals were heard by a two Judge Bench of this Court on 14.03.2007, they were of the view that the matter should be referred to a larger Bench for the reasons stated in the order dated 14.03.2007, which are quoted hereinunder:

...The question is that on what basis the promotion is to be given. In normal course of business a person in Grade-I is to be promoted on the basis of seniority from Grade I to Grade II and likewise from Grade II to Grade III and from Grade III to Grade IV. But because of a clarification issued by the Department dated

3.4.1991, the basic Grade seniority should be taken into consideration for promotion and not the pay-scales. If this is to be taken, then this will mean that a person who is in Grade I and has put in 26 years of service on 1.1.1990 will be entitled for promotion from Grade I to Grade IV. Therefore, the concept of basic cadre has to be interpreted with reference to the seniority in each Grade. But on account of the order passed by the CAT which has been affirmed by this Court on 9.9.1993 in Civil Appeal No. 3201 of 1993 this anomalous situation has been created. Therefore, in our view, it is appropriate if this matter is referred to a larger Bench so that the controversy involved in the matter can be resolved....

Thus, the learned Judges were of the view that on account of the order passed by Central Administrative Tribunal in O.A. No. 1455 of 1991 which had been affirmed by this Court on 09.09.1993 in C.A. No. No. 3201 of 1993 an anomalous situation has been created inasmuch as a person who is in Grade I and had put in 26 years of service would be entitled for promotion from Grade I to Grade IV. They were of the view that the concept of basic cadre has to be interpreted with reference to the seniority in each grade.

8. In the course of hearing before us, however, it has been brought to our notice by learned Counsel for the parties that the controversy before us is confined to promotions of only employees from Grade-III to Grade-IV and not of employees working in either Grade-I or Grade-II. This will be clear from the order dated 07.07.1992 of the Central Administrative Tribunal in Smt. Santosh Kapoor and Ors. v. Union of India and Ors. O.A. No. 1455 of 1991, in which the Tribunal has directed that promotions to 10% posts in Grade-IV (Pay Scale 2000-3200) would have to be based on seniority in basic cadres subject to fulfillment of other conditions in the BCR Scheme and it is this order of the Tribunal which was affirmed by this Court in the order dated 09.09.1993 in Civil Appeal No. 3201 of 1993. This will also be clear from the fresh circular dated 13.12.1995 which was confined to promotions from Grade III to Grade IV under the BCR Scheme. Hence, the question of an employee of the basic Grade (Grade-I) being promoted to Grade-IV directly does not arise in the appeals before us.

9. Coming now to the merits of the two appeals before us, Mr. R.D. Agrawala, learned Counsel for the Appellants, submitted that the Central Administrative Tribunal allowed the claims of the Respondents on the ground that in the basic grade they were senior to some employees who had already been promoted to Grade-IV and this was clearly contrary to the fresh circular dated 13.12.1995 of the Government according to which promotions to Grade-IV may be given from amongst officials in Grade-III on the basis of their seniority in the basic grade. He submitted that the Tribunal in its common order in the two O. As. has given the illustrative example of Lakhpat Rai Gumbar who was at serial No. 73 of the seniority list in the basic cadre while the Respondents Ghanshyam Dass and Shyamlal Sachdeva, who were applicants in O.A. No. 2484 of 1997, were placed above him in the seniority list of the basic cadre at serial Nos. 69 and 70 and yet Lakhpat Rai Gumbar had been promoted to Grade-IV by order dated 08.01.1993

while the said two Ghanshyam Dass and Shyamlal Sachdeva had been promoted to Grade-IV with effect from 01.01.1997 and 01.07.1997 respectively. Mr. Agrawala submitted that the Tribunal failed to appreciate that Lakhpat Rai Gumbar had been promoted from Grade-III to Grade-IV with effect from 08.01.1993 pursuant to the order dated 07.07.1992 of the Central Administrative Tribunal in O.A. No. 1455 of 1991 in which the Tribunal had allowed the Government to create supernumerary posts for promotion to Grade-IV for those employees who were senior to the applicants in the O.A. in the scale of Rs. 1600-2600 (Grade III) and who had been given the scale of Rs. 2000-3200 (Grade IV) at the cost of those who were senior in the basic grades by a different interpretation of the BCR Scheme. He further submitted that the Tribunal also failed to appreciate that the fresh circular dated 13.12.1995 of the Government could have only prospective effect and could govern only promotions made after 13.12.1995 and in fact Ghanshyam Dass and Shyamlal Sachdeva, the two applicants in O.A. No. 2484 of 1997, and many other employees had been promoted from Grade-III to Grade-IV on the basis of seniority in the basic cadre after the fresh circular dated 13.12.1995. He submitted that the High Court has lost sight of all these aspects and has affirmed the order of the Tribunal in the two O. As. erroneously.

10. Mr. Sudarshan Rajan, learned Counsel appearing for the Respondents, in reply, submitted that the consolidated list of promotions under the BCR Scheme (Annexure P/1 in C.A. No. 4370 of 2006) would show that Ghanshyam Dass was at serial No. 69 and Shyamlal Sachdeva was at serial No. 70, whereas Lakhpat Rai Gumbar was at serial No. 73 in the seniority list of the basic grade. He submitted that since the Central Administrative Tribunal in its order dated 07.07.1992 in O.A. No. 1455 of 1991 has held that promotions to 10% posts in Grade-IV would have to be based on seniority in the basic Cadre, Ghanshyam Dass and Shyamlal Sachdeva ought to have been promoted before Lakhpat Rai Gumbar but the chart at page 34A in C.A. No. 4370 of 2006 would show that Lakhpat Rai Gumbar was promoted on 08.01.1993 whereas Ghanshyam Dass and Shyamlal Sachdeva were promoted much later on 01.01.1997 and 01.07.1997 respectively. He vehemently submitted that Ghanshyam Dass and Shyamlal Sachdeva and all other Respondents have to be given the benefit of the order dated 07.07.1992 of the Tribunal in O.A. No. 1455 of 1991 as affirmed by this Court, even though they were not parties in the aforesaid O.A. before the Tribunal or before this Court. He cited the decision in K.I. Shephard and Others Vs. Union of India (UOI) and Others, , in which this Court held that employees who had not come to the Court should not be penalized for not having litigated and would be entitled to the same benefits as the Petitioners in that case. Mr. Rajan further submitted that the Central Administrative Tribunal in its order dated 07.07.1992 in O.A. No. 1455 of 1991 had only observed that employees who may be senior to the applicants in the O.A. in the scale Rs.1600-2600 and which may have been given the scale of Rs.2000-3200 at the cost of those senior in the basic grades may be 'considered for promotion' and the Tribunal had not

given any direction to promote all such employees such as Lakhpat Rai Gumbar. He submitted that the clarification on Point No. 6 in the letter dated 11.03.1991 of the Government on the BCR Scheme was that the selection for promotion from Grade-III to Grade-IV was to be based on merit and not simply fitness and, therefore, Lakhpat Rai Gumbar and others could not have been promoted to supernumerary posts without a proper selection on merit pursuant to the order dated 07.07.1992 of the Tribunal in O.A. No. 1455 of 1991.

11. We have considered the submissions of learned counsel for the parties. The order dated 07.07.1992 of the Central Administrative Tribunal in O.A. No. 1455 of 1991 (Smt. Santosh Kapoor and Ors. v. Union of India and Ors.), contained the following directions:

In the above view of the matter, we direct that the promotions to 10% posts in scale 2000- 3200 would have to be based on seniority in basic cadres subject to fulfillment of other conditions in the BCR Scheme viz. those who were regular employees as on 1.1.1990 and had completed 26 years of service in basic grades (including higher scales). The Respondents are directed to consider applicants accordingly from due dates with consequential benefits. The employees who may be senior to applicants in the scale of Rs. 1600-2660 and who may have already been given the scale of Rs. 2000-3200 at the cost of those senior in basic grades by any different interpretation of the BCR Scheme, may in the discretion of the Respondents, instead of being reverted, be considered for promotion to scale of Rs. 2000-3500 by suitable adjustments in the matter of posts by upgradation as necessary.

It will be clear from the directions in the aforesaid order dated 07.07.1992 in O.A. No. 1455 of 1991 that the Government was directed to consider only the applicants in the O.A. for promotion to 10% posts in the scale Rs. 2000- 3200 (Grade-IV) on the basis of seniority in the basic cadres from the due dates with consequential benefits. The Respondents in the two Civil Appeals before us were not the applicants in O.A. No. 1455 of 1991 and there was no direction to the Government to consider the Respondents in the two appeals for promotion to Grade-IV scale on the basis of seniority in the basic cadre as per the BCR Scheme. Hence, the Respondents were not entitled to claim any promotion to Grade-IV on the basis of their seniority in the basic grade on the basis of the order dated 07.07.1992 of the Tribunal in O.A. No. 1455 of 1991 as affirmed by the order dated 09.09.1993 of this Court in Civil Appeal No. 3201 of 1993.

12. In *K.I. Shephard* (supra) relied upon by the learned counsel for the Respondents, this Court directed that each of the transferee banks should take over the employees who had been excluded from employment under the amalgamation schemes of the banks on the same terms and conditions of employment under the respective banking companies prior to amalgamation and further directed that such employees, who were taken over, would be entitled to the benefit of continuity of service for all purposes including salary and perks. This Court further found that some of the excluded employees had not come to

Court and held that there was no justification to penalize them for not having litigated and that they too shall be entitled to the same benefits as the Petitioners in that case. There was, therefore, a clear direction in the judgment of this Court in K.I. Shephard (supra) that the excluded employees, who had not approached the Court, shall also be entitled to the same benefits as the Petitioners in that case were entitled under the judgment of this Court. In the present case, as we have seen, the Central Administrative Tribunal has not directed in its order dated 07.07.1992 in O.A. No. 1455 of 1991 that the benefits of the order would also be extended to those who had not approached the Tribunal.

13. The principle laid down in K.I. Shephard (supra) that it is not necessary for every person to approach the court for relief and it is the duty of the authority to extend the benefit of a concluded decision in all similar cases without driving every affected person to court to seek relief would apply only in the following circumstances:

- a) where the order is made in a petition filed in a representative capacity on behalf of all similarly situated employees;
- b) where the relief granted by the court is a declaratory relief which is intended to apply to all employees in a particular category, irrespective of whether they are parties to the litigation or not;
- c) where an order or rule of general application to employees is quashed without any condition or reservation that the relief is restricted to the Petitioners before the court; and
- d) where the court expressly directs that the relief granted should be extended to those who have not approached the court.

14. On the other hand, where only the affected parties approach the court and relief is given to those parties, the fence-sitters who did not approach the court cannot claim that such relief should have been extended to them thereby upsetting or interfering with the rights which had accrued to others. In Jagdish Lal and others Vs. State of Haryana and others, , the Appellants who were general candidates belatedly challenged the promotion of Scheduled Caste and Scheduled Tribe candidates on the basis of the decisions in Ajit Singh Januja and others Vs. State of Punjab and others, , Union of India and others etc. Vs. Virpal Singh Chauhan etc., and R.K. Sabharwal and others Vs. State of Punjab and others, and this Court refused to grant the relief saying:

...this Court has repeatedly held, the delay disentitles the party to the discretionary relief under Article 226 or Article 32 of the Constitution. It is not necessary to reiterate all the catena of precedents in this behalf. Suffice it to state that the Appellants kept sleeping over their rights for long and elected to wake up when they had the impetus from Virpal Chauhan and Ajit Singh ratios. But Virpal Chauhan and Sabharwal cases, kept at rest the promotion already

made by that date, and declared them as valid; they were limited to the question of future promotions given by applying the rule of reservation to all the persons prior to the date of judgment in Sabharwal case which required to be examined in the light of the law laid in Sabharwal case. Thus earlier promotions cannot be reopened. Only those cases arising after that date would be examined in the light of the law laid down in Sabharwal case and Virpal Chauhan case and equally Ajit Singh case. If the candidate has already been further promoted to the higher echelons of service, his seniority is not open to be reviewed. In A.B.S. Karamchari Sangh case a Bench of two Judges to which two of us, K. Ramaswamy and G.B. Pattanaik, JJ. were members, had reiterated the above view and it was also held that all the prior promotions are not open to judicial review. In Chander Pal v. State of Haryana a Bench of two Judges consisting of S.C. Agrawal and G.T. Nanavati, JJ. considered the effect of Virpal Chauhan, Ajit Singh, Sabharwal and A.B.S. Karamchari Sangh cases and held that the seniority of those Respondents who had already retired or had been promoted to higher posts could not be disturbed. The seniority of the Petitioner therein and the Respondents who were holding the post in the same level or in the same cadre would be adjusted keeping in view the ratio in Virpal Chauhan and Ajit Singh; but promotion, if any, had been given to any of them during the pendency of this writ petition was directed not to be disturbed....

Since the Respondents preferred to sleep over their rights and approached the Central Administrative Tribunal only in 1997, they cannot get the benefit of the order dated 07.07.1992 of the Tribunal in O.A. No. 1455 of 1991 and will only be entitled to the benefit of the circular dated 13.12.1995 which was in force in 1997.

15. We also find on a reading of paragraph 8 of the order dated 07.07.1992 of the Central Administrative Tribunal in O.A. No. 1455 of 1991 that the Tribunal gave liberty to the Government to consider employees who were senior to the applicants in that case in a scale of Rs. 1600-2660 (Grade- III) and who may have already been given the scale of Rs.2000-3200 (Grade-IV) at the cost of those senior in the basic grades by any different interpretation of the BCR Scheme then one given by the Tribunal by suitable adjustments in the number of posts by upgradation as necessary. It appears that pursuant to this liberty granted to the Government, Lakhpat Rai Gumber had been promoted to Grade-IV scale w.e.f. 08.01.1993 because of his seniority in Grade-III scale over two the Respondents in the Civil Appeal No. 4369 of 2006, Ghanshyam Dass and others and Shyamlal Sachdeva, even though he was junior to these officers in the basic grade. Hence, Lakhpat Rai Gumber was promoted to one of the posts in Grade-IV created by the Government for the specific purpose of protecting promotions done on a different interpretation of the BCR Scheme by the Government as allowed by the Tribunal in the order dated 07.07.1992 in O.A. No. 1455 of 1991 and the Respondents in these appeals can have no claim of promotion to these supernumerary posts. Moreover, if the Respondents were in any way aggrieved by the promotion of Lakhpat Rai Gumber and others who

were junior to them in the basic grade, they could have challenged their promotion in the appropriate forum, but they have not done so.

16. We further find on a reading of the circular dated 13.12.1995 of the Government that after the order dated 07.07.1992 of the Tribunal in OA. No. 1455 of 1991 was affirmed by this Court in Civil Appeal No. 3201 of 1993 on 09.09.1993 the Government undertook a review of the existing procedure of promotion to Grade-IV and decided in supersession of earlier instructions that promotion to Grade-IV may be given from amongst officials in Grade-III on the basis of their seniority in the basic grade. This would be clear from the relevant portion of the circular dated 13.12.1995 extracted below:

Review of the existing procedure of promotion to Grade-IV (now designated as Chief Section Supervisor) under the BCR Scheme has been under consideration in view of the judgment of Principal Bench, New Delhi upheld by the Supreme Court. It has now been decided in supersession of earlier instructions that promotion to the said Grade-IV may be given from amongst officials in Grade-III on the basis of their seniority in the basic grade....

17. The language of the circular dated 13.12.1995 makes it crystal clear that the Government took a fresh decision in supersession of earlier instructions that promotion to Grade-IV may be given from amongst officials in Grade-III on the basis of their seniority in the basic grade. Hence, the decision of the Government to make promotions to Grade-IV on the basis of their seniority in the basic grade could take effect only from 13.12.1995 and not from a prior date and the Respondents, who had filed O.A. No. 2484 of 1997 and O.A. No. 2099 of 1997 in the Central Administrative Tribunal could not claim any promotion to Grade-IV on the basis of their seniority in the basic cadre with effect from any date prior to 13.12.1995. The Central Administrative Tribunal was, therefore, not right in allowing O.A. No. 2484 of 1997 and O.A. No. 2099 of 1997 by order dated 11.08.2000, directing the Government to consider promoting the applicants to Grade-IV with effect from the dates their immediate juniors in the basic grade seniority were so promoted subject to their being found fit with consequential benefits of seniority as well as arrears of pay and allowance and of retiral benefits in the case of those of the applicants in the O. As. who had retired on superannuation. In our considered opinion, the High Court ought to have interfered with the decision of the Tribunal.

18. We accordingly allow these appeals and set aside the impugned orders dated 22.05.2003 of the High Court and the common order dated 11.08.2000 of the Central Administrative Tribunal in O.A. No. 2484 of 1997 and O.A. No. 2099 of 1997. The two O. As. stand rejected. There will be no order as to costs.