
(2014) 09 DEL CK 0361

In the Delhi High Court

Case No : W.P. (C) 3416/2014 & CM No. 7030/2014, 7033/2014 and CONT. CAS (C) 436/2014 & CM No. 11068/2014

R. Shyamala

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309

Citation : (2014) 09 DEL CK 0361

Hon'ble Judges : Vipin Sanghi, J; S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Rajesh Kumar, Advocate for the Appellant; Ashwani Bhardwaj, Anupama Dhruve, R. Mishra, Mukesh Kumar Tiwari, C. Hari Shankar and S. Sunil, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

S. Ravindra Bhat, J.—In these proceedings under Article 226 of the Constitution of India, the order of the Central Administrative Tribunal ("CAT") dated 11.10.2013, allowing O.A. No. 2145/2009 filed by the private respondent applicants, (who were regular Section Officers ("SOs")) in the Railway Board Secretariat Service ("the Secretariat Service") is challenged. Further the order dated 9.5.2014, dismissing R.A. 208/2013, filed by the petitioners, is impugned. The two orders are hereafter collectively called "the impugned orders". The private respondent/applicants were aggrieved by the circular of the Railway Board dated 9.7.07, which included Private Secretaries ("PS") in the Railway Board Secretariat Stenographers Service ("the Stenographers Service") in the zone of consideration for appointment to Grade I-Under Secretary/Deputy Director ("US/DD") in the Secretariat Service. The petitioners were PSs (hereafter called "PS grade officers") in the Stenographers Service who sought to benefit from the impugned circular. The first respondent is the Railway Board, while the second and third respondents are the Department of Personnel and Training and the UPSC, respectively (collectively called "the official respondents").

2. The Secretariat Service is governed by the Railway Board Secretariat Service Rules, 1969 made under Article 309, which came into effect on 1.8.1969. The Stenographers Service on the other hand was governed by the Railway Board Secretariat Stenographers Service Rules, 1971, which came into force on the same day. The hierarchy in the Stenographers Service, after the Railway Board's circular of 18.6.1991, is:

The hierarchy in the Secretariat service is:

3. The recruitment rule governing appointment Grade I (US/DD) in the Secretariat Service was Rule 8(3) of the Rules (of 1969), which read as under:

"3) Vacancies in Grade I shall be filled by promotion of permanent officers of the Section Officers" Grade who have rendered not less than eight years approved service in that grade and of permanent officers of the Grade A of the Railway Board Secretariat Stenographers Service who have rendered not less than eight years" approved service in that grade and have worked as Section Officers for at least a period of one year in accordance with the proviso to rule 6 and are included in the Select List for Grade I of the Service prepared under sub-rule (5).

Provided that an officer of the Grade A of the Railway Board Secretariat Stenographers Service who has not worked as a Section Officer for the said period of one year shall also be considered for promotion to Grade 1 if he is otherwise eligible for such promotion and the Central Government in the Ministry of Railways, for reasons to be recorded in writing, are satisfied that such a person was not appointed to the Section Officers" Grade owing to exigencies of Service.

Note: For the purpose of this rule, in the case of Section Officers appointed to that grade under sub-rule (3) of rule 9 and in the case of officers of Grade "A" of the Railway Board Secretariat Stenographers Service "approved service" shall include the entire period of approved service in Grade I of the Railway Board Secretariat Stenographers Service rendered prior to the 1st August, 1969 and half of the approved service rendered in Grade B after the 1st August, 1969, as the case may be."

Thus feeder grades to the grade of US/DD comprised first, permanent SOs who fulfilled 8 years in service in that grade and second, permanent officers of Group A, Stenographers Service who fulfilled 8 years in service in the Grade, and at least 1 year in the grade of SO, and who were in the Select List for Grade 1. The requirement of one year service in the grade of SO could be dispensed with, as an eligibility condition, if the Ministry of Railways is satisfied that an officer in Group A of the RBSSS was not appointed as SO due to the exigencies of service.

4. After the amendment of 21.12.2004, Rule 8(3) now reads as follows:

"(3) Vacancies in Grade 1 shall be filled by promotion of regular Section Officers who have rendered not less than eight years" approved service in that grade and of regular officers of Grade A and B (merged) of the Railway Board Secretariat

Stenographers" Service who have rendered not less than eight years" approved service in that grade and are included in the Select List for Grade I of the service prepared in accordance with the provisions of sub-rule (5).

Explanation: "For the purposes of this rule, in the case of officers of "Grade "A" of the Railway Board Secretariat Stenographers Service "approved service" shall include the entire period of approved service in Grade I of the Railway Board Secretariat Stenographers" Service rendered prior to the 1st day of August, 1969 and half of the approved service rendered in Grade "B" after the 1st day of August, 1969, as the case may be."

5. The circular impugned (before CAT) dated 9.7.2007 comprises the list of Secretariat Service and Stenographers Service officers eligible for inclusion in the zone of consideration for promotion to Grade I (US/DD) for the years 2002-03, 2003-04, 2004-05; the petitioners are listed at 86 and 95 of the list for 2004-05, while the applicants are shown junior to the petitioners on the basis of the date of "approved service". Aggrieved by this, by the original application O.A. 2145/2009 (filed in July 2009), the respondent/applicants, having spent 8 years in the service as SO, challenged the inclusion of PS grade officers in the zone of consideration for Grade 1 (US/DD), contending that they had never been appointed to Group A of the Stenographers Service. The writ petitioners-Stenographer Service officers, were not impleaded as respondents to that OA. They were appointed to the PS grade i.e. Group B in Stenographers Service by office orders issued between December 1993 and April 1994; some consequent to the Group B Stenographers Limited Departmental Competitive Examination 1992 (by para 3(1)(b) of the 5th Schedule to Stenographers Service Rules), while others were promoted by seniority subject to having 8 years approved service in the grade (by para 3(1)(a) of the 5th Schedule to the Stenographers Service Rules). However, despite this, they were deemed to have completed service in Group A, computed from the date they were appointed into Group B in the Stenographers Service.

6. The case of the applicants in the OA was that these PS grade officers were appointed under para 3 (and not para 2) of the 5th Schedule, which only deals with appointment to Group B of the Stenographers Service. Moreover, it was argued that the officers who had been included in the circular, had no experience in the grade of SO in the Secretariat Service and had not fulfilled even the latter part of Rule 8(3), which required at least 1 year in the grade of SO. Consequently, Group B stenographers of the Stenographers Service were able to secure an unfair advantage over the SOs of the Secretariat Service. Lateral induction of officers from the Stenographers Service into the Secretariat Service, it was argued, was the measure introduced to provide reprieve in terms of career progression where there was no further scope for promotion beyond Group A in the Stenographers Service Rules; however, that is not the case anymore as several promotional avenues were made up to the level of Principal Staff Officer (PSO), beyond Group A (equivalent to the Post of Director (selection grade) in

the Secretariat Service).

7. The applicants also argued that there was no material and there appeared to be no reasons recorded in writing, to indicate that the officers were not appointed as SOs due to administrative exigencies. An RTI application in July 2007 seeking information whether the PSs had applied or had ever been considered by the Railway Board for the grade of SO in the Secretariat Service, and further, seeking file notings or information on whether they were not appointed to the grade on account of administrative exigencies, was made. The Public Information Officer responded by stating on the one hand, that PS grade officers had never applied for the post, and on the other, that they were not posted as SOs due to administrative compulsions. Since no file notings were supplied, the order was appealed in separate proceedings up till the Central Information Commissioner, and finally challenged before this Court in a writ petition. In the meanwhile, the aggrieved applicants' representation dated 16.7.07 was rejected on 28.8.07; the reasons invoked the proviso to Rule 8(3), and stated that the PS grade officers were never appointed as SOs owing to administrative exigencies. A copy of this representation was also forwarded to the UPSC, who were considering the circular of 9.7.2007 in drawing up Select Lists.

8. The CAT, in its first order dated 22.01.2010, dismissed the OA on the ground that the 4th PC recommended that Grades A & B should be considered a single merged grade, from 1.1.1986, and by the order of 18.6.1991, this merged grade was to be termed Private Secretary ("PS"), and it would be junior to the erstwhile PS Grade, which would now be termed Principal Private Secretary ("PPS") after the coming into effect of the new nomenclature as laid out in the order of 18.6.1991. Thus, the CAT was of the opinion that the promotees into Grade B would be treated as in Grade A, despite being promoted in terms of Regulation 3(1)(a) of the 5th Schedule, given the merger of Grades A and B. It then noted that the proviso to Rule 8(3) was operative in that the PS grade officers could not be appointed as SOs due to the exigencies of service.

9. However, this Court by its order of 1.9.2010 in a writ petition against the CAT order, remanded it on the grounds that the CAT had not gone into the question of what amounts to "approved service" under Rule 8(3) of the Secretariat Service Rules, for Grade B Stenographers, prior to the merger recommended by the 4th PC report, and further that the CAT had not explored the question of whether exigencies of service actually existed, as there was no satisfaction of any authority recorded in writing to that effect. After the above remand, the CAT, by the impugned order dated 11.10.2013, allowed the OA, holding first, by relying on *Inder Singh v. Vyas Muni Mishra*, 1987 Suppl. (1) SCC 257, that the order of 18.06.1991, which merged Grades A and B, was a mere executive instruction, and would not partake of the character of statutory rules, and the re-designation of grades, albeit recommended by the 4th PC, could therefore not be effectuated without an amendment of the Stenographer Service Rules; and second, that the

official records indicated no exigency of service that constrained the PSs in the Stenographer Service from being appointed as SOs in the Secretariat Service. On this ground, the CAT held:

"16. We have also seen that contention of the Official Respondents that the PSs in the RBSSS were granted exemption under Rule 8 (3) of the RBSS Rules was fallacious. Their statement that the PSs have fulfilled the condition prescribed in the said rule that they should have worked as Section Officer for one year or in the absence of such work, it was certified that they could not be posted as SO due to exigency of work was also wrong. In fact, the Tribunal had gone by the note of the Secretary, Railway Board that there was nothing fictitious about the real problem of the administration and it was due to the administrative compulsion that it was not possible to appoint the PSs as Sos for one year. But the actual facts revealed in the reply to the information sought under the RTI Act were different. In fact, the official records show that there was no such "exigencies of service" by reason whereof the PSs in the RBSSS could not be posted as Sos in the RBSS and no exceptions had been granted to the PSs in their individual capacity. Therefore, PSs in the RBSSS could not have been included in the zone of consideration for Under Secretary/Deputy Secretary in the RBSS."

(emphasis added)

The CAT thus quashed the impugned circular dated 09.7.07, as well as the appointment of the private respondents into Grade 1 (US/DD), pursuant to it. It is this order of the CAT that the petitioners (who were not respondents before the CAT) seek to challenge in this writ petition.

10. The petitioners joined the Railway Board as Grade C-Stenographers on 23.3.1988 and 12.1.1998, and were promoted to Grade B on 1.3.1994 and 23.12.1993 respectively under the Stenographers Service Rules. They claim that by the order of 17.2.2006, they were granted non-functional scale of Rs. 8000-275-13500 to the PSs-Grade A&B (merged) with effect from 01.01.1996. By operation of Rule 8(3) of the Secretariat Service Rules, the petitioners were listed at Sl. Nos. 86 and 95 of the zone of consideration for promotion to Grade I (US/DD) for the year 2004-05 (in the impugned circular), while the applicants-i.e. Secretariat Service officers, were shown junior to them. After objections on the ground of inclusion of the PSs grade officers in the zone of consideration were considered, a final list was issued (on 28.8.2007) with the explanation that PSs grade officers who had not been appointed as SOs on account of exigencies of service, could nevertheless be considered for promotion to Grade I in Secretariat Service. The list was challenged unsuccessfully before the CAT, appealed before this Court and the matter finally remanded to the CAT, as noted earlier. While it was pending and subject to the outcome of the OA, on 29.12.2010, the final list of PSs of Stenographers Service, for inclusion in the select list of Grade 1 RBSS was published and the petitioners were named. They were then promoted to Grade 1 of the Secretariat Service (US/DD) on 29.6.2011

(listed at 48 and 57, respectively) subject to the outcome of the OA, and then to Joint Director (Selection Grade) on 16.8.2012. The OA was finally allowed 11.10.2013 by the impugned order.

11. The writ petitioners filed a review in November 2013, stating that they had not been arrayed as respondents in the OA, though their names were in the Select List for the vacancy year 2004-05. They alleged that the applicants in the OA had deliberately excluded them from the proceedings and only arrayed those selected candidates who did not opt for inclusion in the Select List and thus were not ultimately promoted to Grade I (US/DD). They also argued that the proviso to Rule 8(3) became redundant when permanent appointment of Grade B officers of the Stenographers Service, to the Section Officer Grade i.e. the stenographer quota, was abolished with effect from 1971, as indicated in the Rules. Thus, Rule 9(3) finds no application here. What could apply is Rule 6, which governs posting to duty posts, which in relation to any post means a permanent or temporary post of the grade. Finally, they urged that they ought not to be prejudiced by the delay and neglect by the establishment in amending the Rules in line with the 18.6.1991 order. In any event, they argued, B.N. Nagarajan and Others Vs. State of Mysore and Others, was an authority for the proposition that "it is not obligatory under proviso to art. 309 to make rules of recruitment, etc., before a service can be constituted or a post created or filled". The review proceedings were resisted by the applicants in the OA (Secretariat Service officers) on the ground that the OA was filed in 2009, whereas the first Select List was only published in December 2010, thus leaving no scope for selectively impleading PSs that have not consented to being included. In any event, it was argued that the review applicants could not complain that they were unaware of the proceedings in the OA since all the office orders including the review applicants in the Select List as well as promoting them to Grade I, RBSS (78/2010 dated 28.12.2010, 24/2011 dated 29.6.2011, 26/2011 dated 19.8.2011, 46/2010 dated 16.8.2012) were expressly subject to the outcome of the OA. The review application was dismissed on 09.5.2014, by the second order impugned in this petition.

Contentions

12. The petitioners submit first, that the CAT in the impugned orders traversed gone beyond the pleadings made out by the original applicants. Next, it was argued that no amendment of the Rules was required in order to give effect to the recommendations of the 4th PC, to merge the Grades A and B, with effect from 1.1.1986 and, that in any event, having not challenged the circular dated 18.6.1991 notifying merged grades, the OA applicants (Secretariat Service Officers) were estopped from doing so now, after 18 years. Third, the petitioners stated that they were dependent on the Railway Board to appoint them to SO in order for them to gain a year's service in the grade, and having not been appointed, could not be made to suffer on account of a factor outside their control. Their fourth argument is that the final decision embodied in the file

noting, as regards exigency of services was to be made by the Secretary of the Railway Board, (who categorically determined about the existence of such exigency) and not by other subordinate officers who stated to the contrary.

13. The private respondents-i.e. the successful original applicants (the Secretariat Service officers) argue that the Rules were ultimately amended only with effect from 17.12.2004. They point out that in the absence of the amended Rule 8 (3), the PS grade officers could not depend solely on the merger of pay made effective as a result of the 4th PC recommendations. Counsel rely on the definition of "approved service" and state that the Rules consciously made a distinction between Group A and Group B employees in the Stenographers Service which could not have been ignored by the official respondents. It was further argued that the distinction was reinforced by the fact that movement from Group B to Group A was conditional upon service in the former for a mandatory period. Therefore "approved service" in Group A continued to exist as a condition in the rules, which could not have possibly been ignored by the official respondents, who instead chose to rely on the pay merger circular of 1991. Such being the case, the petitioners were clearly ineligible. It was argued that even if the 2004 amendment to the Secretariat Service Rules were to be given effect to, yet the Petitioners could not have been considered for Grade I posts in July, 2004 when the unamended rules were in force.

Analysis and Findings

14. The questions that arise for consideration of this Court are:

(a) Correctness of the CAT's findings that the merger of the two Groups, A & B being effectuated by a circular, without an amendment to the Stenographers Rules disentitles Group B Stenographers Service officers from being considered for promotion to Grade I of Secretariat Service;

(b) Effect of Rule 8(3) in regulating the requirement of one year's service as SO, as eligibility for consideration for promotion to Grade I (US/DD) and the extent of permissible review of the existence of exigencies of service under Article 226.

Point a)

15. The Railway Board, in its circular of 18.06.1991, notified the merger of the two grades pursuant to the recommendations of the 4th PC, and also revised the designations (with the approval of the DoPT). The circular also expressly states that the Stenographers Service Rules will be amended accordingly "in due course". The final line of the OM however states that the decision notified will come into effect from 15.05.1991 (the date of the DoPT office memorandum, which revised the nomenclature in the Central Secretariat Stenographers Service). Subsequently, the cadre hierarchy, whenever referenced, always considered the PS grade i.e. Groups A & B as a single merged or unified cadre. For instance, amendment to Rule 8(3) of the Secretariat Service Rules, with effect from 21.12.2004, states inter alia that feeder grade for vacancies in Grade

I will be "Grade A & B (merged)" of the Stenographers Service. Thus, this Rule (which came into effect in December 2004) proceeded on the premise that there was a grade extant in the service hierarchy which comprised the merged Groups A & B, implying therefore, that the merger had happened at an earlier point in time than 2004. Similarly, the grant of non-functional scale of Rs. 8000-13500 with effect from 1.1.1996 was effected to "Grade A & B (merged)", in the order of 17.2.2006 of the Railway Board, implying that Groups A & B were considered merged into a single grade even as of 1996. Likewise, the Railway Board's order of January 2006 restructuring the Stenographers Service cadres changes the mode of recruitment to Grade A & B (merged). Thus, though the Railway Board did not bring about any amendments to the Rules to the effect that Grades A&B would be merged, the establishment operated on the premise that Grades A&B were merged into a common grade of Private Secretary in the service hierarchy.. The first respondent, the Railway Board, also maintained the stand that the Grades A&B were considered and treated as merged for all practical and official purposes, in its reply and pleadings before the Tribunal. Since the Railway Board has, in all subsequent official documentation and communication, treated this merger of the two Grades as an antecedent fact, it is apparent that the private respondents seek to exploit the tardiness of the railway administration in bringing about amendments, in order to question the petitioners' appointments.

16. The private respondents submit that the petitioners were appointed under para 3 of Schedule V of the Stenographer's Service Rules, which is the recruitment rule only for entry to Group B, and that Group A appointments are to be made in accordance with para 2. This being the case, they argue, the petitioners cannot be considered as having discharged any service in Group A, let alone 8 years, for them to be eligible for consideration for promotion to Grade I under Rule 8(3).

17. The question is: does merger-in this case, of pay scales-necessarily imply that the distinction between Group A and B ceased to exist for all purposes. The argument is that para 2 of Schedule V to the Stenographer's Service was rendered otiose. This premise is sought to be fortified by the fact that Group A and B were classified commonly as "Railway Board Secretariat Service-Class II-Ministerial", prior to the merger. The merger itself, as recommended by the 4th PC, was on the ground that both Groups A and B had the same starting pay scale, the only difference being the maximum pay in each grade. The merger was indubitably recommended in order to eliminate this minor difference, between two otherwise similar grades. However, it does not necessarily follow that the transition to Group A, by the separate avenue recognised in Rule 2 of the Schedule no longer existed after the merger, merely of the two pay scales in question.

18. There is no doubt that to make employees suffer for no fault of theirs, on account of the inaction of the administration would be patently iniquitous, as was noted in State of Mizoram and Another Vs. Mizoram Engineering Service

Association and Another, . In this case, after the 4th PC report, representations were made by employees for rectification of anomalies in the rules governing the engineering services. When the rectification recommendations were notified, engineering officers of the rank of Executive Engineer and Superintending Engineer were excluded from its ambit. This, as well as the non-grant of the higher conversion pay scale (in terms of the 4th PC recommendations) to the Engineering Service, was challenged in a writ petition. In these circumstances, the Court held:

"6. Great stress was laid on the fact that Engineering Service in the State was not an organized service and therefore, it did not have categorisation by way of entrance level and senior level posts and for that reason the higher scale of Rs. 5900-6700 which was admissible for senior level posts could not be given in the Engineering Service. The main reason for dubbing Engineering Service as an unorganized service in the State is absence of recruitment rules for the service. Who is responsible for not framing the recruitment rules? Are the members of the Engineering Service responsible for it? The answer is clearly "No". For failure of the State Government to frame recruitment rules and bring Engineering Service within the framework of organized service, the engineers cannot be made to suffer. Apart from the reason of absence of recruitment rules for the Engineering Service, we see hardly any difference in organized and unorganized service so far as Government service is concerned In Government service such a distinction does not appear to have any relevance. Civil Service is not trade unionism. We fail to appreciate what is sought to be conveyed by use of the words "organised service" and "unorganised service". Nothing has been pointed out in this behalf. The argument is wholly misconceived."

(emphasis added)

19. However, at the same time, this Court notices here that a merger of cadres must be effectuated through an amendment in the recruitment rules, which clearly stipulate the manner, and eligibility criteria for entry into the merged cadre. There is no doubt that it is the prerogative of the Government to amend or alter the rules governing the services to effect a merger or demerger of cadres, as was observed in P.U. Joshi and Others Vs. The Accountant General, Ahmedabad and Others, . The Railway Administration too seems conscious of this requirement, as it notes in its OM of 18.6.1991 which it specifically states that Rules will be brought into force to reflect the merger of cadres, in due course of time. Ideally, the railway administration should have repealed Rule 2 from the 5th Schedule and amended Rule 3 to state that it comprised the mechanism of entry into the merged cadre. Even the Stenographers Rules were not amended, to bring about a merger between Group A and Group B. Furthermore, the petitioners and others continued to be appointed as "Group B" officers, after the pay merger. They never sought intervention of the Tribunal, or a declaration that they were in fact integrated with Group A and ought to be treated as such. What they instead seek to rely on is a de facto merger in the particular case since the

railway administration treated the pay scales of two Groups as merged. Though the petitioners argue that after the 18.6.1991 circular, no separate promotion or entry into Group A was ever resorted to, unless the promotional orders showing movement from Group B directly into the Principal Private Secretary grade are actually shown, an inference to that effect cannot be drawn.

20. This Court is also conscious that eligibility conditions engrafted in the Rules, unless amended by the rule-making authority, continue to bind the employee and the State equally. The significance of eligibility conditions prescribed in the Rules was underlined in *R. Prabha Devi and Others Vs. Government of India*, through Secretary, Ministry of Personnel and Training, Administrative Reforms and Others, in the following manner:

"The rule-making authority is competent to frame rules laying down eligibility condition for promotion to a higher post. When such an eligibility condition has been laid down by service rules, it cannot be said that a direct recruit who is senior to the promotees is not required to comply with the eligibility condition and he is entitled to be considered for promotion to the higher post merely on the basis of his seniority. The amended rule in question has specified a period of eight years" approved service in the grade of Section officer as a condition of eligibility for being considered for promotion to Grade I post of C.S.S. This rule is equally applicable to both the direct recruit Section officers as well as the promotee Section officers. The submission that a senior Section officer has a right to be considered for promotion to Grade I post when his juniors who have fulfilled the eligibility condition are being considered for promotion to the higher post, Grade I, is wholly unsustainable. The prescribing of an eligibility condition for entitlement for consideration for promotion is within the competence of the rule-making authority. This eligibility condition has to be fulfilled by the Section officers including senior direct recruits in order to be eligible for being considered for promotion. When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can over-ride it in the matter of promotion to the next higher post. The rule in question which prescribes an uniform period of qualified service cannot be said to be arbitrary or unjust violative of Articles 14 or 16 of the Constitution."

21. It is one thing to say that pay-scales of two categories of posts merged but entirely another to infer, from such event, that both the promotional grade (Group A) and its only feeder grade resulted into a single unified cadre, without further ado. Oftentimes, pay-scales of two grades-higher and lower are replaced by one scale. That however would not necessarily result in the inference that the

distinction between the two posts stands obliterated. The materials on record no doubt unambiguously point out to merger of pay scales of Group A and Group A employees; however in the absence of a conscious amendment in the Rules, there cannot be any inference-based on some understanding within the establishment, or longstanding practice, that the Rules were to be given a go-bye based on some intention expressed in a circular or office memorandum. The rules-particularly prescribing the eligibility condition for consideration for movement from Group B to Group A (i.e. six years approved service) were never amended; they were not amended even after 21-12-2004, when other amendments were made to the Rules. The judgment in *State of Maharashtra and another Vs. Chandrakant Anant Kulkarni and others*, spelt out the relevant considerations pertaining to merger of cadres in the following manner:-

"(1) where there were regularly constituted similar cadres in the different integrating units the cadres will ordinarily be integrated on that basis but (2) where there were no such similar cadres, the following factors will be taken into consideration in determining the equation of posts: (a) Nature and duties of a post; (b) Powers exercised by the officers holding a post, the extent of territorial or other charge held or responsibilities discharged; (c) The minimum qualifications, if any, prescribed for recruitment to the post and; (d) The salary of the post."

22. In the present case, it is important to bear in mind that the petitioners were in Group C posts, before they entered the merged (Group A&B) pay scale. The rules required six years" approved service in Group B before the incumbent in that position could be considered for Group A posts; thereafter the official had to serve for another eight years in Group A. The absence of retrospectivity to the amendments to the Secretariat Service Rules, brought into force on 21.12.2004, meant that the petitioners could not benefit from the advertence to the merged Groups A & B, in Rule 8 (3). Therefore, it cannot be held that a merger of cadre had occurred with effect from 18.06.1991, as is contended by the petitioners in this case.

23. The implications of a merger of cadre extend beyond the personnel; frequently, courts have dealt with issues of seniority in the merged cadre where the integration results in the loss of seniority of the (erstwhile) senior cadre, if the junior cadre after merger is given continuous officiation in the integrated cadre. Thus for instance the policy where the erstwhile senior cadre employees were placed as en-bloc seniors-in the integrated cadre-above the erstwhile junior employees was approved and applied, in *R.K. Sethi and another Vs. Oil and Natural Gas Commission and others*, . The same view is echoed in *Prafulla Kumar Das and Others Vs. State of Orissa and Others*, .

24. The Supreme Court's decision in *P.U. Joshi and Others Vs. The Accountant General, Ahmedabad and Others*, is an authority for the proposition that the State or executive agency has latitude in the manner it wishes to organize its services and spell out terms and conditions of its employees and that an

inference based on change in one condition would not be justified:

"Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/instruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.

XX

As noticed earlier, a Supervisor (unqualified) has to undertake SOG Examination to be promoted as Section Officers and thereafter only get promoted as A.A.O. Merely because the pay-scales were similarly granted to these unqualified Supervisors on par with Section Officers alone apparently due to alteration and restructuring in the set up of offices those Supervisors, who had not even passed the SOG Examination, therefore, could neither be appointed on promotion as Section Officers nor could claim equal status with the SOG Examination qualified persons to straightaway get promoted as A.A. Os., to which the feeder category is only Section Officers and not Supervisors. It is necessary to notice here that Supervisors even earlier could not have been promoted to the higher post of Accounts Officers. In addition to it, the other criteria of three years regular service as Section Officer, before becoming eligible for consideration to be appointed as A.A. Os. on promotion also must be satisfied. The Cuttack Bench of the CAT, which decided the matter and which decision is challenged by the Department in Civil Appeal No. 10983 of 1996, committed a grave error in taking it for granted equality in status and grade persons like the private parties-

respondents on par with Section Officers with higher qualifications merely because a common seniority list was prepared ignoring the fact that it was not for purposes of further promotion but for the limited purpose of giving only the benefit of non-functional selection grade. "

25. The "deemed merger" concept which the petitioners are espousing, would have also have an adverse effect on the promotional avenues of Section Officers in the Secretariat Service, whose entitlement to be considered for promotion in their service, to Grade I is affected. Originally, the distinction between Group A and Group B meant that only a certain number of Group A employees-on account of their experience and duty posting conditions-could be considered for Grade I (US/DD). However, a deemed merger would result in the number of eligible officers from the Stenographers Services swelling. The Rules do not spell out any quota or proportion to be maintained, between Group A employees and Section Officers, which would result in automatic eligibility of a large number of Group B employees, in addition to the Group A officers already eligible. This diminishes the chances of promotion of Secretariat Service officers, in their own service without any statutory basis.

26. For the above reasons, this Court concludes that the findings of the CAT, that there could have been no automatic merger of the two cadres (Group A and B) in the circumstances of the case, was correct.

Point b)

27. At the outset, this Court must summarily dismiss the argument that lateral entry into Grade-I (of the Secretariat Service) was discontinued, since this happened only with effect from 31.01.2006 and therefore could not possibly apply to the vacancy year in consideration, i.e. 2004-05. As for the question on the amendment to Rule 8(3), learned counsel for the petitioners sought to argue that Tribunal failed to take into consideration the effect of the amendment to Rule 8(3), which did away with the requirement of one year's posting as an SO. This Court finds that nothing turns on the amendment, since it only came into force prospectively, on 21.12.2004, whereas the Select List was for the vacancy year 2004-05. Thus it is apparent that Rule 8(3) prior to the amendment applies to the vacancy year in question.

28. This raises the question of how Rule 8(3) operates to govern promotion to Grade I (US/DD). Rule 8(3), in essence, requires first, that a Grade A, Stenographers Service employee must have "worked" as a Section Officer for at least one year, in accordance with the proviso to Rule 6, and second, those Stenographers Service Grade A employees who were "appointed" under Rule 9(3) shall have their period of "approved service" computed in accordance with the Note. At the outset, this Court notices that appointment under Rule 9 (3) was discontinued in 1971, with the entry into force of the Stenographers Service Rules, in which the two posts in the SO grade reserved for permanent appointment of Grade I Stenographers (later Group B), on the basis of merit to

be assessed by a Departmental Promotion Committee) were de-reserved. This is clearly provided for in the Secretariat Service Rules itself, after Rule 9(3). Therefore, the route through Rule 9(3), to enter the Grade of SO, for Grade I Stenographers in the Stenographers Service is no more an option, after 1.8.1969. This means that there is no possible manner in which an officer seeking to be considered for promotion to Grade I, Secretariat Service (US/DD), can seek to be appointed to the post of SO, by merit, by applying to be considered by a DPC. This leaves only Rule 6 as a possible avenue for serving in the grade of SO.

29. This avenue is provided for in Rule 8(3), which requires that the Secretariat Service employee of Group A must have worked as an SO, in accordance with the proviso to Rule 6. By indicating that an officer from RBSSS (Grade A) must have "worked" as an SO, this rule makes clear, the nature of duty-posting under the proviso to Rule 6. As was held in *State Of Madhya Pradesh vs. Laxmishankar Mishra*, AIR 1979 SC 979:

"Mr. Gambhir, learned counsel for the petitioner urged that the expression: "should have worked on the post for a minimum period of 7 years in the same institution" would, in the context of the rule and the consequences flowing from it, mean only a substantive post on which the Head Master/Principal was confirmed and the confirmed holder of the substantive post for a period of 7 years would be entitled to absorption as envisaged by rule 3 (b). On a pure grammatical construction of the expression it would indisputably appear that the person claiming to be absorbed must have worked on the post of Head Master/Principal of a High/Higher Secondary School for a minimum period of 7 years. Emphasis is on the experience gained by working on the post of Head Master/Principal. A person incharge of the post also works and discharges the duties and functions of the post of which he has taken charge. Even an officiating incumbent of the post does discharge the functions and duties of the post. While examining the relative positions of confirmed Deputy Engineers and Officiating Deputy Engineers in *S.B. Patwardhan & Ors. etc. v. State of Maharashtra & Ors.*, this Court observed that the officiating Deputy Engineers discharge identical functions, bear similar responsibilities and acquire an equal amount of experience in the respective assignments. Viewed from this angle, the confirmed holder of a substantive post would be discharging the functions attached to the post and when some one is placed in that very post in an officiating capacity or directed to hold charge of the post, he would be required to perform the duties and discharge the functions of the post rendering identical service. If the rule expressly did not make any differentiation between the persons working as a confirmed holder of substantive post and an incharge or officiating holder of the post, is there anything in the expression itself which by necessary implication excludes service in any other capacity except as a confirmed Head Master/Principal in a substantive post? A confirmed holder of a substantive post may look tautologous because one can only be confirmed in the substantive post. ...

Further, the emphasis in the expression is on working on the post meaning thereby performing the duties and discharging the functions assigned to the post and not the capacity in which the post is held."

(emphasis added)

30. The requirement that an officer must have "worked" as an SO implies that the incumbent could either have been appointed to a regular vacancy to "hold" the post, or could just have been asked to officiate on the post, and discharge the duties. Whether Rule 6 provides for mere officiating appointment or a confirmed appointment in the grade of SO, can be surmised from the provision:

"6. Duty post to be held by members of the service :-Every duty post in the service shall, unless otherwise excluded from the service under the provisions of Rule 5 or held in abeyance for any reason, be held by a member of the service.

Provided that subject to such instructions as the Central Government in the Ministry of Railways may issue, from time to time, officers of Grade A of the Railway Board Secretariat Stenographers" Service, who have rendered not less than two years" service in that Grade may be posted to duty posts in the Section Officers Grade and officers of Grade C of the Railway Board Secretariat Stenographers Service who have rendered not less than five years" service in that Grade may be posted to duty posts in the Assistants" Grade, the period of such appointment in either case being limited to one year. Officers of the Railway Board Secretariat Stenographers" Service so appointed to duty posts in the Section Officers" and Assistants" Grades shall continue to draw the grade pay admissible to them in that service from time to time."

31. Thus, Rule 6 states that every duty post shall be held by a member of the service i.e. the Secretariat Service. The proviso however states that Grade A officers from the Stenographers Service may also be posted to the grade of SO in the Secretariat Service. This proviso clearly enables the exercise of discretion to appoint Grade A officers of the Stenographers Service in the grade of SO, for a maximum period of one year, based on instructions that may be issued from time to time by the Central Government. No doubt, an officer of the Stenographers Service has no control over whether he or she will be asked to discharge duties under the duty-posting provision in the grade of SO, and cannot possibly ensure that he/she is appointed to officiate in the duty post of SO, to fulfil the one year requirement in Rule 8(3). Yet, the requirement is an integral part of the rule. If seen from the overall structure of the provisions this Court has to consider, Stenographer Services personnel who are expected to, and do, man such duty posts, are in line for promotion to Grade I under the Secretariat Service Rules. These Stenographers Services personnel i.e. PS grade officers have their own channels of promotion in the Stenographers Services; in addition, they are entitled to be considered for promotion to Grade I, provided they have the requisite 8 years approved service as Group A employees, and have discharged at least one year"s service as an SO. If one sees that duty posts under the

Secretariat Service, in Rule 6 (1) are to be manned only by Secretariat Service Officers, and that the proviso merely enables officers of Group A Stenographers Services to be posted to man those positions for a maximum period of one year, the position becomes even clearer. The rule-making authority deliberately kept eligibility of Group A officers to duty posts, at the discretion of the Central Government, because it was Secretariat Service Officers that were required to ordinarily man those positions. It was only on exercise of discretion, subject to instructions that Group A Stenographer Service Officers could be asked to shoulder that responsibility for one year.

32. Once it becomes clear that the power to order posting to SO is merely discretionary, the question of exigencies of service precluding a Group A Stenographer Service officer from working as an SO arises. This point was argued on account of the remand order of this Court in the earlier round of litigation. In that order, in W.P. (C) 3280/2010, the Court had noticed that CAT had while holding that the requirement of Proviso to Rule 8 (3) had been complied with, ignored certain office notings. In the present impugned order, the CAT did not directly deal with the specific aspect of the matter and preferred to rest its conclusions on the broader issue, namely, that in the absence of any rule effecting the merger of Group A and Group B officers in the Stenographer Services, the existing rules enabling only Group A officers to be considered for Grade I in the Secretariat Services could not be ignored.

33. During the hearing, arguments were addressed on the discussion which preceded preparation of the panel dated 09.07.2007. The concerned official noting indicate that on 30.07.2007, a specific observation was made which is as follows:-

"8. In order to have another avenue of promotion, the RBSSS Officers (PSs) are supposed to be posted as SO for one year under Rule 6, so that they become eligible for promotion to Grade I (US/DD). But Rule 6 is an optional provision as per which Ministry of Railways may post them as SO, subject to instructions issued in this regard from time to time. After rationalization of RBSSS by creation of higher grades of PPS on the basis of 4th CPC (01-01-1986) recommendations and further grade of Sr. PPS on the basis of 5th CPC (01-01-1996) recommendations, no need might have been felt in the past to issue instructions for posting of PSs as SO for one year to make them eligible for promotion to Grade-I (US/DD). When the letter of Secretary, DOP&T (S. No. 31) was received requesting for posting PSs as SO, the Government had already taken a decision to discontinue lateral entry of Private Secretary to Grade-I (US/DD) as a part of RBSSS cadre restructuring pack. The entire package issued vide Board's Order dated 21.02.2006, parallel to similar package in CSSS, has been implemented for the panel year 2005-2006. Hence, in any case the PSs will not be included in the ZOC for Grade-I (US/DD) from the year 2005-06 onwards.

9. It may be stated here that earlier there were very few PSs many of whom at the fag end of their career, use to get included in the ZOCs and hence no Section

officer might have objected in the past. In the present ZOCs for the years 2002-03, 2003-04 and 2004-05, which have been prepared on the basis of the past practice, large numbers of PSs from several batches many of whom are quite younger in age to the Section Officers, have got included. For the year 2004-05, the bulk vacancies in the Grade-(US/DD) have occurred as a result RBSS cadre restructuring. On empanelment of these young PSs, a blockage on the way of career progression of the RBSS officers will definitely be created. We normally follow the rules and practices as are followed in CSS/CSSS as our rules are patterned on these rules. In the matter of fixation of seniority between DR and Promotee Section Officers also we are following the practice as followed in CSS. It is amply clear from the letter of Secretary, DOP&T that in CSS cadre, the Private Secretaries are not being considered for promotion to Grade-I (US) unless and until they have the requisite experience in Section Officer Grade. Therefore, we may perhaps fall in line with the practice as prevailing in CSS in the matter of inclusion of Private Secretaries for promotion to Grade-I (US/DD) for the pending three years panels i.e. 2002-03, 2003-04 and 2004-05. From 2005-06, lateral entry of PSs to Grade-I (US/DD) has already been discontinued.

10. In the above back ground, the file is submitted for a decision on the following:

(a) As per RBSS Rules, the experience of working as Section Officer for a period of one year is mandatory eligibility condition for inclusion of PSs in the ZOC for their promotion to Grade-I (US/DD). Since none of the Private Secretaries, including in the ZOCs circulated for the year 2002-03, 2003-04 and 2004-05, have the requisite experience of working as SO, we may remove their names from these ZOCs. OR

(b) We may continue with the past practice according to which the names of PSs have been included in the ZOCs for the year 2002-03, 2003-04 and 2004-05 already circulated. In that case we have to certify the exigencies, though nonexistent, while sending the proposals to UPSC."

The Relevant noting of the Joint Secretary dated 08.08.2007 is as follows:-

"Lateral induction of Private Secretaries (PSs) of RBSSS to the Grade-I (US/DD) of RBSS is governed under Rule 8 (3) of RBSS Rules, 1969 and RBSS (Promotion to Grade-I) Regulations, 1973. These Rules and Regulations are exactly patterned on the CSS Rules, 1962 and relevant Regulation thereon. It is clear from the rule position obtaining in both CSS and RBSS that a Private Secretary to become eligible for lateral induction to Grade-I (US/DD) must have worked as Section Officer for a specified period (two years in CSS & one year in RBSS). Moreover, posting of Private Secretary as Section Officer, as per rule-6 is not a mandatory provision in the rules rather it is an option with the Government.

The PSs were made eligible in the past for lateral induction by making a statement to the UPSC that they could not be appointed as Section Officer due to exigency of services. This action was not in consonance with the extant rule. The

provision of exigency in the rules was not relevant to their posting as Section Officer for one year rather it was related to their permanent appointment as Section Officer against Stenographer's quota, which had already been abolished sometime in 1971 (Pl. refer to Rule 9 (3) of RBSS Rule, 1969).

From the letter of Secretary, DOP&T dated 04.01.2007 it is clear that in CSS, Private Secretaries are not considered for induction into Grade-I unless they were posted as Section Officer for the requisite period. As such we may implement RBSS Rules/Regulations mentioned above meticulously, in letter and spirit so as to obviate any misinterpretation of the same and its implementation at a subsequent stage. This will ensure dispensation of justice to all by the Administration."

These noting, however, were not accepted by the Secretary, Railway Board who in turn observed as follows:-

"Under section 8 (3) has become defunct after the steno quota got de-reserved. This is a complete misinterpretation. An objective reading of Rule 9 (3) and 8 (3) would show that whereas 9 (3) relates to the two permanent posts reserved for the RBSSS, rule 8 (3) spells out the procedure for filling up the duty posts for Grade-I. I sincerely hope that the gross misinterpretation of the rules elaborated in para 6 of the sections note is a genuine mistake and not anything else.

I also take strong objections to the observation that the administration had restored to a fictitious statement of exigency. It is a well-known fact that due to the administrative compulsion, it has not been possible to appoint PSs, to work as SOs for one year. There is nothing fictitious about this very & real problem of the Administration".

34. It is thus clear that the ultimate view-based upon the Secretary's interpretation of the rules was that exigencies of services existed had prevailed at the relevant time. The structure of-and interplay between-the Secretariat Service Rules and the Stenographers Service Rules, clearly reveal entitlement of Secretariat Services officers to be given duty postings to SO, and the corresponding enabling clause under the proviso to Rule 6 of the Secretariat Service Rules, merely conferring discretion on the Central Government to post Group A officers (of Stenographer Services) with at least two years" service in that grade, to man duty post for a maximum of one year. However, this significant distinction appears to have been entirely lost to the Secretary, whose view ultimately prevailed. This understanding was essential to considering whether exigencies of service prevented the Central Government from posting any or some eligible Group A Stenographer Services Officers to man duty posts in the Secretariat Service.

35. Rule 8 (3) in the first instance requires or mandates that Group A Stenographers too can be considered for Grade I (US/DD) provided they man duty posts as SO, in the Secretariat Service for at least a year. It is only by way of exception that in a particular case or cases, on account of exigencies of

services and for reasons to be recorded in writing, where the Central Government cannot resort to duty posting, can Group A Stenographer Services officers, be considered and promoted to Group I (US/DD) without working as an SO for a year. This link between the two rules on the one hand and the nature of discretion granted to the Central Government in both sets of rules on the other, implies that Stenographer Services Group A officers could not, as a matter of right, claim consideration for promotion to Grade I-US/DD. The manning of duty post for a year was an integral part of the eligibility conditions under the Rules, for Group A personnel to be promoted to Grade I. The recording of reasons for dispensing with this requirement, due to exigencies, was an exception to be resorted to, on a case to case basis. In other words, the phraseology of Rule 8 (3) is such that en masse recording of its exigencies of service, to exempt Group A Stenographer Service Officers from the requirement of having manned duty posts, could not have been done, as in the present instance; that requirement was not an idle formality. Nothing appears on the record to show the nature of exigencies of service which constrained the Central Government from deploying Stenographer Service officers to man duty posts as SO. In the absence of specifics, the assumption of a general power to invoke the "exigencies of services" exception, and manner of its exercise, by not recording reasons in writing on a case by case basis, on the further assumption that exigencies did indeed prevent such deployment in duty posts, was contrary to law. This point too, is answered against the petitioners.

36. For the above reasons, this Court is of the opinion that the interpretation placed by the Secretary, Railway Board upon the proviso to Rule 8(3) was clearly erroneous. Exigencies of services that compel dispensing the requirement of one year's duty posting as an SO, by Group A Stenographer Services Officers, must have been recorded in writing, in individual instances or cases. On this count too, the writ petitioner's arguments have to fail.

37. This Court is not persuaded by the argument of the review applicants that they were unaware of the proceedings in the OA, since the Select List as well as the list of promotees to Grade I of the Secretariat Services, in which they were named (78/2010 of 28.12.2010, 24/2011 of 29.6.2011, 26/2011 of 19.8.2011, and 46/2010 of 16.8.2012) were expressly stated to be subject to the outcome of the OA.

38. The following are the Court's conclusions:

(1) the merger of pay scales between Group A & Group B of the Stenographer Services did not automatically result in merger of the two cadres.

(2) the eligibility conditions spelt out in Rule 8 (3)-8 years approved services in Group A of Stenographer Services and one year's experience in the SO grade, by way of duty posting was not fulfilled by the petitioners.

(3) the above conclusions are based upon the rules which prevailed at the relevant time, i.e., as on 01.07.2004 (when the amendment to Rule 8 (3)-

brought into force on 21.12.2004 had not been given effect).

In view of these conclusions, the writ petition has to fail; it is accordingly dismissed. The accompanying contempt petition is disposed of.