

(2011) 09 GUJ CK 0116
In the Gujarat High Court

Case No : Special Civil Application No. 5984 of 2011

Rajendrasing P. Gohil

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 15-09-2011

Acts Referred:

Administrative Tribunals Act, 1985 — Section 15, 2(32), 22, 22(3), 27
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2), Order 27 Rule 1, Order 27 Rule 5A, 79
Constitution of India, 1950 — Article 226, 227, 300, 32, 323A
Railways Act, 1989 — Section 3 , 4

Citation : (2011) 09 GUJ CK 0116

Hon'ble Judges : V.M. Sahai, J;K.S. Jhaveri, J

Bench : Division Bench

Advocate : P.H. Pathak, for the Appellant; Vasavdatta Bhatt, for the Respondent

Final Decision : Allowed

Judgement

V.M. Sahai, J.—The short question that arises for consideration in this writ petition is whether Union of India is a necessary or proper party and through whom it could be sued in Original Application filed by the Petitioner before the Central Administrative Tribunal claiming promotion and seniority?

2. The Petitioner is working as a Group "C" employee in the office of Respondent No. 2. He filed Original Application No. 374 of 2007 (for short the O.A.). An application for amendment being Miscellaneous Application No. 449 of 2007 was also filed before the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (for short the Tribunal). In the O.A. the Petitioner claimed that he was due for promotion in his own Division as Diesel Assistant. The Respondents had offered to the Petitioner, ad-hoc promotion out of cadre in Vadodara Division.

2.1. Another application being Miscellaneous Application No. 84 of 2008 was filed by the Respondents seeking deletion of Respondent No. 1, the Secretary, Ministry of Railways, Rail Bhavan, New Delhi from the array of Respondents.

2.2. The Miscellaneous Application No. 84 of 2008 filed by the Respondents seeking deletion of Respondent No. 1, from the array of Respondents was opposed by the Petitioner. However, the Tribunal vide impugned order dated 23.03.2011 allowed the application of Respondents, without entering into merits of the case, and has directed deletion of the Secretary, Ministry of Railway from array of the parties on the ground that no relief had been claimed against him. It is this order of the Tribunal dated 23.03.2011 which has been challenged in this writ petition filed under Article 226/227 of the Constitution of India.

3. The brief facts stated in the writ petition are that the change of Division can only be made with the consent of the employee. Those employees who had given their willingness, were granted ad-hoc promotion in Vadodara Division and they were permitted to keep their lien in Bhavnagar Division. But these employees were not taken by Vadodara Division as they did not fulfill the conditions for appointment as Diesel Assistant, therefore, they came back to Bhavnagar Division. All such employees were junior to the Petitioner but they had been promoted as Diesel Assistant. The Petitioner was not promoted on the ground that on refusal of ad-hoc promotion to other Division the Petitioner had lost his right of promotion in his parent cadre.

3.1. According to the Petitioner, the General Manager is an authority to implement the orders issued by the Railway Ministry/Board. The Petitioner is an employee of Union of India. Policy decision cannot be taken either at the Divisional level or by the General Manager of the Zone. The facts require amendment in the Indian Railway Establishment Manual for which the Ministry of Railway and the Railway Board are the competent authorities, therefore, Union of India is a necessary party to the O.A.

4. In the affidavit-in-reply the Respondents have relied on Sections 3 and 4 of The Railways Act, 1989 (for short the Act), and submitted that u/s 4 of the Act the general superintendence and control of a Zonal Railway shall vest in the General Manager. The Respondents also relied on the letters of the Railway Board dated 15.10.1997, 17.10.2001 and the letter dated 26.4.2010 written by Western Railway, Headquarters Office, Mumbai, wherein it had been mentioned that the General Manager of the Zone is necessary party in the cases filed by Group "C" and "D" staff, as far as the employees of the zone are concerned because the General Manager of the Zone/Officers are the appointing authorities. It was also mentioned in the letters that the Railway Board may exercise certain limited powers over the entire system of Indian Railways. In paragraph 5 it had further been stated that the General Manager, Western Railway is fully empowered to represent Union of India. Therefore, the Secretary, Ministry of Railways is not a necessary party.

4.1. It had also been stated in the affidavit-in-reply filed by the Respondents that the order of the Tribunal is an interlocutory order and it cannot be challenged in the writ petition.

4.2. It had further been stated that in the O.A. the Respondent No. 2 is the Divisional Manager, Rajkot. The order dated 1.5.2006 passed by APO on behalf of the Divisional Railway Manager, (E) Bhavnagar had been challenged before the Tribunal. The order is with regard to promotion of the Petitioner for which the Divisional Manager, is the competent authority. Secretary of the Railway Board is not a necessary party. In paragraph 6 of the affidavit-in-reply the Respondents have again stated that Union of India can be joined as party to be represented through the General Manager, Western Railway only.

4.3. In the paragraph 8 of the affidavit-in-reply the Respondents have stated that the Petitioner was surplus staff at the relevant time, he could be redeployed any where, on available post.

5. In the paragraph 2 of the affidavit-in-rejoinder filed by the Petitioner it had been stated that the issue was required to be clarified by the Railway Board which is competent to take policy decisions. It has been stated that by typographical error the Respondent No. 2 had been mentioned as the Divisional Railway Manager, Rajkot and for correcting the mistake the Petitioner had filed amendment application before the Tribunal. It had further been stated that the Secretary, Ministry of Railways, as per the information of the Petitioner/applicant, is the ex-officio Chairman of the Railway Board.

5.1. In the paragraph 3 of the affidavit-in-rejoinder filed by the Petitioner it had been stated that important issues are required to be decided by the higher authorities, representing Union of India. Railway Board has to decide that whether an employee from one division could be absorbed in another division, and if he is not absorbed in the other division, then what would be the consequences about fixation of his seniority, maintenance of lien, etc., therefore, the Railway Board is a necessary party.

5.2 In the paragraph 3 of the affidavit-in-rejoinder filed by the Petitioner it had further been stated that the General Manager is simply an authority to implement the orders issued by the Railway Board. The Secretary, Railway Board had filed his reply on merits before the Tribunal on 21.01.2008. The reply filed by Mr. Sunil Pandya, DPO had been filed on behalf of both the Respondents.

5.3. In the paragraph 4 of the affidavit-in-rejoinder filed by the Petitioner it had been stated that the Secretary, Railway Board is a necessary party to the O.A. pending final disposal before the Tribunal.

6. We have heard Ms. Rina Kanani, learned Counsel holding brief of Mr. P.H. Pathak for the Petitioner and Mrs. Vasavdatta Bhatt, learned Counsel for the Respondents.

7. Before adverting to the main question it is necessary to deal with the preliminary objection of the Respondents that the order passed by the Tribunal deleting the Respondent No. 1 from the array of parties is an interlocutory order and it could not be challenged in a writ petition filed under Article 226/227 of the

Constitution.

7.1. Section 15 of the Administrative Tribunals Act, 1985 lays down the jurisdiction, powers and authority of State Administrative Tribunals in service matters. Section 22 says that the tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice. The Tribunal shall have power to regulate its own procedure. In other words the Tribunal for expeditious disposal of case could evolve its own procedure. Section 22(3) provides that the Tribunal shall have the same powers as are vested in Civil Court under the Code of Civil Procedure, 1908, trying a suit. Section 27 states that the order of a Tribunal finally disposing of an application or an appeal shall be final and shall not be called in question in any court (including a High Court).

7.2. The order dated 23.3.2011 passed by the Tribunal deleting the Secretary, Ministry of Railways, Respondent No. 1 from the array of parties had become final. The question whether the order of the Tribunal could be challenged under Article 226/227 of the Constitution before the High Court is no longer *res integra*. A Seven Judges Constitution Bench of the Apex Court in *L. Chandra Kumar Vs. Union of India and others*, had held in paragraphs 78, 91, 93 and 99, of which, relevant part is extracted as below:

78. ...We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded."

91. ...We hold that all decisions of Tribunals, whether created pursuant to Article 323-A or Article 323-B of the Constitution, will be subject to the High Court's writ jurisdiction under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls.

93. ...We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted.

99. ...The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.

From the aforesaid decision, it is clear that the Tribunal is a Court of first instance in respect of the areas of law for which they have been constituted. It

was further held that the High Court under its power of judicial review could examine the legality of final orders passed by the Tribunal under Article 226/227 of the Constitution. Since the order dated 23.3.2011 deleting the Secretary, Ministry of Railways on the application of the Respondents was a final order u/s 27 of the Administrative Tribunals Act, 1985, the writ petition filed by the Petitioner under Article 226/227 of the Constitution is maintainable.

7.3. The aforesaid decision of the Constitution Bench was followed by a Division Bench of the Apex Court in *Rajeev Kumar and Another Vs. Hemraj Singh Chauhan and Others*, wherein in paragraphs 13 (a) and (b), it had been held as under:

(a) The Tribunals will function as the only Court of first instance in respect of the areas of law for which they have been constituted.

(b) Even where any challenge is made to the vires of legislation, excepting the legislation under which Tribunal has been set up, in such cases also, litigants will not be able to directly approach the High Court "overlooking the jurisdiction of the Tribunal".

Whether the principles enshrined under Article 300 of the Constitution and Section 79 of the CPC would be applicable to the Tribunal will be dealt by us a little later. However, a suit before the Civil Court or Original Application before the Central Administrative Tribunal or a writ petition filed before the High Court, are all Courts of first instance and, therefore, proper and necessary parties must be impleaded. Even though the Code of Civil Procedure, 1908 is not applicable to the Tribunal its principles would apply to the Tribunals.

8. The next question is that if the Code of Civil Procedure, 1908 is not applicable to the Tribunal then under which provision of law the Tribunal had deleted the Secretary, Ministry of Railways on the application of the Respondents. It is necessary to extract Order 1 Rule 10 (2) of the C.P.C as under:

Order 1 Rule 10. Suit in name of wrong Plaintiff:

(2) Court may strike out or add parties:

The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant, be struck out, and that the name of any person who ought to have been joined, whether as Plaintiff or Defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

Order 1 Rule 10 (2) of the Act gives discretionary power to the Courts or Tribunals to add or delete Defendant or the Respondent made party to the suit or in O.A. filed before the Tribunal, either on an application or suo-motu.

8.1 Under Order 1 Rule 10 (2) of C.P.C, name of any party improperly joined as a

Plaintiff or Defendant may be struck out from the array of parties. The discretion available to the Court or Tribunal for striking out or adding a party should be exercised in a judicial manner on the principles of fair play and not according to the whims of the Tribunal. The Apex Court considered the scope of Order 1, Rule 10 of Code of Civil Procedure, in *Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. and Others*, Relevant part of paragraph 8 is extracted below:

8. ...A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the Plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the Plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

8.2. The strict principle of Order 1, Rule 10 of CPC may not be applicable to Tribunals or to writ proceedings, but the general principles of this provision would apply to the Tribunals as well as to the writ petitions. The Apex Court in *The District Collector, Srikakulam and Others Vs. Bagathi Krishna Rao and Another*, has in paragraph 12 while applying the ratio of *Chief Conservator of Forests, Govt. of A.P. Vs. The Collector and Others*, has held as under:

12. While considering the similar case in *Chief Conservator of Forests, Govt. of A.P. Vs. The Collector and Others*, this Court accepted the submission that writ cannot be entertained without impleading the State if relief is sought against the State. This Court had drawn the analogy from Section 79 Code of Civil Procedure, which directs that the State shall be the authority to be named as Plaintiff or Defendant in a suit by or against the Government and Section 80 thereof directs notice to the Secretary of that State or the Collector of the district before the institution of the suit and Rule 1 of Order XXVII lays down as to who should sign the pleadings. No individual officer of the Government under the scheme of the Constitution nor under the Code of Civil Procedure, can file a suit nor initiate any proceeding in the name and the post he is holding, who is not a juristic person.

Apart from it, in the cases where there are provisions for the impleadment of necessary parties in respect of other juristic persons, the above quoted principle would apply as per the statutory law or rules applicable to them. Gujarat State Road Transport Corporation could sue and be sued through its Managing Director or the Chairman and not only through the Regional Manager or other officers. Gujarat University could sue or be sued through its Registrar or Vice Chancellor.

Gujarat Urja Vikas Nigam Limited having various Zones have to sue or be sued through the Managing Director of the particular Zone and if all the Zones are being managed by only one Managing Director, then through him only, but not only in the name of the officers of the Gujarat Urja Vikas Nigam Limited so that the orders passed by the Courts or Tribunal should be binding on the Government or the Corporation or on Local Bodies or Local Authorities and could be enforced in a Court of law. The purpose of impleading a party is that rule of natural justice, audi-alteram-partem should be complied with and no adverse order should be passed against a party without hearing. The order should bind the Government or the Corporation or the local bodies. In absence of impleadment of necessary and proper parties, the matter may be dismissed by the Court.

8.3. Now coming back to the case in hand, the Tribunal in its impugned order had held that the Secretary, Ministry of Railway, be deleted from the array of parties. Only Union of India remains on record as Respondent No. 1 without any authority representing it. Its a stage of limbo. In other words, its a condition of oblivion due to which the Respondent No. 1 had been consigned or superseded. Union of India had been rendered to look like a useless or absurd party unless in future the Petitioner amends the array of Respondent No. 1 and adds an authority to represent Union of India.

8.4. The Tribunal was under an implied belief that Union of India through The Secretary, Ministry of Railways, New Delhi was improperly joined as party to the O.A. only for the reason that no relief had been claimed against The Secretary, Ministry of Railways. It cannot be disputed that the Courts or Tribunals have got ample power to struck out or add parties in their jurisdiction at any stage of the proceedings, but the Tribunal has to give cogent reasons in support of the conclusions arrived at for deleting a party, impleaded by the Petitioner, to be an improper party.

8.5. Union of India cannot be held to be a busy body or interloper. In other words, Union of India was a necessary and proper party to the O.A. and the application filed by the Respondents for striking out the name of the authority through whom the Union of India, the Respondent No. 1 was represented, namely, The Secretary, Ministry of Railways, from the array of Respondents was an act of interference with necessary parties to the O.A. without there being any valid reason or justification. We are of the considered opinion that Union of India was a necessary party and properly impleaded by the Petitioner. It was, in any case, a proper party and in its absence, the claim of the Petitioner could not be completely, effectively and adequately be decided. The order of the Tribunal is liable to be struck down on this ground alone.

9. Now we take up the main question that whether Union of India is a necessary or proper party and through whom it could be sued in Original Application filed by the Petitioner before the Central Administrative Tribunal claiming promotion and seniority ? The impugned order dated 23.03.2011 passed by the Tribunal in

Miscellaneous Application No. 84 of 2008 in O.A. No. 374 of 2007 is extracted below:

Present: Mr. P.H. Pathak, counsel for applicant. Ms. R.R. Patel, counsel for Respondents.

Objection raised by the registry is overruled. Notice to Respondents.

Ms. R.R. Patel, learned Counsel appearing for the Respondents who is present in court accepts notice on MA seeking amendment. Reply be filed within ten days. MA/84/2008 has been filed by the Respondents seeking deletion of the Secretary, Ministry of Railways i.e. Respondent No. 1, from array of the parties. It is contended that no relief has been sought against the said Respondents. Applicant is only a Group - C employee and General Manager of the concerned Railway is competent authority. We may note that General Manager is not a party and DRM is a party.

On examining of the matter, we are satisfied that no relief has been claimed against the Secretary, Ministry of Railway and therefore, said Respondent is deleted from the array of the parties. M.A. is allowed.

List on 06.04.2011.

10. The Petitioner had impleaded Union of India, Notice to be served through The Secretary, Ministry of Railways, Rail Bhavan, New Delhi as Respondent No. 1 before the Tribunal. From the order of the Tribunal dated 23.03.2011 it appears that the Respondents had filed M.A. No. 84 of 2008 seeking deletion of Respondent No. 1, the Secretary, Ministry of Railways, Rail Bhavan, New Delhi from the array of parties. The application had been allowed by the Tribunal on the ground that no relief had been claimed by the Petitioner against the Secretary, Ministry of Railways and the said Respondent had been directed to be deleted from the array of parties. The order of the Tribunal may have, either of the two effect. Firstly, entire Respondent No. 1 which also includes Union of India stands deleted. The second effect may be that Union of India may remain the Respondent No. 1 but it would not be sued through any authority. The Apex Court in Shri Ranjeet Mal Vs. General Manager, Northern Railway, Baroda House, New Delhi and Another, in paragraphs 6 and 7 has held as under:

6. It cannot be disputed that the Appellant was a servant of the Union. It is equally indisputable that any order of removal is removal from service of the Union. The Appellant challenged that order. Any order which can be passed by any Court would have to be enforced against the Union. The General Manager or any other authority acting in the Railway administration is as much a servant of the Union as the Appellant was in the present case.

7. The Union of India represents the Railway administration. The Union carries administration through different servants. These servants all represent the Union in regard to activities whether in the matter of appointment or in the matter of removal. It cannot be denied that any order which will be passed on an

application under Article 226 which will have the effect of setting aside the removal will fasten liability on the Union of India, and not on any servant of the Union. Therefore, from all points of view, the Union of India was rightly held by the High Court to be a necessary party. The petition was rightly rejected by the High Court.

11. It will be useful to refer to the relevant provisions of the Constitution of India (for short the Constitution) and the Code of Civil Procedure, 1908 (for short the Code of Civil Procedure). Article 300 of the Constitution falls in Chapter III, which deals with property, contract, rights liabilities, obligations and suits. Article 300 reads as follows:

Article 300. Suits and proceedings:

(1) The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or

been sued if this Constitution had not been enacted.

(2) If at the commencement of this Constitution

(a) any legal proceedings are pending to which Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings; and

(b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings.

From a perusal of the aforesaid Constitutional provision, it is evident that the Government of India as also the Government of a State may sue or be sued by the name of the Union of India or by the name of the State respectively, subject, of course, to any provisions which may be made by Act of Parliament or of Legislature of such State by virtue of powers conferred by the Constitution.

11.1. Section 79 of the CPC deals with suits by or against the Government. It reads as below:

79 Suits by or against Government.-In a suit by or against the Government, the authority to be named as Plaintiff or Defendant, as the case may be, shall be-

(a) in the case of a suit by or against the Central Government, the Union of India; and

(b) in the case of a suit by or against a State Government, the State.

A plain reading of Section 79 shows that in a suit by or against the Government, the authority to be named as Plaintiff or Defendant, as the case may be, in the case of the Central Government, the Union of India and in the case of the State Government, the State, which is suing or is being sued. Order 27 of Rule 1, as mentioned above, deals with suits by or against the Government or by officers in their official capacity. Rule 1 of Order 27 CPC lays down that in any suit by or against the Government, the plaint or the written statement shall be signed by such person as the Government may by general or special order appoint in that behalf and shall be verified by any person whom the Government may so appoint. (See Chief Conservator of Forests, Govt. of A.P. Vs. The Collector and Others,

11.2. The Apex Court in Jagtu v. Suraj Mal and Ors. (2010) 13 SCC 769, in paragraph 8 has held as under:

8. In view of the provisions of Section 79 read with Order 27 Rule 1 and in view of the provisions of the proviso contained in Order 1 Rule 9 of the Code of Civil Procedure, 1908, if any relief is claimed against the State, the State is a necessary party. This view has been reiterated by this Court time and again, as is evident from the judgments in State of Punjab Vs. Okara Grain Buyers Syndicate Ltd. and Others, , Shri Ranjeet Mal Vs. General Manager, Northern Railway, Baroda House, New Delhi and Another, , The State of Kerala Vs. The General Manager, Southern Railway, Madras, , Chief Conservator of Forests, Govt. of A.P. Vs. The Collector and Others, and The District Collector, Srikakulam and Others Vs. Bagathi Krishna Rao and Another,

11.3. From Article 300 of the Constitution read with Section 79 and Rule 1 of Order 27 CPC it is clear that the Union of India or the State Government can sue and be sued as a juristic personality. The Government of India/Union of India or the State Government, have various Departments which are looked after by different Ministries. The Secretaries of the Departments/Ministries transact its function on behalf of the Government of India under the Department concerned as per the Rules of Business framed under Article 77 of the Constitution. Similarly, the Secretaries of the Departments/ Ministries transact its function on behalf of the Government of State under the Department concerned as per the Rules of Business framed under Article 166 of the Constitution.

11.4. A policy decision on the part of the executive of the Central Government, must be strictly construed in terms of Article 77 of the Constitution. The act of the Minister or official who is authorized by the Rules of Business is the act of the President or the Government of India in whom the function or power is vested by the Constitution or by any statute.

11.5. Rule 5A of Order 27 CPC provides that in a suit where the act done by public officer is alleged to be done in official capacity for which any relief is claimed, the Government shall be joined as a party to the suit. The Apex Court in Chief Conservator of Forests, Govt. of A.P. Vs. The Collector and Others, in

paragraph 11 had held that in giving description of a party being sued, the court may at any stage of the suit/proceedings permit correction as misdescription would not be fatal. However, in view of the proviso to Order 1 Rule 9 CPC care must be taken to ensure that necessary party is before the Court, otherwise the suit or the proceedings would have to fail.

11.6. Section 2(17) CPC defines Public Officer. Section 2(17)(h) provides that "every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty." The word "service" must necessarily mean something more than being subject to the orders or control of the government.

11.7. We have decided to consider both the situations arising from the order dated 23.3.2011 of the Tribunal together. Firstly, entire Respondent No. 1 which also includes Union of India stands deleted. Secondly, the Union of India may remain the Respondent No. 1 but it would not be sued through any authority. The Petitioner claims that any change in promotion policy or absorption of employee from one division to another, seniority and lien, the decision could only be taken by the Ministry of Railways or the Railway Board and it would apply to all Zones within India.

11.8. u/s 4 of the Act the general superintendence and control of a Zonal Railway shall vest in the General Manager. The General Manager is simply an authority to implement the orders issued by the Railway Board. He has no power to take policy decision which would apply to the employees of all the Zones created u/s 3 of the Act. The Respondents have not placed any document or material on record which could demonstrate the General Manager, Western Zonal Railway had been conferred power or authority to decide promotion policy or absorption of employee from one division to another without consent of the employee, seniority, lien and refusal to join on ad-hoc promotion an employee would be debarred for promotion.

11.9. Moreover, the Secretary, Railway Board had filed his reply on merits before the Tribunal on 21.01.2008. The reply filed by Mr. Sunil Pandya, DPO had been filed on behalf of both the Respondents. There was no occasion for the Tribunal to delete Respondent No. 1 which had seriously prejudiced the Petitioner in as much as the claim of the Petitioner in absence of Union of India through the Secretary, Ministry of Railway which stands deleted by the order dated 23.3.2011 of the Tribunal, the Petitioner could not get relief as claimed by him.

11.10. If after order dated 23.3.2011 only Union of India had remained as Respondent No. 1 before the Tribunal, then on which Department and on whom the notice issued by the Tribunal had to be served would not be known. There is not even a whisper in the affidavit-in-reply filed by the Respondents in this writ petition that promotion policy or absorption of employee from one division to another, seniority, maintenance of lien could be taken by the General Manager, Western Zonal Railway. Thus, the Secretary, Ministry of Railway only could

represent the Union of India. Notice was required to be served through the Secretary, Ministry of Railways, Rail Bhavan, New Delhi. The Petitioner had rightly impleaded Respondent No. 1 before the Tribunal but the Tribunal on a misconception of law had deleted the Secretary, Ministry of Railway from the array of parties. The order of the Tribunal is erroneous and deserves to be quashed.

11.11. Surprisingly, in paragraph 5 of the affidavit-in-reply to this writ petition the Respondents had stated that the General Manager, Western Railway is fully empowered to represent Union of India. Therefore, the Secretary, Ministry of Railways is not a necessary party. In paragraph 6 of the affidavit-in-reply the Respondents have again stated that Union of India can be joined as party to be represented through the General Manager, Western Railway only. It had also been stated that the Secretary of the Railway Board is not a necessary party. But the Respondents had not filed any material to show that under the Rules of Business framed by the Government of India, applicable to Railways, the General Manager, Zonal Railway or the Divisional Railway Manager are Public Officer or authority who could exercise executive power under Article 77 of the Constitution. Therefore, Union of India could not be represented by the General Manager, Zonal Railway or the Divisional Railway Manager.

11.12. The letters of the Railway Board dated 15.10.1997, 17.10.2001 and the letter dated 26.4.2010 written by Western Railway, Headquarters Office, Mumbai, wherein it had been mentioned that the General Manager of the Zone is necessary party in the cases filed by Group "C" and "D" staff, as far as the employees of the zone are concerned because the General Manager of the Zone/ Officers are the appointing authorities. We are in agreement with the aforesaid part of the letters that the General Manager of the Zone is necessary party in the cases filed by Group "C" and "D" employees.

11.13. The mention in the letters of the Railway Board dated 15.10.1997, 17.10.2001 and the letter dated 26.4.2010 written by Western Railway, Headquarters Office, Mumbai, that the Railway Board may exercise certain limited powers over the entire system of Indian Railways. But these letters do not mention that the General Manager, Western Railway is fully empowered to represent the Union of India. The submission of the Respondents that the General Manager of the Zone could represent Union of India cannot be accepted in view of Article 77 of the Constitution. Further Section 2(20) of the Act defines "Government railway" means a railway owned by the Central Government. Section 2(34) defines "railway servant" means any person employed by the Central Government or by a railway administration in connection with the service of a railway. Therefore, the Secretary, Ministry of Railways was a necessary party. Section 2(32) of the Act defines "railway administration", in relation to a Government railway, means the General Manager of a Zonal Railway. It is one thing to exercise the power of general superintendence and control of a Railway Zone by the General Manager or implementing the orders issued by the Railway

Ministry/Board. The Petitioner is an employees of Union of India. Policy decision cannot be taken either at the Divisional level or by the General Manager of the Zone. The facts require amendment in the Indian Railway Establishment Manual for which the Ministry of Railway and the Railway Board only are the competent authorities.

11.14. Though the CPC is not applicable to the Tribunal but its principles would apply. Section 22 of the Administrative Tribunals Act, 1985, lays down that the Tribunals shall have all the powers of the Civil Court.

11.15. We are of the considered opinion that after the Constitution came into existence 26.1.1950, the sovereign activities of Government of India could be exercised by the Secretary of the concerned Ministry. Under Article 300 of the Constitution the Government of India may sue or be sued by the name of Union of India. The Petitioner before the Tribunal had correctly impleaded the Respondent No. 1 to read as Union of India, notice to be served through The Secretary, Ministry of Railways, Rail Bhavan, New Delhi 110001. We are further of the opinion that the Secretary, Ministry of Railway only could represent the Union of India. The General Manager, Western Zonal Railway, Mumbai could not represent the Union of India as he is also a servant of Railway like the Petitioner. If only the Union of India remains a party before the Tribunal without The Secretary, Ministry of Railways representing it, the Tribunal could reject the O.A. for not impleading the party with proper and detailed description. The Tribunal on a misconception of law had deleted the Secretary, Ministry of Railway from the array of parties. The order of the Tribunal is wholly illegal, erroneous, arbitrary and is liable to be quashed.

12. In the result, this writ petition succeeds and is allowed. The impugned judgment and order dated 23.03.2011 of the Tribunal passed in Miscellaneous Application No. 84 of 2008 in O.A. No. 374 of 2007 is hereby quashed. The Tribunal is directed to proceed with the case treating the Union of India, notice to be served through The Secretary, Ministry of Railways, Rail Bhavan, New Delhi 110001 as Respondent No. 1 in the Original Application. The Petitioner is permitted to file fresh amendment application before the Tribunal for impleading The General Manager, Western Zonal Railway, Western Railway, Headquarters Office, Mumbai as Respondent No. 3 and for amending the description of Respondent No. 2. Thereafter the Tribunal shall decide the matter on merits expeditiously. Rule is made absolute. Parties shall bear their own costs.