
(1974) 10 DEL CK 0003

In the Delhi High Court

Case No : Civil Writ Appeal No. 633 of 1968

S.P. Srivastava and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-10-1974

Acts Referred:

Citation : (1975) ILR Delhi 32

Hon'ble Judges : V.S. Deshpande, J;T.V.R. Tatachari, J

Bench : Division Bench

Advocate : D.D. Desai, G.S. Vohra, R.L. Aggarwal, R.K. Mehra, B.N. Sen and A.B. Saharia, for the Appellant;

Judgement

T.V.R. Tatachari, J.

(1) This Civil Writ Petition was originally filed on August 13, 1968, by S. P. Srivastava and 18 others against (1) The Union of India, (2) The Director General, Posts & Telegraphs, New Delhi, and (3) Dr. Ram Subhagh Singh, Minister of Communications & Parliamentary Affairs, Government of India, New Delhi, praying for the issuance of a writ quashing the decision of the respondents, dated May 3, 1968, contained in Annexure "M" to the Writ Petition, and for certain other directions.

(2) The petitioners were working as Telegraph Engineering Service (hereinafter referred to as T.E.S) Class-II Officers" in the Posts & Telegraphs Department at Delhi. According to them, promotions to the Senior Time Scale in T.E.S. Class-I were not being made in accordance with the rules governing such promotions, and promotions were being made favoring directly recruited Junior Time Scale Class-I Officers. The Writ Petition came up previously before H. R. Khanna C.J. and V. D. Misra J., and the learned Judges felt that there was a conflict of interest between the petitioners and the aforesaid direct recruits, that the acceptance of the writ petition would operate to the prejudice of the said direct recruits, and that it was, Therefore, essential that the said direct recruits too should be imp

led as parties to the Writ Petition. In that view, the learned Judges, by an order dated January 14, 1971. directed that the direct recruits, who are likely to be affected in case of acceptance of the writ petition, should be impleaded as respondents. Accordingly, the petitioners impleaded the said direct recruits as respondents 4 to 269 and filed an amended writ petition.

(3) As already stated, the petitioners were working as T.E.S. Class-II Officers in permanent capacity in the Posts & Telegraphs Department at Delhi. They were governed by the Telegraph Engineering Service (Class-I) Rules, 1965 (hereinafter referred to as the "Rules"), framed by the President of India under the provision in the proviso to Article 309 of the Constitution of India.

(4) Rule 3 of the said Rules provides that there shall be four grades in the Telegraph Engineering Service (T.E.S.) Class-1, namely, Junior Time Scale Grade, (ii) Senior Time Scale Grade, (iii) Junior Administrative Grade, and (iv) Senior Administrative Grade. We are concerned in this Writ Petition with the two grades of Junior Time Scale and Senior Time Scale. Rule 4 provides that appointment to the Class-I Service shall be made by two methods, namely, (a) by competitive examination held in India in accordance with Part II of the Rules (i.e. direct recruitment), and (b) by promotion in accordance with Part III of the Rules. Rule 5 provides for filling of vacancies in the Junior Time Scale. It requires that 50 per cent of the vacancies in the Junior Time Scale in the Class-1 Service should be filled by competitive examination as provided in Part II of the Rules and 50 percent should be reserved for promotion as provided in Part III of the Rules. Rule 23 which occurs in Part II of the Rules provides that appointment by competitive examination shall be made on probation for a period of two years. Rules 26 and 27 which occur in Part III (Appointments by Promotion) are material for the purposes of the present Writ Petition, and they read as under :-

"26. Appointment by promotion to the Junior Time Scale in the Service shall be made by selection on merit from among officers of the Telegraph Engineering and Wireless Service, Class-II, ordinarily with not less than five years permanent service in Class II on the recommendations of a duly constituted Departmental Promotion Committee and in consultation with the Commission. The period of probation shall be two years" 27.

(A) Appointments to the Senior Time Scale in the Service shall be made by promotion of officers in the Junior Time Scale in the order of seniority subject to the rejection of the unfit. A directly recruited Assistant Divisional Engineer shall not ordinarily be promoted as Divisional Engineer unless he has put in five years' service and has passed the prescribed departmental test.

(B) Posts in the Senior Time Scale may, however, be filled as a purely temporary measure, in an officiating capacity or to hold charge by the promotion of permanent members of Telegraph Engineering and Wireless Service, Class-II who are on the approved list for promotion to the Junior Time Scale."

(5) Thus, so far as the posts in the Junior Time Scale are concerned,

appointments to the same are governed by Rule 5, Rule 23, and Rule 26. According to the said Rules, 50 per cent of the vacancies have to be filled by competitive examination (i.e. direct recruitment) as provided in Part II of the Rules, and the appointees have to be on probation for two years. The remaining 50 per cent of the vacancies have to be filled by promotion as provided in Part III of the Rules, namely, by selection on merit from among officers of the T.E.S. Class-II, ordinarily with not less than five years' permanent service (since changed to 8 years' approved service) in Class-II, and the said promotees have to be on probation for a period of two years.

(6) It may be stated, in passing, that the relative seniority of the direct recruits and the promotees is to be determined in accordance with the General Principle No. 6 laid down in Ministry of Home Affairs O.M. No. 9/11/55-RPS, dated December 22, 1969 (Annexure III). According to the said Principle, the relative seniority is to be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules, which in the present case is 1 : 1. An Explanatory Memorandum to the said General Principle No. 6 states that a roster shall be maintained based on the reservation for direct recruitment and promotion in the Recruitment Rules, and that appointment should be made in accordance with this roster and seniority determined accordingly. It is stated in paragraph 5 of the counter affidavit of Shri K. Bharathan, Assistant Director General (S.G), Posts and Telegraphs Board, filed on behalf of respondents 1 to 3, that prior to the confirmation in T.E.S. Class-I (Junior Time Scale), no combined gradation list of direct recruits and the promoted officers is prepared, that it is at the time of confirmation in T.E.S. Class-I (Junior Time Scale) that the combined gradation list of Assistant Divisional Engineers directly recruited through competitive examination and those recruited by promotion for T.E.S. Class-II is prepared, and that it is from this combined gradation list of permanent officer belonging to the T.E.S. Class-I (Junior Time Scale) that the promotions to the Senior Time Scale are to be made in accordance with Rule 27(a).

(7) On the other hand, as regards the posts in the Senior Time Scale, the filling up of the vacancies therein is governed by clauses (a) and (b) of Rule 27. Clause (a) provides that the vacancies in the said Grade have to be filled by promotion of officers in the Junior Time Scale in the order of seniority subject to the rejection of the unfit, and that a directly recruited Assistant Divisional Engineer, who is an officer in the Junior Time Scale, is not ordinarily to be promoted as Divisional Engineer, who is an officer in the Senior Time Scale, unless he has put in five years' service and has passed the prescribed departmental tests. Clause (b) provides that the said vacancies may, however, be filled as a purely temporary measure in an officiating capacity or to hold charge by the promotion of permanent members of the T. E. S Class-II who are on the approved list for promotion to the Junior Time Scale.

(8) The first contention on behalf of the petitioners was that Rule 27(b) provides that purely temporary appointments in the Senior Time Scale of the T.E.S Class-I are to be made only by promoting permanent members of the T.E.S. Class-II Service who are on the approved list of promotion to the Junior Time Scale, that in violation of the same the directly recruited Assistant Divisional Engineers (Junior Time Scale Class-I) were being unlawfully promoted on what is termed by the Administration as a "current charge" basis, and that the said promotion to Senior Time Scale of the directly recruited Assistant Divisional Engineers on "current charge" basis is contrary to Rule 27(b) as "current charge" falls within the purview of the expression "charge" used in the said Rule. The learned counsel for the petitioners also argued that if "current charge" is not the same as "charge" within the meaning of Rule 27(b), then such promotions would be altogether irregular as not having been provided for in the Rules. The petitioners alleged that the said illegal promotion in violation of Rule 27(b) were being made over a number of years, and that a number of representations were made, but to no effect. We do not find any force in the aforesaid contention. Rule 27(b) is merely an enabling provision, and it provides that posts in the Senior Time Scale may be filled as a purely temporary measure in an officiating capacity or to hold charge by the promotion of permanent members of T.E.S. Class-II who are on the approved list for promotion to the Junior Time Scale. It does not confer any right upon T.E.S. Class-II Officer to be promoted to the Senior Time Scale on temporary basis. There is nothing in Clause (b) of Rule 27 to show that the provision therein applies exclusively to the permanent members of the T.E.S. Class-II who are on the approved list of the Junior Time Scale. In the absence of any words in clause (b) to that effect, it cannot be argued that all temporary promotions, in an officiating capacity or to hold charge, to the posts in the Senior Time Scale should be made exclusively from among the permanent members of the T.E.S Class-II who are on the approved list for promotion to the Junior Time Scale. Therefore, if directly recruited Assistant Divisional Engineers in the Junior Time Scale were being promoted temporarily to Senior Time Scale, the said promotions cannot be said to be contrary to the provision in Rule 27(b).

(9) The second contention on behalf of the petitioners was that while, according to Rule 5, only 50 per cent of the vacancies in the Junior Time Scale have to be filled by competitive examination (i.e. direct recruitment), the authorities have been appointing for many years more direct recruits, i.e. more than the 50 per cent provided in Rule 5, and were also promoting the said extra (i.e. over and above 50 percent) direct recruits in the Junior Time Scale to temporary vacancies in the Senior Time Scale, under Rule 27(b), with the result that the available admissible vacancies in the Senior Time Scale for which T.E.S Class-II employees can be considered under Rule 27(b) are being reduced. The petitioners put forward- this contention in paragraph 15 of the Writ Petition as under :-

" ANOTHER aspect which has reduced the chances of promotion of the petitioners is the wrong policy of the Department to grant promotion to the entire batches of directly recruited Assistant Divisional Engineers to the Senior Time Scale without

limiting it to their legitimate number. The direct recruitment to their Junior Time Scales of T.E.S. Class I was being made formerly against the then available actual number of vacancies so that all the directly recruited officers were being confirmed in the Junior Time Scale immediately on completion of the probation of 2 years and promoted to the Senior Time Scale later. During the last few years, however, direct recruitment to the Junior Time Scale is being made apparently to an ad hoc figure of anticipatory vacancies for more than actual requirements with the result that the officers so recruited are not being confirmed in the grade of Junior Time Scale immediately on completion of 2 years" probation. As the number of vacancies did not actually occur to the extent anticipated; the Department, having recruited the Assistant Divisional Engineers as anticipated earlier, there was resultant excess of direct recruits to the Junior Time Scale. The direct recruits, so recruited excessively and not confirmed even after 2 years of probation are to be treated under Rule 23(d) of the rules. Some are accommodated against posts in T.E.S Class II. Without any regard to this excess recruitment of direct recruits from open market, the Administration has been promoting to the Senior Time Scale all of them, save as those who are found unfit and had not passed the prescribed test. This, Therefore, cuts down the number of available vacancies in the Senior Time Scale for promotion of petitioners and similarly placed T.E.S Class Ii Officers."

(10) In answer to this, it was stated in the counter affidavit of Mr. Bharathan that the recruitment to the cadre of Assistant Divisional Engineers through the combined Engineering Service Examination is made after taking into account the anticipated vacancies and requirements in the next few" years, that the recruitment in this cadre is not with reference only to actual vacancies, that the recruitment is announced against temporary vacancies likely to become permanent ultimately. These averments explain, in our opinion, satisfactorily why those whom the petitioners called extra direct recruits (i.e. over and above 50 percent) were being recruited.

(11) It was further stated in the counter affidavit that as long as these permanent officers of the Junior Time Scale are available, only they will be eligible for promotion to the Senior Time Scale according to Rule 27(a), that in case permanent Officers in the Junior Time Scale are not .available, only then the next category of officers, namely, the Assistant Divisional Engineers would be considered provided they comply with the prescribed condition of eligibility for promotion, that the need for promotion of T.E.S Class Ii Officers on the select list under Rule 27(b) against long term vacancies will arise only if the officers belonging to the first two categories, namely, the permanent officers of the Junior Time Scale and the Assistant Divisional Engineers, who fulfill the required conditions are not available, and that the petitioners cannot legitimately make a case that the recruitment to the cadre of Assistant Divisional Engineers should be restricted so that the T.E.S. Class Ii Officers have better chances to be promoted to the Senior Time Scale under Rule 27(b) which is mostly a measure designed for making arrangements in short term vacancies or in the circumstances when

the other eligible officers are not available for promotion. These averments explain as to when exactly the T.E.S Class Ii Officers would be considered for temporary appointments in the Senior Time Scale under Rule 27(b). They accord with the view taken by us above that Rule 27(b) does not provide that the temporary promotions should be made exclusively from among the T.E.S Class Ii Officers.

(12) The third contention of the learned counsel for the petitioners was with reference to an order (Annexure "M") dated May 3, 1968, passed by the Minister for Communications and Parliamentary Affairs (respondent 3). In order to appreciate this contention, a few more facts have to be stated. Rule 27(a) prescribes that directly recruited Assistant Divisional Engineers in the Junior Time Scale should ordinarily complete five years of service in Junior Scale and pass the prescribed departmental tests for promotion to Senior Time Scale. The petitioners averred in the Writ Petition that the said Rule had been continuously violated over a number of years by the respondents granting relaxation of the condition of 5 years' service, plus two years' probation, in favor of the directly recruited Assistant Divisional Engineer's and by promoting some of these even without fixing their seniority. The petitioner's state that they, individually as well as through their Service Association, had appealed to the Department to observe the statutory Rule in the matter of promotion to the Senior Time Scale, that "the Chairman, P & T Board, had categorically assured the petitioners through their Service Association in one of the interviews granted to them that "while the officers of the "present batch, i.e. 1960 Examination batch, would be promoted to the Senior Time Scale after putting in 3 years of service, it was the intention, however, depending upon need and exigency of the situation, to promote officers of the next batch after 4 years of service", and that in spite of the said assurance, the directly recruited Assistant Divisional Engineers of all subsequent years, i.e. of 1961 and 1962 Examination, were promoted soon after the completion of two years of probation and one year of service. They further averred that as a result of further efforts, an interview was granted by the Minister for Communications and Parliamentary Affairs (respondent 3) on April 16, 1968, to the Service Association of the petitioners in which the decision was taken that the direct recruits of 1963 batch will not be promoted, unless they had put in four years' service which would be towards the later half of 1968. However, on May 3, 1968, respondent 3 ordered(Annexure "M") that as far as possible, existing vacancies of Divisional Engineers (Senior Time Scale) shall not be filled up till September, 1968, by which time the direct recruits of 1963 Examination, appointed in 1964, become due for promotion. It is averred by the petitioners that this reservation has been ordered at a time when twenty two qualified officers of T.E.S. Class Ii, duly selected on merit, for promotion were available on the approved list.

(13) We have held above on a plain reading of the provision in Rule 27(b) that it does not provide that appointments in the Senior Time Scale as a purely temporary measure are to be made exclusively from among T.E.S Class Ii

Officers, and does not confer any right upon the said T.E.S. Class Ii Officers to be promoted to Senior Time Scale as a temporary measure. Therefore, even if there were qualified officers of T.E.S Class Ii available on the approved list, they were not entitled as of right to be promoted to Senior Time Scale as a temporary measure. The authorities could in their discretion make such promotion either from among the direct recruits in the Junior Time Scale or from among the T.E.S Class Ii Officers who were on the approved list. That being so, the order in Annexure "M" that as far as possible existing vacancies of Divisional Engineers (Senior Time Scale) shall not be filled up till September, 1968, by which time the direct recruits of 1963 Examination, appointed in 1964, become due for promotion, cannot be said to be violative of the provision in Rule 27(b).

(14) In the course of the arguments, Shri R. L. Aggarwal, learned counsel for the respondents, stated that the direct recruits in excess of 50 percent were recruited to the Junior Time Scale against temporary posts sectioned from, time to time. Relying on the said statement, the learned counsel for the petitioners contended that if that was so, the said temporary posts were part of the posts in the Junior Time Scale, and Rule 5 applied to them also, that as such, only 50 percent of those temporary posts could be filled up by direct recruitment, but the respondents filled up all those posts by direct recruitment and then promoted them to the Senior Time Scale as a temporary measure under Rule 27(b), and that Rules 5 and 27(b) were thus violated. It is not clear from the record whether the facts on which the above contention was based were the actual facts. Even assuming that they were the actual facts, it has to be noted that there was no plea or prayer in the Writ Petition for quashing any of the appointments to the Junior Time Scale or the promotions to the Senior Time Scale made by the respondents as being invalid. Therefore, the said appointments and promotions of direct recruits have to be taken as valid appointments and promotions. We have already held that promotions under Rule 27(b) are not to be exclusively from among the T.E.S Class Ii Officers, and also that Rule 27(b) does not confer any right upon the T.E.S. Class Ii officers to be promoted to the Senior Time Scale as a temporary measure. Therefore, the appointments of direct recruits to the Junior Time Scale over and above 50 per cent of the vacancies, or the promotions of those extra direct recruits to Senior Time Scale under Rule 27(b) are immaterial and cannot be made a basis for any grievance by the petitioners at the time of arguments.

(15) We may state here that the counsel for the respondents filed an additional affidavit of Shri Balmokand, Assistant Director General (S.G.T) P & T Board, Delhi, along with a chart annexed to it. The chart purports to show the number of officers, direct recruits as well as promotees, who were working in the Junior Time Scale in the years 1970 to 1973. Relying on the said chart, the learned counsel for the respondents sought to urge that the promotees (T-E.S Class Ii Officers) are in fact holding more than 50 per cent posts on promotion in holding charge capacity in the Senior Time Scale, and that the petitioners have absolutely no cause for any grievance. In the view taken by us as regards the

provision in Rule 27(b), namely, that it does not provide that promotions to Senior Time Scale as a temporary measure should be made exclusively from among the T.E.S Class-11 Officers, and that it does not confer any right on the T.E.S Class-11 Officers to be promoted to the Senior Time Scale as a temporary measure, we consider that we need not go into the contention based on the chart.

(16) For the foregoing reasons, we hold that there is no merit in the Writ Petition. The Writ Petition, Therefore, fails and is dismissed, but in the circumstances without costs.