

(1997) 09 SC CK 0026

In the Supreme Court Of India

Case No : Civil Appeal No's. 6713 to 6715 of 1997

Union of India (UOI)

APPELLANT

Vs

B.S. Agarwal and Others

RESPONDENT

Date of Decision : 29-09-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : AIR 1998 SC 1537 : (1998) AIRSCW 583 : (1997) 8 JT 290 : (1997) 6 SCALE 278 : (1997) 8 SCC 89 : (1998) SCC(L&S) 482 : (1997) 4 SCR 327
Supp : (1998) 5 Supreme 462 : (1997) 9 Supreme 166 : (1997) 3 UPLBEC 2055

Hon'ble Judges : G. N. Ray, J;G. B. Pattanaik, J

Bench : Division Bench

Advocate : T.R. Andhyarujina, Solicitor General, Rajiv Dutta, Vipin Nair, S. Birla and Arvind Kumar Sharma, D.N. Dwivedi, Naresh Kaushik, Shankar Divate, L.C. Pandey and Lalitha Kaushik, in C.A. No. 6713 of 199, for the Appellant; Shyamla Pappu M.R. Krishnamurthi, Pramod Sharma, J.D. Jain, Rajesh, B.S. Mainee and D.N. Dwivedi Naresh Kaushik, Shankar Divate, L.C. Pandey and Lalitha Kaushik, in C.A. No. 6715 of 1997, for the Respondent

Final Decision : Disposed Of

Judgement

G.N. Ray, J.—Leave granted in all the Special Leave Petitions. Heard learned Counsel for the respective parties.

2. The appeal arising out of SLP No. 25014/96 is directed against Order dated October 29, 1986 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 2122/95. The appeal arising out of SLP No. 24361/96 is directed against order dated August 22, 1996 passed by the Central Administrative Tribunal, Mumbai Bench in O.A. No. 184/92 and the appeal arising out SLP No. 9068/97 is directed against order dated March 7, 1997 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 2563/96.

3. As the common question is involved in all the said appeals as to the

interpretation of para 7.3 of the Scheme for making appointments to the posts of General Managers and equivalent in the Indian Railways, all the appeals have been heard analogously and are being disposed of by this common judgment. It will be appropriate if a short background of facts are noted.

4. The Indian Railway system is managed by the apex authority, namely, the Railway Board. The said Railway Board comprises of the Chairman, the Financial Commissioner and five other members viz. Member (Traffic), Member (Engineering), Member (Mechanical), Member (Staff) and Member (Electrical). In the hierarchy, immediately lower to the Board is the posts of General Managers and equivalent. It has been submitted by the learned Counsel for the appellant that there are 25 posts of General Managers and equivalent out of which nine posts are of General Managers of Zonal Railways, 10 posts are in Production and Construction Units and Director General Etc. and there are 6 officers on Special Duty of the newly created Railway Zones.

5. The posts of General Managers and equivalent are filled up by selection on merit from amongst very senior and suitable administrative grade officers with eight different senior Administrative Grade Services excluding the Indian Railway Medical Service. Such selection is made by a very high level Selection Committee consisting of the Chairman, Railway Board, Secretary, Department of Personnel and a Member of Railway Board. The recommendations of the Selection Committee are approved by a Committee which amongst others includes the Prime Minister. No Railway employee has any legal right to claim appointment as a matter of course to the posts of General Managers or equivalent. The Scheme for filling up posts of General Managers and equivalent was notified vide Resolution No. E (O) III-84/PM6/136 dated July 16, 1986 which was further amended vide Resolutions dated January 30, 1987 and February 26, 1988. The main object of the Scheme was to lay down clear guidelines for selection of officers from various railway services for appointment to the posts of General Managers and equivalent on the Indian Railway.

6. As indicated earlier, the issue in all these appeals relates to the interpretation of para 7.3 of the aforesaid scheme. It will be appropriate at this stage to refer to para 7.3 of the said Scheme:

Para 7.3: Only such of the empanelled officers would normally be appointed to posts of General Managers and equivalent as will be able to serve for at least two years on such higher post(s).

7. Mr. T.R. Andhyarujina the learned Solicitor General of India appearing for the appellant Union of India has submitted that in giving appointment in all the three appeals, the constitutional guarantee under Article 14 and 16 have not been violated. He has submitted if a reference to the fact situation is made, it will be evident that in all cases, appointments have been made in accordance with correct interpretation of paragraph 7.3 of the residual length of service of two years from the date of accrual of vacancy in accordance with the interpretation of

the said paragraph by the Allahabad Bench of Central Administrative Tribunal.

8. The learned Solicitor has submitted that the respondents Shri B.S. Agarwal and Shri M.P. Kamal Raj were included in 1994-95 panel of the officers eligible for appointment to the posts of General Managers and equivalent. In the case of Shri Agarwal and Shri Kamal Raj, appointments to the posts of General Managers and equivalent have been made out of empanelled officers who had two years of residual service from the date of accrual of vacancy on the basis of the interpretation of para 7.3 of the said scheme in conformity with the decision of the Allahabad Bench of the Central Administrative Tribunal. Both Sri Agarwal and Shri Kamal Raj do not have two years' tenure reckoning from the date of accrual of vacancy falling in their turns. It also appears that even the basis of actual period of service left before superannuation, both of them do not have two years of actual service on the date of appointment because the date of appointment was October 31, 1995 and the date of retirement of Shri Agarwal and Shri Kamal Raj is October 31, 1996 and August 31, 1996 respectively. It appears that out of the panel for the year 1994-95 there were in all three officers who did not get appointment for want of the said tenure of two years reckoning from the date of accrual of vacancy and all the said officers have since retired. If the rule of two years of actual service on the date of appointment had been applied then out of the eleven officers, the appointment of eight officers would have become invalid. Shri S.A.A. Zaidi the respondent in the appeal arising out of SLP No. 9068/97 belongs to 1995-96 panel for the posts of General Managers and equivalent. Appointment of General Managers and equivalent out of the said panel have been made on the basis of reckoning of two years of service from the date of accrual of vacancy falling in the turn of the said officers. Out of the panel 1995-96, 17 appointments of General Managers and equivalent have been made. Shri Zaidi was not appointed. He did not have two years of service from the date of accrual of vacancy falling in his turn. There were 19 officers out of which 15 though senior to Shri Zaidi did not get appointment to the said posts of General Managers and equivalent on similar considerations. All the said 19 officers are still in service. The actual appointment of General Managers out of the panel of 1995-96 was made in November, 1996. Shri Zaidi did not have two years of actual service on the date of appointment because his date of retirement is July 31, 1998. It may be stated here that out of 17 appointments of General Managers and equivalent in respect of panel for the year 1995-96, only five officers are such who do not have two years of actual service on the date of appointment but they have two years of residual service. The learned Solicitor has given a correct interpretation of para 7.3 of the said Scheme by indicating that the residual service of two years as contained in para 7.3 of the said Scheme should be reckoned from the date of accrual of the vacancy. It has been contended by the learned Solicitor that on the proper interpretation paragraph 7.3 of the Scheme appointments have been made out of empanelled officers who had residual service of at least two years from the date of accrual of vacancy. Therefore there was no question of relaxation of paragraph 7.3 of the scheme and resorting to

hostile discrimination against other empanelled officers by not relaxing the condition under paragraph 7.3 of the Scheme in their cases. The learned Solicitor has, therefore, submitted that the appointments made by the Union of India to the eligible and suitable officers to the posts of General Managers and equivalent in all these cases have been made on the basis of correct interpretation of para 7.3 consistent with the decision of the Allahabad Bench Central Administrative Tribunal. "Therefore none of the respondents in these appeals can have any legitimate grievance for not being appointed to the post of General Manager and equivalent and the directions given in the impugned decisions, therefore, cannot be sustained and the impugned orders should be set aside.

9. Ms. Shyamala Pappu, learned Senior counsel appearing for the respondent Sri B.S. Agarwal and Sri Kamal Raj in appeals arising out of SLP [C] No. 25014 of 1996 and SLP [C] No. 24361 of 1996 has submitted that para 7.3 of the Scheme should be read along with para 4.1 of the scheme and para 10 of the Scheme which provides for relaxation.

Para 4.1 - A panel of names for consideration for appointment to the posts listed in appendix I shall be prepared by a Selection Committee set up in accordance with para 5 of the Scheme. For this purpose, the Selection Committee shall consider or merit eligible officers of each of the Railway Services listed in Appendix II, having regard to their inter se seniority as well as their seniority in the respective services, and prepare a panel of officers considered suitable in all respects for appointment to the posts of General Manager and equivalent. The Selection Committee may also recommend the specific type/types of assignments for which a particular officer mentioned in the panel may be considered suitable.

Para 4.4 - While taking action as in the preceding sub-para the Railway Board shall normally suggest the promotion of empanelled officers in order of their inter se seniority within those clear for that service if reckoned from the date of accrual of vacancy falling in their turn. It therefore appears to us that appointment in question have been made on consideration of residuary service of two years reckoned from the date of accrual of vacancy.

10. The learned Solicitor has further submitted that the respondents Shri Zaidi, Shri Kamal Raj and Shri B.S. Agarwal were not eligible to be appointed because none of them had two years" tenure either on the date of accrual of vacancy in their turn or on the date of actual appointment of empanelled officers. Therefore, the impugned directions cannot be sustained and should be set aside. The learned Solicitor has submitted that Para 7.3 of the said Scheme should be interpreted in such a manner so that there is no scope of bringing any uncertainty as to eliminate the chance of getting appointment of an empanelled officer even though such officer is senior and is otherwise suitable to be appointed to the post of General Manager and equivalent. The learned Solicitor has submitted that it would be unfair and will bring about unmerited hardship if on the date of actual appointment, large number of eligible and suitable officers

even though senior are to be kept out of consideration because on the date of actual appointment they do not have two years" tenure although they had such requisite tenure when the vacancies arose. The learned Solicitor General has submitted that there is no manner of doubt that reasonable length of tenure in the key posts of General Managers and equivalent is highly desirable so that the concerned officers after being appointed to such key posts can take appropriate policy decisions and take follow up actions within the tenure of such officers. But such tenure of two years as referred to in para 7.3 of the said Scheme should not be referable to any of the dates which is not fixed but is essentially variable and therefore uncertain because of time lag involved at various stages as indicated hereinbefore. Mr. Solocitor has submitted that the date of accrual of vacancy is a fixed point but the date of subsequent stages of consideration and actual appointment are not fixed and necessarily such date may widely vary depending on the convenience of the Committee to sit and consider and thereafter to take final decision of appointment by the appropriate authority. The learned Solicitor has submitted that though it is highly desirable that the appointment should be made as early as practicable whenever the vacancy has accrued, more often than not, long time elapses before taking the final decision of appointment on account of time factor involved at various stages and also the time constraint associated with various urgent administrative and policy decisions required to be taken by the Members of the Committee particularly by the Prime Minister. Mr. Solicitor has submitted that the Allahabad Bench particular type of assignment, except when-

(a) it is considered necessary to overlook any officer on the panel in view of any unsatisfactory performance or action as reflected in his confidential report, subsequent to his empanelment, subject to such a recommendation being made to the appointment committee of the Cabinet under exceptional circumstances and for reasons to be recorded in writing and put up to the Appointment Committee of the Cabinet for their consideration, or

(b) it is concerned necessary to make a temporary departure from the order of seniority in the panel for a few months to fit the officers considered in different vacancies arising within a short time span in a manner best in keeping with their relative background and aptitude. In this event, it will be notified that the junior officer will not gain any seniority vis-a-vis his empanelled seniors, or

(c) it becomes inescapable to promote an officer of a particular discipline as General Manager Open Line ahead of normal turn, to meet the requirements for manning the post of Member, Railway Board, corresponding to his discipline. In such cases, detailed reasons will be recorded for the consideration of the Appointment Committee of his Cabinet. In the event of such an appointment being approved by the Appointment Committee of the Cabinet, it will be notified that the junior officer will not gain any seniority vis-a-vis his empanelled seniors, or

(d) it is found necessary to leave out any officer borne on the panel at the time

of actual appointment in order to avoid undue predominance of any one service by holding of more than six posts of General Managers and equivalent by officers belonging to any one service. In this event, it will be notified that the junior officer will not gain any seniority vis-a-vis his empanelled seniOrs.

11. Ms. Shymala Pappu has submitted that every year in July a select panel is drawn up by empanelling the officers of Senior Administrative Grade (SAG) equivalent to the grade of Joint Secretary and Officers holding higher post (Additional Secretary level) for appointment to the posts of General Managers and equivalent ensuring that such empanelled officers are less than 56 years of age on 1st of July of the year in which the panel is drawn up. Such panel is approved by a very high power committee i.e. Appointment Cabinet Committee. It is submitted that the select panel is drawn up every year after due consideration is made by Departmental Selection Committee consisting of Chairman, Railway Board, Secretary Department of Personnel and one Member of the Railway Board nominated by the Cabinet Secretary. Ms. Pappu has contended that paragraph 9 of the Scheme provides that the said high powered selection committee should meet once a year at a suitable time after 1st of April as soon as ACRS for the year ending on March 31, are available for consideration. Ms. Pappu has also submitted that although it is intended that the selection committee should meet prior to July every year so that the panel of eligible officers drawn up remains valid for one year starting from 1st July of the year and ending on 30th June of the next year, in practice, however, such committee do not meet in time and often such committee meet after few months. In the case concerning Sri B.S. Agarwal, the Selection Committee had met in September, 1994. Sri B.S. Agarwal had a period of 2 years 4 months to his credit on 1.7.1994. Ms. Pappu has submitted that Sri B.S. Agarwal had outstanding service record with no blemish whatsoever. Sri Agarwal received Indian Railway Construction Shield and award of Rs. One lakh for outstanding and meritorious work relating to construction and gauge conversion work. Despite such brilliant and outstanding service period, he was not appointed to the post of General Manager and equivalent. Sri Agarwal made representations to the Chairman, Railway Board, Railway Minister, Cabinet Secretary and Prime Minister. Officers junior in service to Sri Agarwal were appointed General Managers on 31.10.1995 but Sri Agarwal was not favoured with any reply for being bye passed. It was only before the Central Administrative Tribunal, reason for not appointing Sri Agarwal was disclosed by indicating that Sri Agarwal had not tenure of two years when the vacancy had accrued.

12. Ms. Pappu has contended that para 7.3 of the Scheme essentially indicates that only such empanelled officers will be appointed to the posts of General Managers and equivalent as will be able to serve at least for two years in the post of General Manager and equivalent. It is contended by Ms. Pappu that such intention of at least two years of service tenure as General Manager or equivalent is evident if a reference is made to the scheme for appointment as Members of the Railway Board which provides that "2 years or more from the date of

occurrence of vacancy" will be available to the incumbent as Member, Railway Board in express contradistinction of the provision for appointment of General Manager and equivalent in para 7.3 using the expression "as will be able to serve at least for 2 years on such higher post."

13. Ms. Pappu has submitted that the scheme in para 7,3 is quite clear that only such empanelled officers as will be eligible to service at least for 2 years on the higher post of General Manager and equivalent will be appointed. Sri Agarwal had fulfilled this criterion when empanelled. The Central Administrative Tribunal has allowed his petition because juniors were favoured by relaxing the provisions of para 7.3 of the Scheme without making such relaxation in the case of Sri Agarwal thereby resulting in hostile discrimination against Sri Agarwal.

14. Ms. Pappu has further contended that even if it is assumed that the expression "normally" appearing in para 7.3 of the Scheme brings some flexibility enabling the appointing authority to relax the rigour of at least 2 years of tenure in appropriate case, the appointing authority can not ignore inter se seniority of the empanelled officers in resorting to relaxation. Paragraph 4.4 of the Scheme clearly envisages adherence of inter se seniority. In the case of Sri Agarwal, at least three officers were junior to Sri Agarwal. Out of the said three officers, two had tenure for less than 2 years. Such juniors were appointed by completely ignoring the outstanding service record of Sri Agarwal and his inter se seniority position. Ms. Pappu has submitted that a great injustice had been meted out both to Sri Agarwal and Sri Kamal Raj and they had been discriminated against in the matter of appointment of the post of General Manager and equivalent for no valid reason thereby offending Articles 14 and 16 of the Constitution. In the impugned judgments, such hostile discrimination has been clearly indicated.

15. Ms. Pappu has also contended that interpretation of para 7.3 of the scheme was made by the Central Administrative Tribunal Principal Bench as early as in 1990 in the case of D.P.S. Ahuja v. Union of India. Such decision being final, became binding on the Union of India. Ms. Pappu has submitted that if the Allahabad Bench had entertained a view different from the view taken in the earlier decision in Ahuja's case, the matter should have been referred to a larger Bench for resolving the dispute. Such reference was not made because the Allahabad Bench has not taken any view essentially different from the view taken in Ahuja's case because a case of discrimination was not an issue before the Allahabad Bench. Ms. Pappu has submitted that it is a settled principle in service jurisprudence that relaxation, if possible, should not be arbitrarily made. Such relaxation must be based on some principle and should not encourage discrimination amongst persons similarly circumstanced. The decision of the Principal Bench in Ahuja's case squarely applied in the facts of the case of Sri Agarwal. Considering all aspects, the Tribunal has passed the impugned judgments in favour of Sri Agarwal and Sri Kamal Raj. Such judgments therefore, should not be interfered with in these appeals. Ms. Pappu has submitted that the

respondent Sri Agarwal retired on attaining the age of superannuation on 31.10.1996. Therefore, there is no question of his getting appointment to the post of General Manager and equivalent. But the appellant should be directed to pay all arrears upto the date of superannuation by treating Sri Agarwal as notionally appointed to the post of General Manager and equivalent when his juniors were appointed and also pay post retiral benefits on that basis.

16. Mr. Devendra Dwivedi, the learned Senior counsel appearing for the respondent S.A.A. Zaidi in the appeal arising out of SLP (C) No. 9068 of 1997, has submitted that for the purpose of disposal of this appeal, it is not only necessary to decide the true import of paragraph 7.3 of the scheme but also to consider whether or not the respondent Sri Zaidi has been discriminated against by violating the mandate under Articles 14 and 16 of the Constitution. Mr. Dwivedi has submitted that equality of opportunity in matters relating to employment guaranteed under Article 16(1) of the Constitution extends also to promotion even though no one can claim promotion as a matter of right. But an employee has a right to be considered fairly and reasonably being subjected to equal consideration with other eligible candidates. Mr. Dwivedi has submitted that the consideration of merit and suitability enters the decision making process in the preparation of panel of eligible officers for appointment to the post of General Manager and equivalent. But once the panel is finalised, officers are to be appointed in accordance with paragraph 7.3 of the scheme according to their inter se seniority positions. Once an officer is empanelled, his seniority can not be ignored, Mr. Dwivedi has submitted that almost three decades ago, this Court has held in *Sant Ram Sharma v. State of Rajasthan* 1967 AIR(SC) 1910 : 1968 (2) LLJ 830] that where persons are to be selected to the higher post on the basis of merit and suitability from amongst persons of equal merit, the senior is entitled to be preferred for appointment.

17. Mr. Dwivedi has also contended that the policy cannot be framed arbitrarily and capriciously but the same is to be framed in public interest. Such policy must be fair and reasonable and conform to the constitutional guarantees enshrined in Articles 14 and 16. Under the Constitutional scheme, judicial interference is permissible to prevent violation of the constitutional safeguards. Any consideration on the score of problems of the government or its convenience is incidental and secondary and cannot be permitted to transgress constitutional safeguards. In support of such contention, reference has been made to the decision of this Court in *Prabhakar Rao v. State* [1985] Suppl. 2 SCR 573 at 613.

18. Mr. Dwivedi has also contended that the rules of interpretation of the statute or government order are well settled. When there is no scope of any ambiguity and the language is clear, the courts always give effect to the general meaning of the words used. The words are to be interpreted in the context in which they are used and in the garb of interpretation, violation to the language or amendment of the language is not permissible. The words have to be interpreted in the context in which they are used having regard to a rational nexus to the objective

that is sought to be achieved. It is only when the courts consider that the application of the words in their ordinary sense would produce absurd result or would be unreasonable, unworkable or irreconcilable with the object of the statute or the order, the courts allow themselves a limited role in adding or amending the meaning of the words used. The language of the statute or order has to be interpreted if any interpretation is needed, so as to conform to the equality mandate enshrined in Articles 14 and 16 for the Constitution.

19. Referring to paragraph 7.3 of the scheme, Mr. Dwivedi has contended that it hardly needs reiteration that the purpose underlined in laying down a certain criterion for eligibility for the appointment to the post of General Manager or equivalent is to ensure a certain modicum of continuity at decision and policy making levels. Keeping such policy in mind, the Union Government has formulated norms/schemes for appointment of the Members of Railway Board as well as General Managers of the Indian Railways. The pertinent question that goes to the root of the problem of interpretation of para 7.3 of the scheme lies in the clear difference in the choice of the language that has been employed while laying down the norms for appointment of the Members of Railway Board. Mr. Dwivedi has supported Ms. Pappu by contending that in the matter of appointment of General Managers and equivalent, the incumbent must be able to serve for at least two years in the higher post of General Manager and equivalent but for appointment to the post of Member, Railway Board, the incumbent should normally have balance of tenure of service of two years or more from the date of occurrence of vacancy, Mr. Dwivedi has contended that in view of conscious departure in the language in para 7.3 of the scheme from the expression in the scheme/ norms for appointment of Member, Railway Board, it is evident that the Union Government definitely intended and meant that only such persons will be appointed as General Managers who on being appointed as General Managers, will have residual service of at least two years. Any other interpretation is not only against the plain meaning of the expression used in paragraph 7.3 of the Scheme but also against the policy of continuity in decision making process for a desired length of time, sought to be achieved.

20. Mr. Dwivedi has contended that neither the appellant nor the respondent should be permitted to put a self serving interpretation contrary to true legal position. Mr. Dwivedi has submitted that the case of the respondent Sri Zaidi before the Tribunal was that in the teeth of a clear language in para 7.3 of the scheme, officer who was junior to the said respondent was appointed in violation of the criterion laid down in para 7.3 of the scheme resulting in erroneous application of para 7.3 and hostile discrimination against the respondent.

21. Mr. Dwivedi has submitted that the Principal Bench of CAT has decided in Ahuja's case that any deviation of residual service of two years from the date of appointment, if made, can be said to have been done only by invoking paragraph 10 of the Scheme which permits relaxation. Such decision was accepted by the Union of India. Mr. Dwivedi, has submitted that in the impugned decision, the

Tribunal has held to the effect that if the appointments of the juniors can be explained or justified on the face of para 7.3 of the Scheme only through the power of relaxation under paragraph 10 of the Scheme, it would be violative of Articles 14 and 16 of the Constitution to deny such appointment to Sri Zaidi by not applying such relaxation even though Sri Zaidi was senior. Such view of the Tribunal stands affirmed in the other two decisions of the Central Administrative Tribunal in Sri Agarwal's and Sri Kamal Raj's case. As the decisions of the Tribunal are well reasoned and unexceptionable, no interference by this Court, particularly in the exercise of discretionary jurisdiction under Article 136 is called for. Mr. Dwivedi has also contended that there was no plea of discrimination in appointing a junior ignoring the claim of senior in the A.S.P. Sinha's case decided by the Allahabad Bench of CAT. The interpretation of Allahabad Bench of para 7.3 of the scheme in Sinha's case is not only erroneous but such interpretation being obiter and not accepted in the said four decisions of various Benches of CAT in the cases of Ahuja, Zaidi, Kamal Raj and Agarwal, should not be accepted.

22. Mr. Dwivedi has submitted that in all the three impugned decisions of CAT, cogent reasons in conformity with the constitutional safeguards under Articles 14 and 16 have been indicated. There is no reason to interfere with such decisions by this Court. Mr. Dwivedi has also contended that accrual of vacancy is also not a firm or fixed date as sought to be contended by the learned Solicitor. Such date can also be manipulated. Mr. Dwivedi has submitted that if a reference is made to paragraph 14 of the judgment of the Tribunal in Ahuja's case, it will be evident that vacancy was proposed from 31.8.90 to 10.8.90 as a result of the incumbent General Manager, Sri V.K. Fondekar proceeding on one month's leave. Likewise, Sri B.T. Bhind incumbent General Manager/ICF/Madras applied for 34 days leave w.e.f. 28.11.90 which facilitated initial promotion of Sri M.C. Das and he was eventually adjusted against another vacancy of GM/WAP Bangalore occurring three months later on 31.1.91 Mr. Dwivedi has submitted that in the aforesaid facts, the appeals should be dismissed.

23. After giving our careful consideration to the facts and circumstances concerning these appeals and the submissions made by the learned Counsel for the respective party, it appears to us that the learned Counsel for the respondents have rightly contended that in the matter of appointment and also in giving promotion, the guarantee enshrined under Articles 14 and 16 of the Constitution cannot be violated. If a panel of eligible officers for the purpose of appointment to the posts of General Manager or equivalent is prepared, then each of such empanelled officers must be held to have been found suitable for appointment to such post. Therefore, if the said empanelled officer conform to the requirement of para 7.3 of the Scheme, his inter se seniority cannot be ignored in giving appointment to the post of General Manager and equivalent.

24. There cannot be any dispute in principle that if appointment is given to an officer out of the empanelled officers by relaxing the requirement under paragraph 7.3 of the Scheme by resorting to power of relaxation under para 10

of the Scheme, then such relaxation cannot be made arbitrarily and capriciously in favour of some by picking and choosing such officers in preference to others when being empanelled, the others should be held to be similarly circumstanced. It is therefore, necessary to scrutinise whether any relaxation has in fact been made in the matter of appointments concerning these appeals and if so, whether such relaxation has been made ignoring the inter se seniority of the empanelled officers resulting in hostile discrimination against some of the empanelled officers.

25. In order to appreciate true import to paragraph 7.3 of the Scheme, it is necessary to decide whether the tenure for at least two years as referred to in para 7.3 of the said Scheme is referable to

- (a) the date of accrual of vacancy
- (b) the date of proposal for filling up such vacancy
- (c) the date of selection of the empanelled officers for appointment to the posts of General Managers and equivalent
- (d) the date of actual appointment of the selected candidates.

26. It may be stated that the interpretation of para 7.3 of the said Scheme as given by various Benches of the Central Administrative Tribunal is not the same. The decision of the Mumbai Bench and Principal Bench of the Central Administrative Tribunal is in conflict with the interpretation given by the Allahabad Bench of Central Administrative Tribunal. It appears that the Union of India has followed the interpretation given by the Allahabad Bench of the Central Administrative Tribunal in giving appointments in question in these appeals.

27. For the purpose of appreciating correct interpretation of para 7.3 of the said Scheme consistent with equity and justice and avoiding unmerited hardship to any eligible officer, it will be appropriate to refer to the method of appointment to the posts of General Managers and equivalent. It appears that after the Empanelment of the eligible officers, the proposals for appointment are sent to a Committee (ACC). These proposals are made only in respect of vacancies which are arising or are likely to arise. The suitability of empanelled officers who qualify for vacancies in their turn for such appointment is taken into consideration. It is the case of the appellant that after the decision of Allahabad Bench of Central Administrative Tribunal, the ACC is approving appointment of such officers from the panel who are not only held suitable for appointment to the posts of General Managers or equivalent but who has a tenure of at least two years from the date of accrual of the vacancy in their turn.... Between the date of accrual of vacancy and actual appointment made, there has persistently been considerable time lag. As a result, many of the empanelled officers who had been found to be suitable for the appointment to the posts of General Managers and equivalent when the vacancy had accrued in their turn did not have the two years tenure when the order of appointment was made if two years tenure was to be reckoned from the date of actual appointment. In most cases the delay in making actual

appointment after the accrual of vacancy is not only on account of procedural formalities but also on account of avoidable delay flowing from the usual red tapism and proverbial administrative lethargy. It is also not unlikely that in some cases the delay may be caused in a designed manner so as to deprive some of the eligible suitable officers in order to benefit juniors by bringing a fact situation when tenure of two years is not fulfilled in case of some seniors and otherwise suitable officers resulting in dropping of such officers.

28. Para 7.3 of the scheme in express term refers to the residual service of at least two years on higher post of General Manager and equivalent. But the question that requires to be addressed is from which point of time, the said residual tenure is to be reckoned. In our view, para 7.3 of the Scheme must be given such fair and reasonable interpretation with reference to a fixed point of time so that there is no scope of introducing any uncertainty and variable factors thereby bringing unmerited hardship and injustices by eliminating some of the eligible senior officers either on account of normal procedural delay or delay caused in a designed manner. An empanelled officer having higher inter se seniority over others has a reasonable expectation to get appointment on the accrual of vacancy but if the actual appointment is not made promptly either on account of inherent time lag, associated with procedural formalities or on account of bureaucratic lethargy or by delaying the process of appointment in a calculated and designed manner, and eligible and senior officer in the panel cannot but suffer unmerited hardship if para 7.3 is interpreted in the manner advocated by the learned Counsel for the respondents. In that event, such officer in the last lag of brilliant service career will be deprived of the fruits of toil and sincere efforts put in over the years. It is true that in para 7.3 the residual service for at least two years has been indicated in contradistinction to the language appearing in the matter of appointment as Member, Railway Board, but in our view, such expression of residual service for at least two years as contained in para 7.3 does not stand in the way of giving a fair and reasonable interpretation. In our view, para 7.3 must be held to be referable to the date of accrual of vacancy in order to ensure fairness and transparency in the matter of appointment as General Manager or equivalent. The date of accrual vacancy is a fixed one and even if any manipulation is made about the date of accrual of vacancy the actual date of accrual of vacancy can always be ascertained by a closer scrutiny. We, therefore, do not find any merit in the contention that accrual of vacancy is not a certain event and be easily subjected to manipulation. In our considered view, determination of residuary length of service with reference to accrual of vacancy will not be consistent with the language of para 7.3 but such interpretation will also not frustrate the purpose for which residuary length of service is intended in para 7.3 of the Scheme. The Court should lean in favour of such interpretation of a statute which conforms to justice and fair play and prevents potentiality to injustice by liberally construing the provision without intrinsically violating the language of the statute and the purpose intended to be achieved. We may indicate here that although the residual tenure is referable to

the date of accrual of vacancy, the intended purpose of reasonable length of service in the post of General Manager and equivalent should not be permitted to be defeated by delaying the actual appointment from the date of accrual of vacancy for long, it will only be proper if the concerned authorities remain alive to the urgency in taking prompt action in making actual appointment, so that such appointment is made at least within three months from the date of accrual of vacancy.

29. It appears to us that in all these appeals, no appointment has been made to any empanelled officer whose residual tenure was less than two years from the date of accrual of vacancy. Shri B.S. Agarwal and Shri Kamal Raj were included in 1994-95 panel of the eligible officers for appointment to the posts of General Managers and equivalent. The officers who had two years of service from the date of accrual of vacancy had been appointed because Shri Agarwal and Shri Kamal Raj had not such residual service with reference to the date of accrual of vacancy. Therefore, the question of ignoring a senior officer by relaxing the requirement of para 7.3 of the Scheme in favour of some junior officers did not arise. So far as Shri S.A.A. Zaidi is concerned, he was included in the panel of eligible officers for 1995-96. Out of the said panel, 17 appointments to the posts of General Manager and equivalent were made. Shri Zaidi was not appointed because he had not two years of residual service from the date of accrual of vacancy falling in his turn. Therefore, the question of any hostile discrimination against Shri Zaidi did not arise in the facts of the case.

30. We, therefore, do not think that there has been any impropriety or illegality in making appointments concerning all the said appeals. The impugned decisions of the Tribunals, therefore, cannot be sustained and the same are set aside and the applications presented by the respondents in these appeals before the Central Administrative Tribunal stand dismissed.

31. It has been submitted by the learned Solicitor that after the decision of the Allahabad Bench, Central Administrative Tribunal in A.S.P. Sinha's case, the appointments to the posts of General Managers and equivalent are being made on consideration of residual service of at least two years with reference to the date of accrual of vacancy. If, in any case, any officer included in the panel for 1994-95, 1995-96 has been passed improperly by not adhering to the interpretation of para 7.3 as indicated by this Court, the appellant Union of India is directed to review such case and to give the eligible officer notional promotion with all consequential benefits till the date of his superannuation and thereafter consequential post-retiral benefits.

32. These appeals are accordingly disposed of without any order as to costs.