

Col. D. D. Joshi and Others

Vs

Union of India and Others

Writ Petitions Nos. 3685-3691 of 1982 and 5636 of 1980

(D.A. Desai, V.B. Eradi JJ)

01.03.1983

JUDGMENT

DESAI, J –

1. Commissioned officers belonging to Army Medical Corps ('AMC' for short, having post/graduate qualifications in different specialities at the time of obtaining commission have approached this Court under Article 32 complaining of a discriminatory treatment in the matter of granting antedating benefit which is directly linked to seniority and promotional prospects.

2. Petitioners in the first batch of petitions were granted commission in AMC between 1954 and 1963. Petitioner in the second. Petition was commissioned as a regular officer in AMC on March 15, 1970. There are in all 154 commissioned officers including the according to the petitioners suffered the same discriminatory treatment. The. petition is not in a representative capacity. Petitioners assert that the decision in this group of petitions would affect roughly 147 other officers.

3. Petitioners help post-graduate qualifications in different branches of medical science and some of them held an approved wholetime appointment in a recognized civil hospital for a period of six months or more prior to their being commissioned in AMC.

4. There is a provision for giving the benefit of antedating the commission for varying periods, if the commissioned officer at the time of entry fulfills prescribed qualification. The earliest available reference is to Army Instruction No. 31/S/48 dated August 16, 1948 which provided as under :

(a) An officer who has held an approved wholetime appointment in a recognised civil hospital for a period of six months or more will be eligible for an antedate of six months.

(b) A candidate will be eligible for the grant of an antedate not exceeding six months if he, at the time of selection, is in possession of a post-graduate Diploma in any branch of medical science recognised by the Indian Medical Council, provided that the candidate has to attend a course of Instruction in a recognised institution for at least 9 months to qualify for such Diploma.

(c) At the time of appointment a candidate will be eligible for the grant of an antedate not exceeding 12 months in respect of higher qualifications obtained prior to appointment. This will normally be granted for qualifications such as Doctor of Medicine, Master of Surgery, Fellow of the Royal College of Surgeons, Member of

the Royal College of Physicians or an equivalent qualification; obtained by examination from recognised Universities or colleges.

(d) In the case of a candidate who is eligible for an antedate under more than one of the preceding sub-paragraphs, the maximum period of antedate will be limited to 18 months.

It appears that prior to December 31, 1965 maximum period of antedating benefit was 1 1/2 years which was reduced to one year from January 1, 1966. It was enlarged to maximum 2 1/2 years from April 1, 1978. Thus the period varied but the conditions of eligibility remained more or less constant.

5. By Army Instruction No. 74 of 1976, the period of antedating under Clauses (a), (b) and (c) remained unchanged but the period under Clause (d) was raised to 18 months in the aggregate.

6. By the impugned Army Instruction No. 78 of 1978 dated November 4, 1978, a further upward revision in the period of antedating the commission by amending Army Instruction No 74 of 1976 was prescribed. By this amendment, the period prescribed in Clause [a] above remained unchanged. The period of antedating prescribed in Clause [b] was received from six months to 12 months and the period of instruction was revised from nine months to 12 months. In Clause [c], the period of 12 months was revised to two years and in Clause [d], the aggregate was upward revised from 12 months to 2 1/2 years. A note was appended to this amendment which according to the petitioners introduces the discrimination. It reads as under :

The above provision are effective w. e. f. April 1, 1978. However the seniority of Officers who joined with PG qualifications during 1 1/2 years prior to April 1, 1978 will be protected by grant of requisite antedate so that they do not become junior to officers who have joined later with equivalent PG qualifications.

7. Petitioners contend that the denial of the benefit of longer period of antedating the commission introduced by the amended Army Instruction No 78 of 1978 which became effective from April 1, 1978 to those commissioned officers who had requisite postgraduate qualifications when they were commissioned prior to April 1, 1978 is grossly discriminatory and the choice of date is arbitrary. It is alleged that those officers who had postgraduate qualification at the time of being commissioned in AMC whether they were commissioned prior to April 1, 1978 or thereafter for the purpose of conditions of service and treatment form one homogeneous class is divided to pick and choose arbitrarily choice of date, this homogeneous class is divided to pick and choose arbitrarily for the benefit of longer period of antedating the commission and the classification is not based on any intelligible differentia and if there be any, it does not have any rational nexus to the objects sought to be achieved. It is further alleged that the choice of date for granting the benefit being thoroughly arbitrary and is not explainable on any rational hypothesis and therefore, on these grounds, the denial of benefit of extended period of antedating to those who were commissioned prior to April 1, 1978 is discriminatory and it is a denial of an equality of opportunity in the matter of employment and therefore violative of Article 16 of the Constitution. It is alleged that in the matter of antedating the commission, there is no difference between those who had post-graduate qualification commissioned subsequent to that date and therefore the earlier entrants have been treated with an evil eye and unequal hand and therefore of employment. Petitioners have averred in the petition that the benefit of antedating the commission to those who were commissioned after obtaining post-graduate qualification irrespective of whether they have been commissioned prior to a certain date or

subsequent to that date, in the matter of conditions of service, cannot be differently treated and they are entitled to same treatment irrespective of the date on which the commission was granted.

8. In the return filed on behalf of the respondents, it was specifically contended that the benefit of antedating is granted at the time of being commissioned in AMC and it is an incentive for attracting post-graduate qualification. It is further averred that if an incentive for attraction persons who applied for being commissioned after obtaining post-graduate qualification. It is further averred that if even the old commissioned officers are given benefit of larger period of antedating, it would adversely affect a large number of officers of the AMC and would disturb the seniority of number of persons. It was further alleged that promotions are given on the basis of seniority. It was averred that those commissioned officers of AMC who have either acquired post-graduate qualification while in the service or who were merely M. B. B. S. at the time; of being commissioned and those who and postgraduate qualification when commissioned are all brought on a common seniority list and on the basis of this common seniority list, promotion to the higher rank is given. It was therefore, contended that if the earlier entrants are now given benefit of longer period of antedating it would disturb the seniority and promotional prospects of a large number of persons and this is unjust and unfair. Number of charts have been annexed to the written submissions by the learned Additional Solicitor-General showing that giving of benefit of longer period of antedating the commission to the petitioners and those similarly situated would give them an undeserved advantage of jumping over a number of senior officers and the promotional prospects of many such persons would be adversely affected. The note at the foot of the Army Instruction no. 78 of 1978 was explained by saying that since by the impugned Army Instruction the maximum period of antedating the commission is revised to 2 1/2 years, if those just above the marginal line meaning those who were commissioned shortly prior to April 1, 1978 if not protected, would be adversely affected by those entering just after the date and would score a march over the earlier entrants and to protect them, it was provided that the seniority of officers who joined with PG qualification during the 1 1/2 years prior to April 1, 1978 will be protected by grant of requisite antedated so that they do not become junior to officers who have joined later with equivalent PG qualifications. It was said that there is rationale behind the note and it is incorrect to say that limited retrospective effect is given to the impugned Army Instruction No. 78 of 1978.

9. At the outset, it is necessary; to clear the ground by understanding what constitutes antedating the commission. It appears that the basis minimum entry qualification for being commissioned in AMC is graduate degree such as M. B. B. S. Those who enter service with post-graduate qualification such as post-graduate diploma or post graduate degree or those who enter after having held an approved wholetime appointment in a recognised civil hospital for a period of not less than six months will be given a deemed date of commission prior to the actual date of commission depending upon the period for which under the relevant Army Instruction such person is qualified. In other words, such person would be deemed to have been commissioned. This deemed date would be the date on which person concerned is deemed to have been commissioned and his seniority would be reckoned from such deemed date. This is what is styled in the relevant Army Instruction as benefit of antedating.

10. The commissioned officers in the AMC fall into three recognised divisions : [1] those; who enter with post-graduate qualification, [2] those who acquire post-graduate qualification after being commissioned. and [3] those who enter as M. B. B. S. and never acquire any further post-graduate qualification. It is not disputed that all the three are borne on the common seniority list because they formed one class of commissioned officers in AMC. Further upward promotion is generally based on this common seniority list.

11. The benefit of antedating is given to those who enter AMC with post-graduate qualification and the benefit of antedating the commission is given at the time of being commissioned and not later on. The learned Additional Solicitor-General pointed out that this benefit of antedating the commissions is in vogue from 1948 but the period has varied according to the decision of the Government of India to provide incentive for entering AMC depending upon market conditions of recruitment. It appears that prior to December 1, 1965, maximum antedating admissible on account of post-graduate qualification and for whole-time hospital appointment was 1 1/2 years. From January 1, 1966, it was reduced to one year. Government of India was again approached for enlarging the period of antedating admissible on account of the post-graduate qualification. Accepting the proposal, the maximum period for antedating the commission was revised from one year to 2 1/2 years with effect from April 1, 1978 with the marginal adjustment to avoid any undeserved benefit being given to the later entrants over earlier entrants to be adjusted as set out in the note appended to the impugned Army Instruction. It was however, strenuously urged that this benefit; of antedating was admissible at the time of appointment because it was an incentive and not a benefit being conferred for all those who have already entered AMC. This submissions borne out by the language of the relevant Army Instruction.

12. Let us turn to the Army Instruction dated August 16, 1948. Para (b) which is relevant for the present purpose provided that "a candidate will be eligible for the grant of an antedate not exceeding six months if he, at the time of selection is in possession of a postgraduate Diploma etc. " The words "at the time of selection" clearly connotes the stage when benefit is admissible and reveals the object underlying the benefit of antedating. Similarly para 6 (b) of Army Instruction No. 74 of 1976 dated September 18, 1976 clearly provides that "a candidate will be eligible for the grant of an antedate not exceeding 12 months if he, at the time of appointment is in possession of a post-graduate Diploma in any branch... ". Again attention should be focussed on the expression "at the time of appointment". By the impugned amendment by Army Instruction No. 78 of 1978 dated November 4, 1978 what is revised is the period, in paras 6 (b) and 6(e) raising it to 12 months and two years respectively retaining the condition of eligibility, namely, "at the time of appointment". In this connection, one can advantageously refer to para 6(c) of Army Instruction No. 74 of 1976 which provided that "at the time of appointment, a candidate will be eligible for grant of antedate not exceeding two years (now revised) in respect of higher qualifications obtained prior to appointment". The expressions "at the time of appointment" and "higher qualifications obtained prior to appointment" provided a terminus a quo for the eligibility of the benefit when the benefit of antedating can be granted and claimed. On a plain grammatical construction of para 6(a), (b) and (c) of Army Instruction No. 74 of 1976 there is no room for doubt that the benefit of antedating the commission will be available at the time of being commissioned as an officer in AMC i. e. at the time of appointment and the qualification must have been acquired prior to joining AMC. If the language of a provision is clear, unambiguous and intelligible, and does not admit of two meanings, the court is bound to construe it in its ordinary sense because it is well recognised that language used speaks the mind and reveals the intention of the framers. If the language of the statute is clear and unambiguous, and if two interpretations are not reasonably possible, it would be wrong to discard the plain meaning of the words used in order to meet a possible injustice [see *C. I. T. v. M/s T. V. Sundram Iyengar (P) Ltd.*((1976) 1 SCC 77, 84-85 : 1975 SCC (Tax) 470 : 1975 Supp SCR 93 : AIR 1976 SC 255)]. In such a situation, it would be impermissible to call in aid any external aid of construction to find out the hidden meaning. The cardinal rule for construction of a statute is that it should be construed according to the intention expressed in statute itself (see *Capper v. Baldwin*((1965) 2 QB 53, 61 : (1965) 1 All ER 787 : (1965) 2 WLR 610)). It would be presently pointed out that the underlying intention, object and purpose for granting the benefit of antedating

clearly bears out the meaning deduced by literal construction.

13. It is therefore necessary to go into the genesis of extending this benefit of antedating the commission. It is well known that those who pursue study for higher qualification in any branch of medicine after acquiring the graduate degree had to put in formerly two years and now nearly three years in acquiring postgraduate qualification. If the employer meaning the union Government would get the benefit of a person who has put in two to three years of advanced learning and training and is, therefore better equipped, he or she must be compensated in some measure. There would be qualitative difference in the service rendered by a graduate entrant and an entrant with post-graduate qualification. The time, money and energy expended in acquiring higher qualification is sought to be compensated by grant of antedating benefit, and therefore the benefit of antedating was devised and has been in vogue. Obviously, this benefit is to be given at the time of entering service. The recognition for the time, money and energy spent by an entrant with post-graduate qualification, compared to a graduate who enters AMC because of his minimum eligibility qualification is implicit in devising this benefit of antedating the commission. If the Union Government were to treat one who has the graduate degree on par with one who has a post-graduate degree and both are brought on the common seniority list for further promotion, obviously the person who spent some time in acquiring post-graduate qualification, the benefit of which would be available to the employer, would be at a comparative disadvantage in the matter of seniority and future promotion compared to one who came with only graduate qualification. It is this difference between a graduate entrant and entrant with post-graduate qualification which was sought to be compensated by granting the benefit of antedating the commission. The object, the purpose and the intention underlying the provision was to compensate for the extra time, money and energy spent in acquiring post-graduate qualification equipped with which the men enter service and this object, purpose or intention underlying the provision is clearly manifest in the language used in the relevant paragraphs of the Army Instruction bearing on the subject by providing the eligibility for gaining the benefit of antedating the commission, namely, having a post-graduate qualification shall be taken into account at the time of entering the service. Two pre-conditions have to be fulfilled before the benefit can be acquired, i. e. [1] the candidate must have a postgraduate qualification obtained prior to appointment, and [2] that such qualification must have been acquired and must be available at the time of appointment. Therefore, not only the language of the relevant provision leaves no room for doubt but the object and intention underlying the provision clearly buttressed the meaning of the provision.

14. If the benefit of antedating the commission is not to be granted at the time of entering a AMC to those who enter with post-graduate qualification, how would their case be differentiated or distinguished from those who acquire post-graduate qualification while in service. There is no qualitative difference in the relative merit of a person entering service having acquired post-graduate qualification since after acquiring the qualification. Yet the benefit of antedating is given to those who enter AMC with post-graduate qualification, and not to those who acquire such qualification after being commissioned. It may be recalled that at present out of approximately 4400 commissioned officers of AMC, there are about 154 commissioned officers who were commissioned after having acquired post-graduate qualification. As against this there are about 1227 officers of the AMC who acquired post-graduate qualification while in service. The quality of service rendered by; both having identical qualification would not be materially different, and yet in the case of first, the benefit of antedating the commission is extended by the relevant Army Instruction while in the case of latter, no such benefit of antedating the commission is to be made available only to those who had acquired post-graduate qualification before being commissioned into the AMC. The recipient of the benefit gets seniority over earlier entrants and the seniority is

determined, in the absence of another rule from the date of entry in the service or cadre. The seniority so acquired will enable such persons to be considered for promotion earlier than those over whom they score a march by antedating the commission. It is thus abundantly clear that the benefit of antedating the commission is available only at time of entering the AM. A subsequent enlargement of the benefit cannot be retrospectively made available to those who had already entered service and once availed of the benefit because their case thereafter would not be different from those who acquired postgraduate qualification after being commissioned as members of AMC.

15. It was strenuously contended on behalf of the petitioners that all commissioned officers of AMC who entered AMC after acquiring post-graduate qualification formed one homogeneous class and by artificially selecting the date of April 1, 1978 for entitlement of enlarged period of antedating compared to those who had entered prior to that date has the pernicious tendency of dividing a homogeneous class into two compartments. It was urged that this classification is not based on any intelligible differentia and it has no rational nexus to the objects sought to be achieved by enlarging the period of entitlement. It was therefore, contended that the note at the foot of the amended Army Instruction No. 78 of 1978 which introduces discriminatory treatment in the matter of longer period of antedating the commission by denying the same to those who entered prior to that date and extending it by to those who entered subsequent to that date, is violative of the guarantee of equality enshrined in Article 14 and is a denial of equality of opportunity in the matter of employment as guaranteed under Article 16 and therefore, being unconstitutional deserves to be struck down. A good number of decisions of this Court were read to us. The decisions on the scope and content of Article 14 are legion and to recall all of them would be merely an 'idle parade of familiar learning'. It is well-settled and not controverted on behalf of the respondents that Article 14 forbids class legislation but does not forbid classification for the purpose of legislation. It is equally well settled that in order to met the test of Article 14, [i] the classification must be based on intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and [ii] the differentia must have a rational nexus to the objects sought to be achieved by the legislative or executive action under challenge.

16. Does the enlarged period of antedating the commission made admissible to those who enter AMC after a certain date denying the same benefit to those who had already entered AMC prior to that date, has the pernicious tendency to divide a homogeneous class based on arbitrary criterion and not relatable to any intelligible differentia?

One has to remember that an employer has a right to grant incentive for attracting better qualified persons to the service offered by the employer. If the incentive is devised with a view to offering inducement to those wavering whether to enter a certain service or not, it is difficult to accept that such incentive should also be extended to those who have already entered service and have already taken full advantage of the benefit available at the time of entering service. In this case, it is clearly made out that the benefit of enlarged period of antedating the commission for persons joining AMC after having acquired post-graduate qualification was given as an incentive with a view to attracting more persons who have already acquired postgraduate qualification. Those who were already in service and had that benefit once, cannot be heard to say that this new incentive should be retrospectively enforced so as to give them the same benefit. It is difficult to conceive that an incentive can be retrospective though it is indisputable that conditions of service can be retrospectively made. And the unfairness of the approach of the petitioners becomes manifest from the fact that while maximum period of antedating prior to

December 31, 1965 was 1 1/2 years when petitioners entered AMC which was reduced to one year effective from January 1, 1965 none of them ever suggested that this being a condition of service must uniformly apply to those who would be covered by the conditions of eligibility and therefore the period must be reduced. But subsequently when the period of antedating was enlarged by the impugned Army Instruction which became effective from April 1, 1978, it is now clamoured that the benefit must be extended to those who have entered AMC way back as early as November 1949 and in the process give the petitioners and similarly situated persons a march over those who are already senior to them in the common seniority list.

17. The degree of unfairness of the claim of petitioners can be demonstrably established by working out the position of some petitioners on the footing that each one of them is entitled to longer period of antedating the commission. 1st petitioner Col. D. D. Joshi was commissioned on July 25, 1953. Now if he is given the benefit of antedating the commission by 2 1/2 years, his deemed date of joining the AMC would be January 25, 1952. In the process, he would score a march over 21 commissioned officers who are already senior to him in the seniority list. This is equally true of all the seven petitioners but in the case of petitioner 3, Col. V. S. Sharma, he would score a march over 41 commissioned officers already senior to him. One M. B. L. Saxena who is not one of the petitioners but who is similarly situated, if now held entitled to benefit of 2 1/2 years antedating, he would jump over 50 commissioned officers senior to him. In the case of petitioner 7, he would supersede 65 officers already senior to him and a good number of them are persons who had acquired postgraduate qualification, of course, after joining the service. Could one ever think of an incentive giving such an undeserved advantage? The answer is obviously in the negative.

18. The next question is does this incentive divide a homogeneous class? In the matter of incentive offered at the time of entering the service, there is no question of a homogeneous class. The new comers may become members of the class after being commissioned. They are outside the cadre before entrance. They do not belong to the class of existing members of the AMC. They derive the benefit of antedating simultaneously with becoming a member of AMC. They do not get any benefit denied to others after becoming the members as benefit of antedating is available at the time of appointment. There may be an enlargement of the cadre. There would be retirements. Recruitment and retirement are a continuous process. Those who are recruited at the relevant time will have to satisfy the conditions for recruitment then in force and would be entitled to the benefits that may be available to the new entrants. If the principle canvassed for on behalf of the petitioners is taken to the logical end, it would lead to a startling result. Suppose a rule is now made that only persons with post graduate qualification would be qualified for being commissioned in AMC, can anyone contend that as in the past mere graduate were recruited and therefore, ignoring the revised minimum eligibility qualification, a graduate must be considered for recruitment. Therefore, in respect of benefits which are available for certain qualification at the time of entering the service, the same having been made available, a revision of the same at a later date to attract fresh entrants cannot be retrospectively claimed by those who had already entered service knowing full well the benefit then available. Therefore, there is no substance in the contention that the note appended to the amended Army Instruction No. 78 of 1978 providing the benefit of enlarged period of antedating being made available to new entrants only will have the pernicious tendency of dividing a homogeneous class.

19. It was then contended that the selection of the date April 1, 1978 is thoroughly arbitrary and has no rational nexus to the objects sought to be achieved. Reliance was placed on *Union of India v. M/s Parameswari Match Works* ((1975) 2 SCR 573 : (1975) 1 SCC 305 : AIR 1974 SC 2349). In that

case this Court quoted with approval the decision in *Louisville Gas Co. v. Alabama Power Co.* (240 US 30), wherein it was observed that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances of the case. In the present case, there is no division of a homogeneous class by the choice of the date. The object; underlying the benefit extended to the new entrants determines the choice of date. Inducement for attracting fresh recruits from the market must come into force by a certain date. The employer can legitimately determine, keeping in view the demands of public service, from which date the inducement will be available. In such a situation choice of date is not wholly arbitrary and has not the tendency to divide a homogeneous class. We see no classification amongst those who enter AMC after acquiring post-graduate qualification determined by length of antedating benefit because each one at the relevant time obtained the advantage of antedating benefit because each one at the relevant time obtained the advantage of antedating as it was then in force. There is no differential treatment. There is no division of a homogeneous class. The distinct possibility is that of petitioner's contention is accepted there would be vertical splitting of a homogeneous class. It is therefore, difficult to accept the contention that the note under the impugned amended Army Instruction is violative of Article 14 or Article 16.

20. It was next contended that the Third Pay Commission recommended that doctors entering service of the Union of India with post-graduate qualifications should be suitably recompensated for the time spent in acquiring these qualification. It was urged that this recommendation was implemented in Central Government Health Service and it is this recommendation which has prompted the Union of India to enlarge the period of antedating. It was urged that by limiting the benefit only to those who would be commissioned on or after April 1, 1978, the respondents are guilty of according discriminatory treatment in the matter of public employment, and it is violative of Article 16 of the Constitution. Reliance was placed on *Purshottam Lal v. Union of India* (AIR 1973 SC 1088 : (1973) 1 SCC 651 : 1973 SCC (L&S) 337 : (1973) 1 LLJ 407 : (1973) 1 SLR 633), wherein this court held that when a Pay Commission makes recommendations and the Government accepts the same, it is bound to implement the recommendations in respect of all government employees. And if it does not implement the report regarding some employees only it commits a breach of Articles 14 and 16 of the Constitution. It is difficult to appreciate how this decision would help the petitioners. The benefit of antedating was devised long before the recommendations of the Third Pay Commission were formulated and each petitioner got the benefit consistent with the Army Instruction in force at the time of being commissioned in the AMC. A subsequent enlargement of the period, not pursuant to the recommendation of the pay commission and held out as an inducement for recruitment from the market cannot be claimed as a matter of right by those who have already availed of the benefit on earlier occasion.

21. It was then contended that if extending the benefit of enlarged period of antedating to all irrespective of the date of entry would have the tendency of unsettling the seniority list, that should not weigh with this Court because on such nebulous ground violation of constitutional mandate cannot be overlooked. Reliance was placed on *G. M. South Central Railway, Secunderabad v. A. V. R. Siddhanti* ((1974) 3 SCR 207 : (1974) 4 SCC 335 : 1974 SCC (L&S) 290 : AIR 1974 SC 1755 : (1974) 1 LLJ 312). We again fail to see how this decision helps the petitioners. The fallacy underlying the submission is that this benefit of enlarged period of antedating is claimed as a condition of service uniformly applicable to all persons qualifying for the same ignoring the conditions under which it can be claimed. The contention overlooks the basic condition subject to which benefit can be claimed and it is that it is available at the time of entering the service as a compensation for having a higher qualification compared to others simultaneously entering service

with lower qualification. And undoubtedly an inducement held out to future entrants, if extended to those who had entered more than 25 years ago, the inducement so offered would adversely affect a large number of persons who need not be subjected to unfair treatment for no fault of their. There are hundreds of officers, in all 1227, who are holding post-graduate qualifications today may be having acquired the same after joining service but there being no qualitative difference in the service rendered by them and those who entered with PG qualification, wayback in 1948 or 1949 or 1953 of the contention is accepted the petitioner would score a march over others having now the same qualification thereby give in the petitioners and unfair advantage which ought; not to be given, if approaching the matter from that angle, would not violate any constitutional mandate.

22. The next contention is that if giving the petitioners benefit of enlarged period of antedating would unsettle a settled seniority list, the respondents have already given limited retrospectivity to the revised benefit by providing the note to the impugned Army Instruction 78 of 1978 that : The seniority of officers who joined with PG qualifications during 1 1/2 years prior to April 1, 1978 will be protected by grant of requisite antedate so that they do not become junior to officers who have joined later with equivalent PG qualifications.

It was urged that the provision in the note would benefit some of those who joined with PG qualifications even prior to April 1, 1978 in a limited way, and thus its retrospective operation is implicit in the note. There is no merit in this contention. In fact the provision demonstrably establishes fairplay in action. An illustration would expose the fallacy underlying the submission. A joined with PG qualification and six months' fulltime service on March 31, 1978, B joined with the same qualification and eligibility on April 2, 1978. Both are wholly similarly situated. A would get antedate benefit; o 1 1/2 years and B would qualify for 2 1/2 years. B though a later entrant with same qualifications would score a march over A. This would be extremely unfair. To protect such cases, it is provided that those who joined with PG qualifications during 1 1/2 years prior to April 1, 1978 will be protected by giving of requisite antedate to protect their seniority over later entrants who qualified retrospectivity is given to impugned Army Instruction. It is in fact a case of marginal adjustment showing fairplay in action.

23. On behalf of the respondents, it was urged that if the contention of the petitioners accepted which could compel the 1st respondent to resettle the seniority list, those over whom petitioners and those similarly situated would score a march should have been impeded as respondents and in their absence, no relief can be given to them. We would not accept this contention for two reasons : [i] that the decision in G. M. South Central Railway Secunderabad((1974) 3 SCR 207 : (1974) 4 SCC 335 : 1974 SCC (L&S) 290 : AIR 1974 SC 1755 : (1974) 1 LLJ 312) would permit us to negative the contention, this being not a case of individual claim or claim of seniority by one person against specified others, but a question of interpretation of a provision and which interpretation could be given because would be binding on the Union of India, the presence of others is unnecessary. Union of India would have merely to give effect to the decision of this Court. Therefore, the absence of those who may by our interpretation be adversely affected in the facts and circumstances of the case need not be necessarily here and if the relief could have been granted, the same would not have been denied on the ground that proper parties were not before the court. But the second reason why we should not examine this contention is that we are not inclined to grant any relief and the matter ends there.

24. Having examined the matter from all angles, we find no substance in the contentions raised on

behalf of the petitioners and therefore all petitions are dismissed with no order as to costs.

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