

Surjit Singh & Ors.

Vs

Union of India & Ors.

(K. Ramaswamy, D. P. Wadhwa JJ)

09.05.1997

ORDER

1. Leave granted.

2. We have heard learned counsel on both sides.

3. The never-ending dispute between the direct recruits and the promoters has again surfaced in these appeals. The year 1962 onwards, the Central Secretariat Service Rules (for short, the 'Rules') framed under the proviso to Article 309 of the Constitution of India provided a ratio of 1/6th and 5/6th between the direct recruits and the promoters. On July 1, 1982, the ratio was changed to 1/5th and 4/5th between the direct recruits and the promotees respectively. In the year 1983, a writ petition under Article 32 was filed by the promotee officers titled H.N.Hardasani & Ors. Vs. Union of India & Ors.. This Court had directed that the unfilled vacancies meant for the direct recruits might be carried forward for over two years and subsequently unfilled vacancies meant for direct recruits might be thrown open for being filled up by the promotees. A statutory shape was given to the said direction by amending the Rules. In these cases, we are concerned with the Section Officers in the Central Secretariat. When fresh seniority list was being prepared, another writ petition came to be filed titled Amrit Lal & Ors. Vs. Union of India & Ors. This Court directed therein preparation of the seniority list in the light of the direction given by this Court which stood transformed into Amended Rules. Consequently, a seniority list had been prepared giving due placement to the direct recruits and the promotees in accordance with the rota and quota as operating under the Rules. Again, a third round of litigation had been started by filing of an Original Application in the Central Administrative Tribunal. The Tribunal in the impugned order made in O.A. No.629 of 1994, on March 22, 1995 and the review order following therefrom on May 23, 1996, has put the clock back, stating that prior to the amendment of the Rules putting two years' limitation on carry forward of the vacancies meant for the direct recruits would mean that earlier to that date the Government of India had no power to carry forward and thereafter, when the Rules had come into force, the Government had power to carry forward the vacancies limited to two years. Therefore, all the promotions made earlier to the amendment of the Rules must be held to have been thrown open to the promotees and subsequently, as and when the vacancies would not be filled up within two recruitment years, after the amendment has been brought into force after expiry of two recruitment years, the unfilled vacancies reserved for direct recruits would also be thrown open to the promotees; the seniority list is required to be prepared afresh in that manner. Thus, these appeals by special leave.

4. It is seen that Rule 13(1) of the Rules dealing with recruitment of Section Officers of the Central Secretariat, reads as under:

"One-sixth of the substantive vacancies in the Section Officers' Grade in any cadre

shall be filled by direct recruitment on the results of the competitive examinations held by the Commission for this purpose from time to time. The remaining vacancies shall be filled by the substantive appointment of persons included in the Select List for the Section Officers' Grade in that cadre. Such appointments shall be made in the order of seniority in the Select List except when for reasons to be recorded in writing, a person is not considered fit for such appointment in his turn."

5. A reading of this rule would clearly indicate that one-sixth/one-fifth, as per subsequently amended Rules of the substantive vacancies (posts) in the Section Officers' grade in any cadre shall be filled by direct recruitment on the results of the competitive examinations held by the Union Public Service Commission for this purpose from time to time. In other words, the rule is imperative and unequivocal that the one-sixth/one-fifth vacancies meant for direct recruitment shall be filled only by direct recruitment after due recruitment is made by the UPSC and appointments made by Government from time to time. The unfilled spilled over vacancies shall be filled up with the promotees from the select list. It must be for two years from the last recruitment year. Consequent upon the directions issued by this Court, the rule came to be amended and the two years' limitation was introduced which reads thus:

"G.S.R.21 In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules further to amend the Central Secretariat Rules, 1962, namely:

1.(1) These rules may be called the Central Secretariat Service (Second Amendment) Rules, 1984.

(2) They shall come into force on 1st July, 1985.

2. In the Central Secretariat Service Rules, 1962 (hereinafter referred to as the said rules) in rule 12, in sub-rule (2) for the third proviso, the following shall be substituted, namely:-

"Provided further that if any persons appointed to the Section Officers' Grade is considered for promotion to grade I under this sub-rule, all persons senior to him in the Section Officers' Grade, belonging to the Scheduled Castes or the Scheduled Tribes, who have rendered not less than four years' approved service in that Grade, shall also be considered for promotion" 3. In rule 1 of the said rules:-

(1) after sub-rule (1), the following proviso shall be inserted namely:- Provided that the number of the vacancies to be filled by the substantive appointment of persons included in Select List for the Section Officers' Grade is a recruitment year in a cadre, shall be proportionate to vacancies reported by that cadre to the Department of personnel and Administrative Reforms to be filled by direct recruitment for that year:

Provided further that if sufficient number of candidates are not available for filling up the vacancies in a cadre in any year, either by direct recruitment or by appointment of persons included in the select list for Section Officers' Grade, the unfilled vacancies shall also be carried forward for not more than two recruitment years, beyond the year to which the recruitment relates, where after the vacancies, if any, still remaining unfilled, belonging to one mode of recruitment, shall be

transferred as additional vacancies for the other mode of recruitment"; (ii) in sub-rule (2), for the first proviso, the following shall be substituted, namely:-

"Provided that if any person appointed to the Assistants' Grade is considered for promotion to the Section Officers' Grade in any cadre under this rule, all persons senior to him in the Assistants' Grade in that cadre and belonging to the Scheduled Castes."

6. A reading thereof would indicate that the number of the vacancies to be filled by the substantive appointment of persons included in Select List for the Section Officers' Grade in a recruitment year in a cadre, shall be proportionate to vacancies reported by that cadre to the Department of Personnel and Administrative Reforms to be filled by direct recruitment for the year. Provided further that if sufficient number of candidates are not available for filling up the vacancies in a cadre, in any recruitment year, either by direct recruitment or by appointment of persons included in the select list for Section Officers' grade, i.e. by promotion the unfilled vacancies shall also be carried forward for not more than two recruitment years, beyond the year to which the recruitment relates, where after the vacancies, if any, still remaining unfilled, belonging to one mode of recruitment, shall be transferred as additional vacancies for the other mode of recruitment. In other words, where sufficient number of direct recruit candidates for the unfilled vacancies are not available for two recruitment years prior to the recruitment year, all unfilled vacancies will be thrown open to the respective quotas, namely, by promotions and vice versa, as the case may be. In that view of the matter, this Court held in Amrit Lal's case as under:

"In spite of the decisions of this Court referred to above, some of the promotee officers in this cadre went before the Central Administrative Tribunal raising a fresh dispute on what may be said to be a covered field. The Tribunal had the handicap of a binding judgment in the field; yet on the basis of materials placed before it, it came to conclusions partly different from what had been reached by this Court and; rendered a judgment which is impugned before us in this group of case. We have heard parties at considerable length in the month of January this year and thereafter when we were satisfied that the representation made to this Court on the earlier occasion that there existing a seniority list was perhaps not correct, we called upon the Union of India to draw up such a list and for that purpose we adjourned the proceedings for a considerable period of time, it is not disputed that with the assistance of both the sides such a list has now been drawn up. We have again heard counsel appearing on the two sides and even allowed oral arguments to be addressed by an intervener in person. This Court has repeatedly noticed the fact that public officers are more in Court than in their offices. With a view to doing complete justice to the matter and being assured by counsel on either side and the representatives who have filled our Court hall that if a seal be given to this litigation, our expectation that Government business shall now be carried on and not litigation hereafter, we have agreed to make this further order providing certain guidelines for updating/modifying the list which was drawn up as referred to above. We are of the opinion that with a view to doing complete justice to the situation, the December 1984 Rules should be made operative from 1.7.1984 instead of 1.7.1985. These Rules have now a limited provision of carry forward of vacancies to be filled up by direct recruits and that is a two years period. The entitlement to substantive recruitment to the cadre is on an eight years period of qualifying service, Entitlement as qualified officers in the field is one matter and recruitment into the cadre on substantive basis is another. It may be

noted that 20% is reserved for the direct recruits and the remainder is available to the promotees. We do not consider it appropriate to dispose of the matter now and leave the litigant again to come in some form. Therefore, we adjourn these proceedings by two months and require the Union Government to update/modify the list scrupulously following every provision of the relevant rules and the regulations and place the list for consideration of the Court on the adjourned date. A copy of the list as prepared may be served on the counsel for either side a week in advance so that they would be in a position to make their representations on that date."

7. In the light of these directions, it is obvious that the Government of India had prepared the seniority list. The contention of the promotees which was found acceptable to the Tribunal that preceding the date of amendment the Government was devoid of power to carry forward all unfilled vacancies to the direct recruits and that all these vacancies are meant to be thrown open to the promotees, is clearly a misinterpretation of the rules and on that basis the directions came to be issued by the Tribunal. This Court had suggested on earlier occasion that vacancies meant for the direct recruits may be carried forward for two years after the recruitment year and thereafter the unfilled vacancies would be thrown open to the respective cadres. Under these circumstances, the view of the Tribunal is clearly illegal, unfortunately, the Tribunal has wrongly stated that if they commit mistake, it is for this Court to correct the same. That view of the Tribunal is not conducive to the proper functioning of judicial service. When a patent error is brought to the notice of the Tribunal, the Tribunal is duty bound to correct, with grace, its mistake of law by way of review of its order/directions.

8. The appeals are accordingly allowed. The impugned order of the Tribunal is set aside. As a result, the seniority list prepared by the Central Government needs to be redone as per the law now declared. No costs.