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M.S. USMANI AND ORS.

v.

UNION OF INDIA AND ORS.

DECEMBER 14, 1994

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[R.M. SAHAI AND N.P. SINGH, JJ.]

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SERVICE LAW : Indian Railway Establishment Manual—Para 123—Recruitment of Traffic Apprentice—Employees selected and appointed by a competitive examination against 10% quota reserved for graduates—Promoted to a higher scale of pay—Whether could be reverted subsequently on assumption that the entire process of selection and appointment was against the rules—Held Reversion order not only unjust but vitiated by error of law.

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In 1968 the Railway Board introduced a scheme under para 123 of the Indian Railway Establishment Manual in which provision was made for recruitment of Traffic Apprentices to the extent of 25% in various supervisory posts in the Transportation Department of the Railway and 15% through agency of the Railway Service commission and 10% from amongst the serving non-ministerial graduates of Transportation Department, through open market to be filled on the basis of limited Departmental Competitive Examination. The Departmental examination was to be conducted strictly in order of merit by subjecting candidates to written test and *viva-voce*. The Railway Board issued another letter communicating its decision that 10% of the annual vacancies in the category of Section Controllers, Station Masters (SMS) and Assistant Station Master's (ASMS) grade Rs. 470-700 and Rs. 455-700 were to be filled in through departmental competitive Examination from Class-III non-Ministerial staff who were graduates and less than 33 years of age. Selection was done accordingly.

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The selection list itself indicated the designation of candidates and the category for which they were selected. The list also contained names of those ASMS who were in the scale of Rs. 425-640 but as consequence of Selection they were placed in the scale of Rs. 455-700 as S.M. Many of the appellants so selected and appointed were further promoted as SMS/TIS in the scale of 55-750 (revised scale Rs. 1600-2660).

In August 1983 Grade C and D posts in the Northern Railway were restructured with reference to cadre strength as it existed on 1.8.83. It provided for grant of proforma benefit from 1.8.1982 to the staff eligible for higher grade. Consequent to the restructuring all these ASMs who were working in the grade of Rs. 330-560 and were graduates and had worked earlier with appellants but had not appeared in the competitive examination or had appeared and failed stood upgraded and were placed in to scale of Rs. 425-700 for ASMs. A B

In 1987 the appellants were promoted in the higher grade of Rs. 1600-2660. Some of them were appointed as TIS. In May 1987 the Railway Board issued a circular that fresh recruitment to the post of Traffic Apprentice would be placed in the scale of Rs. 1600-2660, whereas those who were already serving as Traffic Apprentices shall be in the scale of Rs. 1400-2300. Therefore for the same post of Traffic Apprentice two scales were provided which was challenged before the Central Administrative Tribunals in different States on the ground of discrimination. The Tribunal upheld the challenge and the order became final as S.LP against that order was dismissed. C D

After 4 years such of those ASMs, who as a result of restructuring were allowed the same scale as was applicable to S.Ms approached the Railway Authorities through Railway men's Union claiming that the post of SMs in the post of Rs. 1600-2660 be filed in by invoking the principle of pro-rata. The same was rejected. Thereafter the Union approached the Head Quarters which rejected the claim holding that the Selection of the appellants in September 1984 was illegal, restructuring having been done on 1.8.83. In consequence of this decision the appellants were reverted to the grade Rs. 1400-2300 and were placed below all the ASMs in the panel on 1.8.83 for the purpose of seniority. E F

Aggrieved by the said order, the appellants approached the Tribunal. The Respondents got impleaded in the petition at their instance. Tribunal rejected the contention of appellant and dismissed the application against which the present appeal have been preferred. G

Allowing appeals, this Court

HELD :1. The selection in 1982 was held for the posts earmarked for SM. The Selection and appointment of the appellants, therefore could not be said to be against rules. Another aspect which needs be clarified is about status promotion. According to respondents the H

- A appointment of appellants could be made only in the grade of Rs. 425-640 and they could not be promoted in the grade of Rs. 455-700.

[578 H, 579 A]

- B 2. Restructuring was done to upgrade certain percentage of posts in each grade of ASM and SM. The percentage was to be worked out of the cadre in each category as it existed on 1st August 1983. This upgradation had nothing to do with 10% graduate quota. But some difficulty does arise as paragraph 3 of the restructuring order provided that vacancies arising after July, 1983 would be filled in accordance with the procedure provided in the circular. This gave rise to arguable issue whether the vacancies for which selection was held in 1982 and all processes of selection had been completed in June, 1983 except the declaration of panel could be said to be available on 31st July 1983.

[581 G to H]

- D 3. The reversion order issued by the Railways appears not only to be unjust but vitiated by error of law. It was passed without affording any opportunity of hearing to the appellants. The appellants had been selected through a competitive merit examination. Their selection was not challenged. They had been regularized and had been promoted to even higher grade on the basis of suitability test. Reverting such persons after a laps of six years from the date of their selection, five years from the date of their appointment and two years from the date of their promotion in the higher scale, was not warranted. The appellants having been regularized as SMs and promoted further as TIs it was not open either for other Railways to re-open the selection held earlier or for other employees to agitate that the selection held in 1982 was vitiated as the panel was announced after the cadre had been restructured. [582 C to D]

- F 4. The order passed by the Tribunal is set aside and the order issued by the Railways in 1989 reverting the appellants is quashed. They shall also be entitled to consequential benefits. [582 F]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 9177-78 of 1994.

- G From the Judgment and Order dated 23.2.1993 of the Central Administrative Tribunal, Lucknow in O.A.Nos. 162 and 28 of 1990.

Afzal and R.D. Upadhyay for the Appellants.

- H Ms. Kitty Kumar Manglam, Arivind Kumar Sharma, C.V. Subba Rao and S. Murlidhar for the Respondents.

The Judgment of the Court was delivered by

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R.M. SAHAI, J. The question of law that arises in these appeals directed against order of Central Administrative Tribunal, Lucknow Bench, is whether the appellants who were selected and appointed by a competitive examination against 10% quota reserved for graduates and were promoted even to a higher scale of pay could have been reverted subsequently, on assumption that the entire process of selection and appointment was against the rules.

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Facts as they emerge from the order passed by the Central Administrative Tribunal and the affidavits filed by the parties, more particularly the Railways, are narrated in brief. In 1968 the Railway Board introduced a scheme under para 123 of the Indian Railway Establishment Manual in which provision was made for recruitment of Traffic Apprentices to the extent of 25% in various supervisory posts in the Transportation Department of the Railways. In 1972 the scheme of 25% was bifurcated pursuant to the decision taken in the Departmental Council of the Ministry of Railways under the Joint Consultative Machinery Scheme and it was decided to recruit the Traffic Apprentices by two methods— 15% through agency of the Railway Service Commission and 10% from amongst the serving non-ministerial graduates of Transportation Department, through open competition to be filled on basis of Limited Departmental Competitive Examination. It further provided that the departmental examination was to be conducted strictly in order of merit by subjecting candidates to written test and *viva voce*. On 22nd July, 1975 the Railway Board issued another letter communicating its decision that 10% of the annual vacancies in the category of Section Controllers, Station Masters (SMs), and Assistant Station Masters (ASMs) grade - Rs. 470-700 and Rs. 455-700 were to be filled in through departmental competitive examination from Class - III non-Ministerial Staff who were graduates and less than 33 years of age. It was reiterated on 18th March, 1976. The copy of the letter is extracted below:

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“In terms of Railway Board’s letter No. E (NG) 72 RRI/18 dated March, 1972 circulated vide this office letter No. 220-E/172 Pt.XI (Rectt) dated June, 1972, 10% of the annual vacancies in the category of SM’s/ASM’s/AYM’s and Section Controllers gr. Rs. 250-350 (As) are to be filled in through a departmental competitive examination from Class - III non-ministerial staff who are graduates and less than 33 years of age.

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- A It has been decided that the staff selected against 10% vacancies in the transportation Deptt. referred to above will be trained in a Special Course, the syllabus for which is under compilation in this office in consultation with the Principal Zonal Training School, Chandausi. The selected staff may be booked for training courses as and when the syllabus of the case is finalized and issued by this office."
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- C It is thus clear that the selection of Traffic Apprentices for placing them in various supervisory posts came to be extended to SM as well at least from 1975. The selection against 10% quota to fill up the vacancies in the category of SM/ASM/TI/AYM and SCNL in the grade Rs. 455-700 was initiated on 31st July, 1982. The break-up of the vacancies for which the selection was held was :

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|---|----------------------------|-----|-----|--------------------------|
| | "1. Station Master, | Gr. | Rs. | 455-700 (RS) - 11 |
| D | 2. Asstt. Station Master " | " | " | - Nil |
| | 3. Asstt. Yd. Master Gr. | " | " | " - One |
| | 4. Traffic Inspector | " | " | " - One |
| | 5. Section Controller | | | Rs. 470-750 (RS) - Three |
| E | | | | Total - Sixteen" |

- F It is thus too late to claim, as has been attempted by the private respondents, that the selection against 10% reserved for graduates was not held or could not have been held for the post of SM. The letter selecting the appellants on 27th September, 1983 is extracted below:

- G "As a result of the Selection held for the above posts on 2.2.83, 17.4.83 and 29.6.83, the following staff found suitable for the posts shown against each have been placed on the provisional panel of 10% graduate quota in accordance with their merit position in respective categories :—

- T.I.
- | S.No. | Name | Designation | Category earmarked |
|-------|-----------------|-------------|--------------------|
| H 1. | Shri R.C. Gupta | ASH/LIJ | T.I. |

STATION MASTER

S.No.	Name	Designation	Category earmarked
2.	Shri M.S. Usmani	ASM/MLJ	S.M.
3.	Shri Rajendra Pd. Singh	ASM/BKSA	S.M.
4.	Shri J.R. Mourya	ASM/FD	S.M.
5.	Shri S.J. Singh	LR/ASM/LKD	S.M.
6.	Shri S.S. Singh	ASM/DELD	S.M.
7.	Shri D.K. Kharey	ASM/HCP	S.M.
8.	Shri Gyan Prakash Srivastava	ASM/LRD	S.M.

SECTION CONTROLLER

9.	Shri Vinod Kumar	THC/LKD	SCNL
10.	Shri Krishna Pd. (SC)	THC/BSB	SCNL

The above staff should note that the retention of their names on the panel is subject to their work remaining satisfactory during the currency of the panel and qualifying R.29 A and B courses. Mere fact that their names have been placed on the panel is no guarantee that they will be offered the post for which selected."

What is necessary to be mentioned is that this list itself indicates the designation of candidates and the category for which they were selected. For instance No. 1 was working as ASM/LIJ and was selected for T.I. Similarly No. 2 to 8 working as ASM were selected for SM and No. 9 and 10 who were THC were selected for SCNL. The appellants according to the counter-affidavit of Railways were given training of one year as provided by letter No. 757E/102-I(EIb) dated 17th April, 1976. They were appointed on 19th November, 1984 on various posts for which they were selected. Even in the appointment letter the details were mentioned. For instance Usmani was shown as Assistant Station Master/MNJ in existing grade and in the column of new designation and station of posting it is mentioned SM/UTR - Rs. 455-700. The list also contained names of those ASMs who were in the scale of Rs. 425-640 but as a consequence of selection they were placed in the scale of Rs. 455-700 as SM. Many of the appellants so selected and appointed were further promoted as SMs/TIs in the scale of

A Rs. 550-750 (revised scale Rs. 1600-2660). Some of them were even selected and sent to Iraq for Iraq Rail India Technical Economic Services in 1988. The averments in the counter affidavit filed by Railways is extracted below:

B "It is however stated that the first part of the panel of the aforesaid selection was declared on 27.9.83 in which one person was earmarked for the post of Traffic Inspector, seven persons were earmarked for the post of Station Master Gr. Rs. 455-700(RS) and two persons were earmarked for the post of Section Controller in Gr. Rs. 470-750 (RS). The remaining part of the panel was announced on 12.8.87 after getting the approval of competent authority for de-reserving the six posts of SC/ST quota.

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D The incumbents on the panel formed against 10% graduate quota were imparted the pre-requisite training and were posted in their respective cadres after being declared successful and were allowed to reckon the seniority from the date of joining in the cadre in terms of para 302 of IREM. The applicants were promoted to Gr. Rs. 1600-2660 (RPS) by virtue of their position in the cadre of Station Master which was assigned to them by operation of para 302 of IREM."

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F The eligibility of the appellants, their selection and appointment as SM and further promotion as SM/Traffic Inspector cannot be disputed. Nor it can be disputed that they after selection were given training and regularized in the post of SM. Even the Tribunal found this and noticed that they were given seniority in accordance with paragraph 302 of the Establishment Manual. But the Tribunal did not accept the case of the appellants as in consequence of restructuring of C and D posts the reservation of posts for graduates came to an end and seniority of the appellants after restructuring was contrary to Railway Establishment Code 302. Before proceeding further it is necessary to mention that the respondents who were impleaded before the Tribunal, at their own instance, relied vehemently on paragraph 123 of the Railway Manual and urged that the Traffic Apprentices could be selected for certain posts but not for the post of SM. The claim proceeded on misapprehension as it did not take note of the letter issued in 1972, 1975 copies of which have been filed with the counter affidavit of the Railways. The selection in 1982 as is clear from the affidavit of Railways was held for
H the posts earmarked for SM. The selection and appointment of the

appellants, therefore, could not be said to be against rules for this reason. A
 Another aspect which need be clarified is about status promotion.
 According to respondents the appointment of appellants could be made
 only in the grade of Rs.425-640 and they could not be promoted in the
 grade of Rs. 455-700. But that stands belied as the selection of the appel-
 lants was held for SM in the scale of Rs. 455-700.

The reason for reversion of the appellants may now be examined and B
 whether it was well founded. In August, 1983 C and D posts in the
 Northern Railway were restructured. It came into effect on 1.8.1983. The
 restructuring was done with reference to cadre strength as it existed on
 1.8.1983. It provided for grant of proforma benefit from 1.8.1982 to the C
 staff eligible for higher grade. The restructuring in the category of
 SM/ASM was in two groups depending upon whether existing cadres or
 SM/ASMs was separate or combined. It was further provided that revised
 percentage would be allotted depending upon whether the existing structure
 was combined or separate, since different practices were in vogue in
 different zones. In consequence of restructuring it appears all those ASMs D
 who were working in the grade of Rs. 330-560 and were graduates and had
 worked earlier with appellants but had not appeared in the competitive
 examination or had appeared but failed stood upgraded and were placed in
 scale of Rs. 425-700 for ASM.

Till 1987 there was no dispute and the Railways and the employees
 both understood that those who had come by way of selection against 10% E
 quota in September, 1983 and those who came by way of restructuring
 were in their respective positions and there was no occasion for grievance
 as each was placed in the same scale of pay.

In 1987, the appellants were promoted in the higher grade of Rs. 1600-
 2660 (Rs. 550-750). Some of them were appointed as TIs. The appointment F
 order of appellant No. 1 is extracted below:

“A. As the result of suitability test for the post of Traffic-
 Inspector in grade Rs. 1600-2660. The following two
 candidates have been found suitable and are placed on this
 select list in order of their seniority. G

1. S/Shri M.S. Usmani, SM/LKO
2. S/Shri R.D. Jaiswal, SCNL/LKO

B. Consequent on the placement of above named staff on the select
 list for the post of Traffic-Inspector in grade Rs. 1600-2660, S/Shri H

- A M.S. Usmani, SM/LKO and R.D. Jaiswal, SCNL/LKO are promoted and posted as Traffic-Inspector PBH and REL respectively in grade Rs. 1600-2660.”

- B At this stage when the appellants were selected and placed in the scale of Rs. 1600-2660 (Rs. 550-750) another controversy arose which even though not relevant may be mentioned as it probably furnished the occasion for beginning of what ultimately led to the reversion order of the appellants. In May, 1987 the Railway Board issued a circular that fresh recruits to the post of Traffic Apprentice would be placed in the scale of Rs. 1600-2660 whereas those who were already serving shall be in the scale of Rs. 1400-2300 (Rs. 425-700). This resulted in discrimination between the two classes of the same employees. Therefore, many of the persons affected approached the Central Administrative Tribunal and different tribunals in different States allowed their claim and directed that all those Traffic Apprentices would be entitled to be placed in the scale of Rs. 1600-2660 with effect from 15th May, 1987. The order of the Tribunal became final as the Special Leave Petitions filed against some of the orders passed by the tribunals were dismissed by this Court. When the appellants thus became entitled for scale of Rs. 1600-2660 with effect from 15th May, 1987 those ASMs who as a result of restructuring of the grade had been placed in the same scale of ASM as was being drawn by the appellants as SM approached after four years through Railwaymen's Union and made a demand in 68th Permanent Negotiating Meeting that the post of Station Master in grade Rs. 1600-2660 may be filled by invoking the principle of pro-rata, that is, the ratio of 1:17. In other words 1 should be promoted from the grade of SM and 17 should be promoted from the grade of ASMs. This demand was rejected by D.R.M., Lucknow as the pro-rata principle was not applicable. The Union having failed at the divisional level raised the issue at headquarter. What is significant to be mentioned is that the Union never claimed that the selection or appointment of the appellants was illegal or irregular. It agitated for applicability of pro-rata principle for promotion to the higher post. It appears on the representation made by the Union comments were invited from the D.R.M., Lucknow who apprised the headquarter that promotion as SM through selection against 10% reserved for graduates was due from 1979. It was further pointed out that the cadre of ASM grade Rs. 1400-2300 and SM Rs. 1600-2660 were separate. The respondents did not accept the claim of Union of granting promotion to the higher scale on pro-rata basis. But they held that the entire selection of the appellants in September, 1983 was illegal as the restructuring having been done on 1st August, 1983 the appointment of appellants in September, 1984 was contrary to restructuring. It was in consequence of this decision that the
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appellants were reverted from the post of SM/TI grade Rs. 1600-2660 to the post of ASM grade Rs. 1400-2300 and placed below all the ASM in penal on 1st August, 1983 for the purposes of seniority. A

On these facts and in the circumstances of the case two questions arise for adjudication— one, whether selection and appointment of the appellants in pursuance of examination held in 1983 could be said to be illegal or against the rules in view of restructuring of grade C and D staff and second, whether even if it was so could the appellants be reverted even though they had moved higher in the hierarchy and had been promoted to higher scale of SM or TIs. It was submitted by the learned counsel for appellants that the appellants having been selected and appointed as Station Masters through a competitive examination in which others either did not appear or failed they could not have been reverted to a post below the post in which they had been regularized. It was urged that even though the appellants had been selected for the post of SM in the grade of Rs. 455-700 (revised scale— Rs. 1400-2300) but they having been appointed in the higher grade of Rs.470-750 (revised scale- Rs. 1600-2660) after suitability test the Railways were not justified in either reverting them or setting aside selection after a lapse of nearly six years. It was urged that even if for any reason the appellants were reverted from the higher post they could not be pushed down below the ASMs and their placement below all the ASMs promoted as a result of restructuring was arbitrary. This according to appellant had resulted even in disturbing the original seniority of the appellants as ASM prior to selection which was contrary to the rules. It was urged that the respondents wrongly construed the restructuring circular as what was provided therein was that a panel of non-selection post would lapse in consequence of restructuring. But this could not apply to the selection of SMs which was a selection post both before and after restructuring. It was also urged that in any case the appellants having moved up higher in hierarchy the setting aside of their selection and appointment which was otherwise in accordance with law only because of the restructuring G.O. relating to grade C and D, Railways was unfair. B
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Restructuring was done to upgrade certain percentage of posts in each grade of ASM and SM. The percentage was to be worked out on the cadre in each category as it existed on 1st August 1983. This upgradation had nothing to do with 10% graduate quota. But same difficulty does arise as paragraph 3 of the restructuring order provided that vacancies arising after July 1983 would be filled in accordance with the procedure provided in the circular. This gave rise to arguable issue whether the vacancies for which selection was held in 1982 and all processes of selection had been G
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- A completed in June 1983 except the declaration of panel could be said to be available on 31st July 1983. Much was said and could be said on behalf of the appellants but it is not necessary to express any opinion on various issues touching upon the applicability of the circular to the vacancies other than those which arose out of restructuring. Nor it is necessary to express any opinion on the clarification issued in August 1984 regarding 10% graduate quota and whether it could be confined to only those who had been sent for training prior to 1.8.1983 or it could be extended even to those who had been selected prior to this date as the appeal is liable to succeed on other ground.
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- C The reversion order issued by the Railways appears not only to be unjust but vitiated by error of law. It was passed without affording any opportunity of hearing to the appellants. The appellants had been selected through a competitive merit examination. Their selection was not challenged. They had been regularized and had been promoted to even higher grade on basis of suitability test. Reverting such persons after a lapse of six years from the date of their selection, five years from the date of their appointment, and two years from the date of their promotion in the higher scale, was not warranted. The appellants having been regularized as SMs and promoted further as TIs it was not open either for Railways to re-open the selection held earlier or for other employees to agitate that the selection held in 1982 was vitiated as the panel was announced the cadre had been restructured.
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- E Therefore, without deciding the larger issue and not as precedent we are of opinion that the appeals are liable to succeed. The order passed by the Tribunal is set aside and the order issued by the Railways in 1989 reverting the appellants is quashed. They shall be entitled to continue in their respective posts and shall also be entitled to consequential benefits.
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No Costs.

K.S.D.

Appeals allowed.