

BACHAN SINGH & ANR. A

v.

UNION OF INDIA & ORS.

March 17, 1972

[S. M. SIKRI, C.J., A. N. GROVER, A. N. RAY, D. G. PALEKAR B
AND M. H. BEG, JJ.]

Military Engineer Service Class I (Recruitment, Promotion, and Seniority Rules) 1951, Rule 3—Recruitment by interview whether recruitment by competition within meaning of rule—Quotas for promotion and confirmation of direct recruits and promotees—Direct recruits recruited whether could be confirmed in permanent posts earlier than promotees who had been promoted to Class I before their recruitment. C

The two appellants were promoted in the years 1958 and 1959 respectively to the Military Engineer Service Class I. Some of the respondents were appointed to the said class I Service after they had appeared at the competitive examination while the rest were appointed by direct recruitment after having been interviewed by the Union Public Service Commission. All the respondents were appointed to the service in the years 1962, 1963 and 1964. The respondents were confirmed in their posts before the appellants. The appellants filed writ petitions in the High Court which were dismissed. In appeal before this Court the appellants contended (i) that the respondents who were directly appointed to class I service by interview were not within the purview of recruitment to Class I service by competitive examination under the Military Engineer Service Class I (Recruitment Promotion and Seniority) Rules; (ii) that the respondents were recruited to Class I Service by interview and competitive examination after the appellant had been promoted to Class I service and were therefore not to be confirmed in permanent posts before the appellants. D

HELD: (i) The appointments to Class I Service by interview were made by the Government in consultation with the Union Public Service Commission. The selection was made by the Union Public Service Commission. The appointment by competitive examination proved fruitless. The country was in a state of emergency. The appointment and selection by interview was the only course possible. It could not be said that all appointments should have been made by promotion; that would not be in the interest of the service. The Service Rules were administrative in character. The Government relaxed the rules. The amendments of the rules in 1967 recognised the reality of the situation of appointment by interview. That is why the 1967 amendment recognised that 50% of "the direct recruit by competitive ad hoc appointments were to be reserved for graduate engineers who were commissioned in the Armed Forces on a temporary basis" Ultimately, when the rules were amended in 1969 and the rules became statutory in character, not only the recruitment by interview but also the relaxation of rules was regularised. The result is that the respondents who were appointed by interview fell within the Class I direct recruits. [901 F-902 A] E

(ii) The appellants could have no grievance with regard to confirmation. Departmental promotees had been confirmed against permanent posts within their quota in order of seniority. The departmental promotees who had been confirmed up to the year 1970 had been promoted to F

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A Class I Service before the appellants. On the other hand direct recruits consisting of those recruited by competitive examination as well as by interview had been confirmed against permanent vacancies within their quota. As a matter of fact between the years 1959 and 1963 inclusive the quota fixed for departmental promotees was increased from 10 to 50% and thereby confirmation of departmental promotees and direct recruits was equally balanced. [905 D-F]

B Accordingly, the appeal must fail;

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1499 of 1971.

Appeal from the judgment and order dated August 23, 1971 of the Delhi High Court in Civil Writ Petition No. 517 of 1971.

C *M. C. Chagla* and *R. Gopalakrishnan*, for the appellants.

Jagadish Swarup, Solicitor-General of India, *G. L. Sanghi*, *B. D. Sharma* and *S. P. Nayyar*, for respondents Nos. 1 and 2.

D *A. K. Sen* and *H. K. Puri*, for respondents Nos. 15, 39 to 48, 51, 103 and 123.

J. D. Jain, for respondent No. 55.

The Judgment of the Court was delivered by

E *Ray, J.* This in an appeal by certificate from the judgment dated 23 August, 1971 of the High Court of Delhi dismissing the writ petitions of the appellants.

F The two appellants were promoted in the years 1958 and 1959 respectively to the Military Engineer Service Class I (hereinafter referred to as the Class I Service). The appellant No. 1 joined the Military Engineer Service as a temporary overseer on 1 May, 1942. He was promoted to the grade of Superintendent Grade I on 1 May, 1949. In the month of April, 1957 he was selected to be promoted to the grade of temporary Assistant Executive Engineer in Class I Service and he was promoted in fact in the month of April, 1958.

G Respondents Nos. 4 to 21, 107 to 122 and 124 to 126 were appointed to the said Class I Service after they had appeared at competitive examination while the rest were appointed by direct recruitment after having been interviewed by the Union Public Service Commission. All the respondents were appointed to the said Class I Service in the years 1962, 1963 and 1964.

H The appellants contended first that the respondents who were directly appointed to Class I Service by interview were not within the purview of recruitment to Class I Service by competitive examination. The Military Engineer Service Class I (Recruitment,

Promotion and Seniority) Rules which came into force on 1 April, 1951 speak in rule 3 of recruitment to the Class I Service (a) by competitive examination in accordance with Part II of the Rules and (b) by promotion in accordance with Part III of the Rules. The appellants contended that appointment to Class I Service by interview was not one of the methods of recruitment contemplated in the Rules, and, therefore, the respondents who were appointed by interview could not be said to be validly appointed in accordance with the Rules.

The second contention of the appellants was that the respondents were recruited to Class I Service by interview and competitive examination after the appellant had been promoted to Class I Service and were therefore not to be confirmed in permanent posts before the appellants.

Class I Rules mention recruitment by competitive examination and by promotion. In 1961 on the results of the competitive examination no candidates were available for allotment to Class I Service against temporary posts. In 1962 there was a state of emergency. Engineers were immediately required to fill the temporary posts in Class I Service. To meet the emergency the Union Government in consultation with the Union Public Service Commission decided to recruit candidates by advertisement and selection by the Union Public Service Commission. The Government with the aid of selection and interview by the Union Public Service Commission directly recruited some respondents to Class I Service in the years 1962, 1963 and 1964. The candidates were selected after *viva-voce* examination.

It, therefore, follows that the method of recruitment by interview was adopted to meet the emergency specially when the mode of appointment by competitive examination failed. The candidates who were selected were put through a period of probation of 2 years. Only on a satisfactory completion of probation the candidates were allowed to continue in service. On completion of 3 years continued service in the grade and after qualifying the necessary departmental test the respective officers were declared quasi-permanent in the grade in terms of Central Civil Service (Temporary Service) Rules.

During the years 1962, 1963 and 1964 particularly and until the year 1969 the Class I Service Rules were not statutory in character. The Union Government relaxed the Rules both in regard to recruitment by interview and in regard to the quotas fixed by the Rules for direct recruitment and recruitment by promotion to Class I Service.

In the year 1967 rule 20 of Part II of Class I Service Rules was amended by introduction of sub-rules (h), (i), (j) and (k).

A Rule 20 referred to the period of probation in the case of recruitment by competitive examination. Sub-rule (i) stated that "50 per cent of the permanent vacancies to be filled through the competitive ad hoc recruitment conducted by the Commission after 17 May, 1963, shall be reserved for graduates engineers who are commissioned in the Armed Forces on a temporary basis during the present emergency and later released," subject to certain conditions enumerated therein. Rule 24 was also introduced by way of amendment in the year 1967. Rule 24 occurs in Part IV of the Rules. It may be stated here that Part II of the Rules deals with recruitment to Class I Service by competitive examination, Part III with recruitment to Class I Service by promotion and Part IV deals with miscellaneous Rules. Rule 24 stated that where the Central Government was of opinion that it was necessary or expedient so to do, it might by order, for reasons to be recorded by it in writing and after consultation with the Union Public Service Commission relax all or any of the rules with respect to any class or category of persons or posts.

D In 1969 the Class I Service Rules were amended. The important amendments were rule 4 and substitution of rule 21 in place of rules 21, 22 and 23. Rule 4 dealt with the quotas fixed for direct recruitment and promotion to Class I Service. The substituted rule 21 stated that appointment by promotion was to be made by selection and promotion was not to be as a matter of right. The real importance of the amendments of the rules in the year 1969 lies in the fact that the amendments were made by the President in exercise of the powers conferred by the proviso to Article 309 of the Constitution. As a result of the 1969 amendment it follows that the entire body of rules of Class I Service became statutory rules by incorporation.

F The appointments to Class I Service by interview were made by the Government in consultation with the Union Public Service Commission. The selection was made by the Union Public Service Commission. The appointments by competitive examination proved fruitless. The country was in a state of emergency. Appointment and selection by interview was the only course possible. It could not be said that all appointments should have been made by promotion. That would be not in the interest of the Service. The Service Rules were administrative in character. The Government relaxed the rules. The amendments of the rules in 1967 recognised the reality of the situation of appointment by interview. That is why the 1967 amendment recognised that 50 per cent of "the direct recruits by competitive/ad hoc appointment were to be reserved for graduate engineers who were commissioned in the Armed Forces on a temporary basis."

on a temporary basis." Ultimately, when the rules were amended in 1969 and the rules became statutory in character not only the recruitment by interview but also the relaxation of rules was regularised. The result is that the respondent who were appointed by interview fell within the class of direct recruits.

The only other contention on behalf of the appellants was that they were promoted to Class I Service in the years 1958 and 1959 respectively and were thus senior to the respondents who were recruited to the Service subsequently, and, therefore, the appellants should be confirmed in Class I Service in priority to the respondents. The promotion of the appellants was to temporary posts in Class I Service. The appellants were to be confirmed in permanent posts. The respondents who were appointed by competitive examination and by interview were also appointed to temporary posts. They were also to be confirmed in permanent posts after having served the period of probation in accordance with the rules. The recruitment to Class I Service during the years 1951 to 1958 was on the quotas fixed by rule 4 of the Class I Rules on the ratio of 10 per cent for departmental promotion and 90 per cent for direct recruitment. Though rule 4 fixed the quotas on the ratio of 10 per cent for departmental promotion and 90 per cent for direct recruitment the Union Government in consultation with the Union Public Service Commission relaxed the rules and revised as an interim measure the existing quota of 10 per cent of departmental candidates for promotion to 50 per cent in the years 1959 to 1963 inclusive. From 1964 to 1968 the quota fixed by rule 4 was followed again. Finally, in 1969 the rules were amended and the quota for departmental promotion was 25 per cent and for direct recruitment at 75 per cent.

In this background the recruitment against temporary posts between the years 1951 and 1971 was indicated by a chart prepared by the Government and accepted to be correct. The recruitment against temporary posts indicated the following features: Between 1951 and 1956 the total recruitment against temporary posts was 84 whereof 75 were allocated for direct recruits and 9 for departmental promotees. But in fact the recruitment by interview was for 29 and by departmental examination. During the years 1957 and 1963 the number of vacancies for recruitment to temporary posts was 675 whereof 339 were allocated for direct recruits and 336 for departmental promotees. Only 20 were recruited by competitive examination and 171 by interview and the remaining 484 were instances of departmental promotion. Between the years 1964 and 1968 the total recruitment was 264 whereof 238 were allocated for direct recruits and 26 for departmental promotees. In fact, recruitment was of 139 persons by

A competitive examination and of 98 by interview and 27 by departmental promotion. Between the years 1969 and 1971 there were 45 vacancies to temporary posts whereof 33 were allocated for direct recruits and 12 for departmental promotees. 11 were recruited by competitive examination and 34 were promoted departmentally. The recruitment against temporary posts during the years 1951 and 1971 shows that during the relevant years 1959 to 1963 the Union Government relaxed the quota and increased the quota of 10 per cent to 50 per cent for departmental promotion. It cannot therefore be said that any injustice was done to the departmental promotees or that any advantage was gained by the persons who were recruited by interview. It is because of the conditions of emergency that the quota for filling the temporary posts was half for departmental promotees and half for direct recruitment.

The confirmation against permanent posts was also in accordance with the quotas fixed by rule 4 for the years 1951 to 1958, namely, 10 per cent for departmental promotion and 90 per cent for direct recruitment. During the years 1959 to 1963 inclusive the Union Government in consultation with the Union Public Service Commission relaxed the quota rule and increased the quota for departmental promotees from 10 per cent to 50 per cent and reduced the quota of direct recruitment from 90 per cent to 50 per cent. In the year 1959 126 permanent posts were available whereof 63 were allocated for direct recruits and the other 63 were for departmental promotees. In 1960 there were 14 permanent posts and 7 were allocated for direct recruits and 7 for departmental promotees. Again, in 1961 there were 23 permanent posts available. 12 were allocated for direct recruits and 11 for departmental promotees. For 1962 there were 20 permanent posts whereof 10 were allocated for direct recruits and the other 10 for departmental promotees. In 1963 there were 11 permanent posts whereof 5 were allocated for direct recruits and 6 for departmental promotees. In 1964 there were 9 permanent posts whereof 8 were allocated for direct recruits and one for departmental promotee. In 1965 there were 15 permanent posts whereof 13 were allocated for direct recruits and two for departmental promotees. In 1966 there were 113 permanent posts whereof 82 were allocated for direct recruits and 11 for departmental promotees and 20 for released officers in accordance with the revised rule in the year 1967. In 1967 there were 45 permanent posts whereof 40 were allocated for direct recruits and 5 for departmental promotees. In 1968 there were 14 permanent posts available whereof 13 were allocated for direct recruits and one for departmental promotee.

The position with regard to filling of permanent posts shows that during the years 1951 to 1958 the quota was 10 per cent for

departmental promotees and 90 per cent for direct recruitment but during the years 1959 to 1963 the quota was changed with the result that half of the permanent posts were filled by departmental promotion and the other half by direct recruitment. From 1964 to 1968 the old quota of 10 per cent for departmental promotion and the remaining 90 per cent for direct recruitment was resorted to. In 1969 rule 4 was changed with the result that there were 25 per cent for departmental promotion and the remaining 75 per cent for direct recruitment. In the year 1959 the direct recruits who were confirmed in permanent posts were recruited by the Union Public Service Commission by interview during the years 1951 to 1956. In 1960 the direct recruits through interview who were confirmed had been selected through interview by the Union Public Service Commission between the years 1953 and 1956. In 1961 the direct recruits who were confirmed in permanent posts were those who had been selected by the Union Public Service Commission through interview during the years 1956 to 1957. In 1962 the direct recruits who were confirmed in permanent posts were those who had been selected by the Union Public Service Commission through interview during the years 1956 to 1958. In 1963 the direct recruits who were confirmed in permanent posts were those who had been selected by the Union Public Service Commission through interview between the years 1958 to 1961. In 1964 the direct recruits who were confirmed in permanent posts were those recruited in 1962 by the Union Public Service Commission through interview. In 1965 the direct recruits who were confirmed in permanent posts were those recruited by the Union Public Service Commission through interview in 1962 and 1963. In 1965 13 direct recruits were confirmed and they included some of the respondents. In 1966 82 direct recruits were confirmed against permanent posts and they were persons who had been selected by the Union Public Service Commission through interview during the year 1963 and they included some of the respondents.

In the year 1959 when the Government in consultation with the Union Public Service Commission revised as an interim measure the increase of the quota of departmental promotion of candidates from 10 to 50 per cent and followed that system up to the end of 1963 a question arose as to how the then existing permanent vacancies were to be filled and the Union Public Service Commission advised that the same might be filled by confirmation of direct recruits, namely, those recruited on the basis of competitive examination and by advertisement and selection and promotees in the ratio of 1 : 1. The advice of the Union Public Service Commission was accepted and the Departmental Promotion Committee acted on that basis. It is apparent that during those years there was a relaxation in the observance of rules in the case of appellants and the other departmental promotees. The Union Government

- A all throughout acted in consultation with the Union Public Service Commission. The departmental promotees gained considerable advantage by relaxation of the rules. The direct recruits were not shown any preference at all. The proportion of confirmation of departmental promotees and of direct recruits by interview was 1 : 1.
- B In the year 1967, the Government was again faced with the question of confirmation of direct recruits by interview as well as by competitive examination against permanent vacancies in the grade falling in the direct recruitment quota prescribed in the rules. The Union Public Service Commission advised that direct recruits
- C by interview and by competitive examination could be confirmed against permanent vacancies within the fixed quota of direct recruits. The result was that in 1969 the Class I Service Rules were amended and the quota for departmental promotion was raised from 10 to 25 per cent and the quota of direct recruits was reduced from 90 to 75 per cent.
- D The appellants can have no grievance with regard to confirmation. The departmental promotees have been confirmed against permanent posts within their quota in order of seniority. Departmental promotees who have been confirmed up to the year 1970 had been promoted to Class I Service before the appellants. On the other hand, direct recruits consisting of those recruited by competitive examination as well as by interview have been confirmed
- E against permanent vacancies within their quota. As a matter of fact between the years 1959 and 1963 inclusive the quota fixed for departmental promotees was increased from 10 to 50 per cent and thereby the confirmation of departmental promotees and direct recruits was equally balanced.
- F The direct recruits who were appointed by interview fell within the class of direct recruits. The quota fixed for direct recruits was never infringed by absorbing direct recruits by interview beyond the quota. The confirmation of direct recruits and departmental promotees against permanent vacancies was in accordance with the quota fixed. By reason of relaxation of rules in regard to increase
- G of quota for departmental promotees they gained advantage during the years 1959 to 1963 when because of the emergency direct recruits by interview were selected by the Union Public Service Commission.

H For the foregoing reasons the appeal fails and is dismissed. In view of the fact that there was no order as to costs in the High Court parties will bear their own costs.