

S. K. CHANDAN

v.

UNION OF INDIA & ORS.

October 12, 1976

[Y. V. CHANDRACHUD AND A. C. GUPTA, JJ.]

Indian Railway Establishment Code—Para 157—Whether the paragraph empowers the Railway Board to make rules for the gazetted Railway servants—Construction of para 157.

(ii) *Promotions—Right to promotion—Whether promotion of class III employees to class II is governed by “Advance Correction Slip No. 70” introducing w.e.f. March 11, 1973, new rules 324 to 328 and substituting a new rule 301 in Chapter III of the Indian Railway Establishment Manual—Scope and applicability of Rules 301 and 328(2), (4) and (5).*

(iii) *Indian Railway Establishment Manual—Whether Rule 328(2) providing for the invalidity of promotions made in the Diesel Locomotive Works from August 1, 1961 to March 11, 1973 casts an obligation on the Railway Board to recall all promotions and to form a fresh panel—Meaning of “promotion made in the Diesel Locomotive Works in Rule 328(2) and promotion to the higher grades in Rule 328(4).”*

Chapter II of the Indian Railway Establishment Manual deals with “Rules governing the provision of subordinate staff and Section A thereof deals with “promotion to class II posts.” The Railway Board by virtue of its power vested by para 157 of the Indian Railway Establishment Code, introduced w.e.f. March 11, 1973, an “Advance Correction Slip No. 70” substituting a new rule 301 and introducing new rules 324 to 328. Chapter III deals with the rules regulating seniority of non-gazetted Railway servants and the new rule 328(2) provided that selections and promotions made in the Diesel Locomotive Works from August 1, 1961 to March 11, 1973 shall not be valid.

The appellant, a member of the class III service serving with the Western Railway as a chargeman was transferred to the Diesel Locomotive Works in 1963 and was given the benefits of deemed dates of transfer as provided for in Rule 326(2). The appellant filed a writ petition in the Allahabad High Court praying for a writ of *mandamus* on the strength of the “Advance Correction Slip No. 70” praying for a direction to the respondent to hold selections to class II service. The application was rejected holding that the rules contained in Slip No. 70 did not govern the promotion of class III employees to class II.

Dismissing the appeal by special leave the court,

HELD: Though the Railway Board has the power to make rules governing both gazetted and non-gazetted Railway servants, the rules expressed to be made under paragraph 157 cannot, in the very nature of things, be intended to apply to gazetted Railway servants or to govern the promotion of non-gazetted Railway servants to gazetted posts. If the Railway Board has the power to make rules in regard to both gazetted and non-gazetted Railway servants, the signification of a limited source of power cannot whittle down the effective exercise of that power if the rules can reasonably be construed to cover both the gazetted and non-gazetted categories. [787 H, 788 A—B]

(2) None of the rules introduced by Slip No. 70 govern the promotion of a class III employee to a class II post. The amendments were made to Chapter III dealing with rules regulating seniority of non-gazetted Railway servants. It is in regard to that class of Railway servants that the Railway

- A Board made new provisions. The provisions contained in Chapter III including provisions newly introduced by Slip No. 70, are very clearly designed to govern the seniority and promotions of non-gazetted servants within the non-gazetted categories of posts. Chapter II Section A of the Manual in terms prescribes rules governing the promotion of subordinate staff to class II post. In view of the fact that the Railway Board has framed seven specific rules in Chapter II for the promotion of class III staff to class II post, the contention that the rules introduced by Slip No. 70 would also govern the same subject-matter cannot be accepted. In the instant case, since the appellant is working as a non-gazetted employe in class III, his promotion to a gazetted post in class II would be governed by Chapter II, Section A and not by Chapter III of the Railway Establishment Manual. [788 F—H, 789 A]

- (3) The words "promotions made in the Diesel Locomotive Works" which occur in Rule 328(2) must be construed as meaning "promotions made in the Diesel Locomotive Works from one category of non-gazetted post to another category of non-gazetted post." The words "promotion to the higher grades" occurring in para 328(4) mean promotion to a class II post. The words promotion to the higher grades must, in the context mean promotion to any of the higher grades in the non-gazetted category. The contention that Rule 328(1) casts an obligation on the Railway Board to recall all promotions made from amongst class III servants to class II posts from August 1, 1961 to March 11, 1973 is misplaced. [789 B—C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 621 of 1976.

- D Appeal by Special Leave from the Judgment and Order dated 12.1.1976 of the Allahabad High Court in Civil Misc. Writ Petition No. 7183 of 1975.

Appellant in person.

- E *V. P. Raman, Addl. Sol. Genl. and Girish Chandra, for respondent No. 1.*

Yogeshwar Prasad, Lalji Sinha and Miss Rani Arora, for respondent No. 5.

The Judgment of the Court was delivered by

- F CHANDRACHUD, J.—Respondent 1, the Union of India, established the Locomotive Component Works at Varanasi in 1956 for manufacturing component parts of locomotives. That manufactory merged in 1961 with the Diesel Locomotive Works. The appellant, S. K. Chandan, who was serving with the Western Railway as a Chargeman was transferred in 1963 to the Diesel Locomotive Works in the grade of Rs. 375-475 which he was holding at the time of his transfer as a member of the Class III service. The question which arises in this appeal concerns the claim of the appellant to be promoted to Class II service.

- H In 1975 the appellant filed the present writ petition in the Allahabad High Court asking for the writs of *Certiorari* and *Mandamus*. We are now concerned with the grant of the latter writ only by which the appellant prayed, *inter alia*, that respondent 1 be directed to hold selections to Class II service in accordance with the "Advance Correction Slip 70." This particular prayer was rejected by the High Court by

its judgment dated January 12, 1976 on the view that rules contained in Slip 70 did not govern the promotion of Class III employees to Class II. Aggrieved by the aforesaid decision the appellant has filed this appeal by special leave of this Court. The leave is restricted to the question whether the promotion of Class III employees to Class II is governed by Slip 70.

Paragraph 105 of the Indian Railway Establishment Code (Vol. I) divides railway services into two categories gazetted and non-gazetted. Services in Classes I and II are gazetted whereas those in Classes III and IV and the services of the Workshop Staff are designated as non-gazetted. Paragraph 157 of the Code confers on the Railway Board "full powers to make rules of general application to non-gazetted railway servants under their control." Acting in pursuance of this power, the Railway Board has framed rules which are to be found in the "Indian Railway Establishment Manual." Chapter I of those rules deals with questions relating to recruitment, training, confirmation and re-employment. Chapter II which is headed "Rules governing the promotion of subordinate staff" consists of two sections, 'A' and 'B'. Section 'A' deals with "Promotion to Class II posts" while section 'B' contains "Rules governing the promotion of subordinate staff. Chapter III is headed "Rules regulating seniority of non-gazetted railway servants."

Originally, Chapter III contained rules 301 to 323. The Advance Correction Slip No. 70, also issued by the Railway Board in exercise of its powers under Paragraph 157 of the Railway Establishment Code, substituted a new rule 301 for the existing rule and it introduced five new rules in Chapter III, namely rules 324 to 328. The contention of the appellant which requires examination in this appeal is that his promotion to Class II is governed by the rules introduced by Slip No. 70 which came into force on March 11, 1973.

The appellant, who argued his own case before us with quite some industry and plausibility, did not dispute that rules 324, 323, 327, 328(1) and 328(3) have no application to this case. Rule 326(2) which prescribes deemed dates of transfers would apply but has been concededly complied with, the appellant having no grievance in regard to the fixation of the deemed date of his transfer to the Diesel Locomotive Works. Keeping these provisions apart, the question boils down to the applicability of rules 301 and 328(2), (4) and (5).

The appellant's argument that the rules introduced by Advance Correction Slip 70 govern his right to promotion to Class II is plainly misconceived. In the first place, the rules introduced by Slip No. 70 were made by the Railway Board in exercise of its powers under Paragraph 157 of the Railway Establishment Code which empowers it to make rules of general application to "Non-gazetted railway servants" under its control. Though the Railway Board has the power to make rules governing both gazetted and non-gazetted railway servants, the rules expressed to be made under Paragraph 157 cannot in the very

A nature of things be intended to apply to gazetted railway servants or to govern the promotion of non-gazetted railway servants to gazetted posts. But this is a small point because if the Railway Board has the power to make rules in regard to both gazetted and non-gazetted railway servants, the signification of a limited source of power cannot whittle down the effective exercise of that power, if the rules can reasonably be construed to cover both the gazetted and non-gazetted categories.

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The true reason why it is impossible to accept the appellant's contention that his promotion to Class II is governed by the rules introduced by Slip No. 70 is that Chapter II, section A, of the Indian Railway Establishment Manual in terms prescribes rules governing the promotion of subordinate staff to Class II posts. The heading of Chapter II is : "Rules governing the promotion of subordinate staff" and section A of that Chapter bears the sub-heading "Promotion to Class II posts." Rule 201 which is the first of the Rules occurring in section A of Chapter II, provides :—

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D "The following provisions shall apply in respect of promotion of non-gazetted class III staff employed on Indian Railways or other Railway administrations to class II posts other than those in Railway Protection Force organization."

E Rule 202 prescribes conditions of eligibility, rule 203 deals with the size of panels of selection, rule 204 with the constitution of the selection boards, rule 205 with the procedure to be adopted by selection boards and rules 206 and 207 with the currency and formation of panels. These seven rules constitute a Code of rules governing the promotion of the non-gazetted Class III staff to Class II posts, other than those in the Railway Protection Force. In view of the fact that the Railway Board has framed these specific rules for the promotion of Class III staff to Class II posts, it seems to us difficult to accept that the rules introduced by Slip No. 70 would also govern the same subject matter.

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The Advance Correction Slip No. 70 introduced amendments to Chapter III and not to Chapter II of the Manual. Chapter III deals with rules regulating seniority of non-gazetted railway servants and it is in regard to that class of railway servants that the Railway Board made new provisions through Slip No. 70. The provisions contained in Chapter III, including the provisions newly introduced by Slip No. 70, are very clearly designed to govern the seniority and promotion of non-gazetted servants within the non-gazetted categories of posts. The non-gazetted railway service consists of Class III and IV employees and of the Workshop staff. Within each of these three classes there may be different grades of railway servants and the rules in Chapter III are intended to govern the *inter se* seniority and the promotion of a railway employee from one category of non-gazetted post to another category of a non-gazetted post. The

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rules in Chapter III cannot therefore govern the promotion of non-gazetted railway servants to gazetted posts. Since the appellant is working as a non-gazetted employee in Class III, his promotion to a gazetted post in Class II would be governed by Chapter II, section A, and not by Chapter III of the Railway Establishment Manual.

Rule 301 of Chapter III, as introduced by Slip 70, provides in terms that the rules contained in the particular Chapter lay down general principles that may be followed for determining the seniority of non-gazetted railway servants and that rules 324 to 328 of that Chapter shall apply for the purpose of determining the seniority and promotion of non-gazetted employees of the Diesel Locomotive Works. The appellant relied very strongly on rule 328(2) which provides that selections and promotions made in the Diesel Locomotive Works from 1-8-1961 to the date on which Slip No. 70 came into force, namely March 11, 1973, shall not be valid. He urges that this provision casts an obligation on the Railway Board to recall all promotions made from amongst Class III servants to Class II posts from August 1, 1961 to March 11, 1973 and that therefore those who are already promoted to gazetted posts ought to be demoted and a fresh panel must be formed for selection to Class II posts from amongst employees working in Class III posts. The infirmity of this argument is that Chapter III applies only to non-gazetted servants and to their *inter se* promotion and therefore the words "promotions made in the Diesel Locomotive Works" which occur in rule 328(2) must be construed as meaning "promotions made in the Diesel Locomotive Works from one category of non-gazetted post to another category of non-gazetted post". The same answer would effectively meet the contention of the appellant that the words "promotion to the higher grades" occurring in paragraph 328(4) mean promotion to a Class II post. The words "promotion to the higher grades" must in the context mean promotion to any of the higher grades in the non-gazetted category. Rule 123(3) of Chapter I, Section B, Railway Establishment Manual, defines "grades" as sub-divisions of a class, each bearing a different scale of pay.

If the grievance of the appellant who holds a non-gazetted post in Class III, at all is or can be that he has not been promoted to Class II, he must show that the railway administration has violated some provision contained in Chapter II, section A, of the Railway Establishment Manual. It is useless and irrelevant for him to show that the provisions of Chapter III introduced by Advance Correction Slip No. 70 have not been complied with by the administration. None of the rules introduced by that slip governs the promotion of a Class III employee to a Class II post.

The High Court was accordingly right in refusing to issue a writ of *mandamus* directing the railway administration to apply the provisions of Chapter III in the matter of the appellant's promotion to a Class II post.

The appellant has filed a civil miscellaneous petition (7990 of 1976) complaining of adverse entries in his Service record and of the

- A** fact that he has been superseded in the matter of promotion. These very grievances were made by him in the High Court but he lost on those points. While granting special leave to appeal, this Court refused to consider the correctness of the High Court's findings on those issues. The leave being restricted to the question as regards the application of rules introduced by Advance Correction Slip No. 70, the appellant cannot be permitted to raise questions which must be taken as finally decided under the judgment of the High Court.
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For these reasons the appeal fails but there will be no order as to costs.

S. R.

Appeal dismissed.