

A **FEDERATION OF DIRECTLY APPOINTED OFFICERS OF INDIAN RAILWAY AND OTHERS ETC. ETC.**

v.

UNION OF INDIA AND ORS. ETC. ETC.

B **JUNE 18, 1993**

[A.M. AHMADI AND MADAN MOHAN PUNCHHI, JJ.]

Civil Services :

C *Indian Railway Service of Engineers, (Class-I)—Absorption of temporary Assistant Engineers (Officers) into the service—Seniority—Weightage—Half the length of service prior to absorption subject to a maximum of five years—Correctness of—Dispute between parties in representative capacity—Applicability of Res Judicata.*

D **There were two parallel Services of Engineers in the Indian Railways. One was the Indian Railway Service of Engineers (Class-I) who were subjected to competitive written and personality tests and appointed by the President of India. The other Service was the temporary Assistant Engineers (later known as Temporary Assistant Officers) appointed by the Railway Board, on selection based on interview alone. In addition to the minimum educational qualifications which was the same for both the services three years experience as Civil Engineer was required for the Railway Service of Engineers.**

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F **The temporary Assistant Officers were gradually absorbed into the Indian Railway Service of Engineers and the Railway Board took a decision that they would be given weightage in seniority on the basis of half the total length of continuous service in working posts in Railways prior to their permanent absorption into Class-I subject to a maximum weightage of five years.**

G **Writ Petitions were filed in this Court by the Federation of Temporary Officers Association in a representative capacity seeking relief in their seniority status.**

H **This Court dismissed the Writ Petitions holding that the classification of temporary Assistant Officers separate from the Indian Railway Service**

Engineers Class-I, was neither discriminatory nor violative of Articles 14 and 16 of the Constitution; and that the object of recruitment, methods of recruitment, appointing authority and training imparted being different, no question of their entitlement to equal rights arose till they were absorbed into the Indian Railway Service of Engineers Class-I. This Court also approved the measures of the Railway Board in regard to giving weightage of half the length of service as temporary Assistant Officers subject to a maximum of five years. Their claim for equal status for equal pay and equal work was also rejected. (*Katyani Dayal & Ors. v. U.O.I.* [1980] 3 SCR 139).

In the present Writ Petitions and Civil Appeals filed in a representative capacity, the relief claimed were on the same lines as in *Katyani Dayal's* case. As directed by this Court the affected parties were impleaded in their representative capacity, so that the decision of this Court would be binding on every member of both the classes of employees.

On behalf of the Petitioners/Appellants, it was contended that equal pay for equal work with equality in all other conditions of service including avenues of confirmation, absorption, promotion, pension and security have become inflexible postulates of service jurisprudence.

The respondents contended that what was being asked was a virtual review of *Katyani Dayal's* case which could not be permitted. It was also contended that principles of constructive *res judicata* would bar the re-agitation of the issues decided in *Katyani Dayal's* case if not the strict principles of *res judicata*; and that when the matter has been settled in this particular service, its unsettling by means of a petition under Article 32 of the Constitution was impermissible.

Dismissing the matters, this Court

HELD : 1. The distinction between the two services was well marked in *Katyani Dayal's* case and the important question of equality was once for all settled. To find fault with it, at this juncture again on the touch-stone of equality dimension would be to unsettle a settled position. That venture is neither in the interest of justice nor in the interest of service. When there has been complete absorption of the personnel of one service into the other, and the seniority of the absorbees is to be reckoned from their date of absorption as stipulated in their appointment letters with weightage of half the length of

- A service subject to a maximum of five years, it would otherwise be imprudent now, at this point of time to dig up old issues. The rule of weightage also appears to be reasonable and this is a pattern which has been noticed and approved in many a Service. Similarly when the dispute raised between the Officers in a representative capacity and Engineers not so represented, still it was a dispute raised before this Court which has been decided finally. (1026 B-D)

Karyani Dayal & Ors. v. Union of India & Ors., [1980] 3 SCR 139, referred to.

- C 2. The dispute now sought to be raised under Article 32 of the Constitution between the Officers in a representative capacity and Engineers across also in a representative capacity is barred by principles of *res judicata* as also by the rule of constructive *res judicata*. (1026 D-E)

- D 3. It cannot be said that the State is prohibited from creating separate channels of service. Equally when absorption had been made possible and its pace quickened with weightage, it is difficult to find fault with the scheme at this point of time to look for a substitution, as that would unsettle a settled position, established more than a decade ago. (1026 E-F)

- E *Direct Recruit Class II Engineering Officers Association v. State of Maharashtra & Others*, [1990] 2 SCC 715, followed.

Raghunandan Prasad Singh v. Secretary, Home (Police) Department, Government of Bihar & Ors. [1988] Suppl. SCC 519 & *Dr. O.Z Hussain v. Union of India*, [1990] Suppl. SCC 688, referred to.

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CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) Nos. 7900-02 of 1982.

WITH

- G Writ Petition Nos. 837 & 853 of 1982.

(Under Article 32 of the Constitution of India)

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Civil Appeals Nos. 3137-38 of 1993.

From the Judgment and Order dated 26.7.84 & 27.7.84 of the Rajasthan High Court in D.B. Civil Special Appeal Nos. 182 & 184 of 1984. A

WITH

C.M.P. Nos. 19643-45 of 1988 & C.M.P. No. 8272 of 1986.

R.K. Garg, Aruneshwar Gupta, R.K. Kamal and S.K. Gupta for the Petitioners in W.P. Nos. 7900, 7902/82, SLPs. 12682/84, 830/85. and for the Respondent No. 4 in CA.No. 1649/78. B

T. Sridharan for the Petitioner in WPs. Nos. 837 & 853 of 1982.

M.K. Ramamurthi, and Parijat Sinha for the Appellants in CA. No. 1649/78 and for the Respondent No. 4 in WPs. Nos. 7900-02/82. C

R.F. Nariman and P.H. Parekh for the intervenor in WPs. Nos. 7900-02/82.

V.R. Reddy, Additional Solicitor General, V.C. Mahajan, Ms. B. Sunita Rao, V.K. Verma and Ms. A. Subhashini for the Respondent in U.O.I. D

C.V.S. Rao, (NP) for the Respondent in SLP Nos. 12682/84, 830/85.

C.V. Rappai for the Respondent No. 14 in WP. Nos. 7900-02/82. E

The Judgment of the Court was delivered by

PUNCHHI, J. These are a handful of writ petitions and special leave petitions which, on grant of leave hereby, and having become appeals, can conveniently be disposed of by a common judgment. F

The fulcrum of the controversy herein, and the shadow in which it works is a three-judge Bench decision of this Court in *Katyan Dayal & Ors. v. Union of India & Ors.* [1980] 3 SCR 139 decided on March 26, 1980. Before advertng to the facts and circumstances in which this cause has been presented to this Court it would be fruitful to give a broad outline of *Katyan Dayal's* case, in the immediately succeeding paragraphs. G

Connected with *Katyan Dayal's* case were writ petitions filed in a represen- H

A tative capacity, purporting to represent all temporary Assistant Engineers (on a later point of time known as temporary Assistant Officers) appointed by the Railway Board, pursuant to the authority given by the President of India, on the recommendations of the Union Public Service Commission; selection based on interview alone. There was a separate classification of such temporary Assistant Officers when compared with India Railway Service Engineers (Class I). Direct

B recruits to the Indian Railway Service of Engineers (Class I) were subjected to competitive written and personality tests and in the nature of things only the very best could emerge out successfully. On the other hand temporary Assistant Officers, (hereafter referred as 'Officers' at places) were neither subjected to written nor to a personality test but, as said before, were selected on the basis of

C interview. Besides the minimum educational qualification, which was the same for both the services three years experience as a Civil Engineer was additionally required for the aspirants to the Indian Railway Service of Engineers (Class I) (hereafter referred to as the 'Engineers' at places). While the President was the appointing authority of the Engineers, the Railway Board was the appointing authority of the Officers. Both the members of these services on selection were due

D for different courses of training earmarked separately. There were a host of other factors which distinguished the quality and character of the personnel of the two parallel services as elaborately detailed in *Katvani Dayal's* case (supra).

Between the years 1955 and 1964, as many as 553 officers (temporary Assistant Engineers) were appointed by the Railway Board through the Union

E Public Service Commission. Though in the letters of appointment the officers (temporary Assistant Engineers) and others concerned were told that six of them would be absorbed into the Indian Railway Service of Engineers (Class I) every year, this figure in the subsequent years was increased from time to time, when in 1975, the figure as increased stood at 25 per year. The net result was that after

F absorption, 107 Officers were residually left unabsorbed in the year 1976 by the time of the filing of the connected writ petitions in *Katvani Dayal's* case and they too were finally absorbed in 1979 by what was described as a "blanket order". Before hand on September 17, 1965, the Railway Board had taken a decision to the effect that the Officers so absorbed into the Indian Service of Engineers would be given weightage in seniority "on the basis of half the total years of continuous

G service in working posts in Railways prior to their permanent absorption into Class I, subject to a maximum weightage of five years". The then writ petitioners, describing themselves as members of the Federation of Temporary Officers Association, Indian Railways joining with them, their President, Vice-President

H and Secretary of the aforesaid Federation as writ petitioners approached this Court

in a representative capacity to seek relief in their seniority status. A

The principal claim of the writ petitioners was that Officers were appointed to temporary posts on the cadre of Engineers and that their seniority had to be reckoned on the basis of their length of continuous service, though they conceded that in any given year, the candidates appointed as Engineers on the basis of the results of the competitive examinations were placed above those appointed on the basis of selection by the Union Public Service Commission. The challenge was to the authority of the Railway Board to create such an unclassified parallel service, something outside the purview of the Indian Railway Establishment Board. Notwithstanding the procedure of selection so adopted the writ petitioners contended that they were recruited in Class I service and supported their claim on diverse grounds so as to obtain the result that all Assistant Engineers formed one class under the Indian Railway Establishment Board. Challenge was made to the classification of personnel into those that were recruited on the basis of the competitive examinations and those that were recruited by selection, but both by Union Public Service Commission, terming it as arbitrary and not permissible under the equality clause in the Constitution. Grievance was voiced that the right of absorption of a handful of temporary Engineers (Officers) every year into the Service of Engineers was arbitrary and inequitable resulting in grave injustice rendering decades of service of the Officers to a mere waste. B
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Unfortunately the then writ petitioners did not sue the respondents across in a representative capacity. In the fitness of things it would have been appropriate for the then writ petitioners to either involve all parties who could possibly have an interest or a likely affectation in the litigation, or to sue them in a representative capacity if not individually. However some people did get impleaded as parties in that case to project their point of view and due to the nature of dispute those predominantly were members of the Indian Railways Service of Engineers Class I. This Court while dismissing the writ petitions held that the classification of temporary Assistant Officers separately from the Indian Railway Service Engineers of Class I was neither discriminatory nor violative of Articles 14 and 16 of the Constitution, for the reason that it had nexus to the object sought to be achieved, which mainly was efficiency of service, and that both the services had started separately and never became one. This Court further viewed that the object of recruitment being different, the methods of recruitment dissimilar, the appointing authority being not the same, the training imparted to the two unlike, the tenure of temporary Assistant Officers being precarious, and their maximum aspiration being only to be absorbed into the Indian Railway Service of Engineers Class I. E
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- A were distinctive features and, therefore, no question of their entitlement to equal rights arose until and unless the temporary Assistant Officers got absorbed into the Indian Railway Service of Engineers Class-I. This court also ruled that the seniority of the absorbed temporary Assistant Officers would ordinarily reckon from the date of their absorption into the Indian Railway Service of Engineers Class I as stipulated in their letters of appointment. With regard to the time factor,
- B this Court also took into account the long wait involved in the process but all the same approved of the measures of the Railway Board in lessening the long wait by giving them weightage of half of the length of service as temporary Assistant Officers subject to the maximum of five years. And lastly this court rejected the claim of the temporary Assistant Officers asking for "equal status for equal pay and equal work" leaving a ray of hope that such goal might be achieved in the not too distant future.
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The instant batch of matters is virtually on the same lines as of *Katani Dayal's* case claiming the same relief and this time by the Temporary Assistant Officers through a body styled as the Federation of Directly Appointed Officers (Suppressed) of Indian Railways and a few others, in a representative capacity across which stand arrayed the Union of India and the Railway Board as respondents. When this matter came up for hearing on 15 March, 1990 before a three-judge Bench in which one of us (Punchhi, J.) was a member, it was felt that the affected parties should be impleaded in their representative capacity so as to make the decision of this Court binding on every member of both the classes of employees. The requisite direction was thus made and carried out. Pursuant thereto some private respondents on record represent the entire body of similarly placed Engineers. Thus both sides have sued and are being sued in their representative capacity.

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Mr. R.K. Garg, learned counsel for the petitioners has spear-headed the claim of the temporary Assistant Officers on the basis of the so called developing concept of Article 14 in the years gone by, especially in the field of the right to equality in matters relating to employment on appointment in service. He asserts that the development of law has gone a long way so as to shed the views expressed in *Katani Dayal's* case justifying demolition of the demarcation between the two services made as it was in *Katani Dayal's* case examining the question afresh in the light of *Raghubandan Prasad Singh v. Secretary, Home (Police) Department, Government of Bihar & Ors* [1988] Supp. SCC 519, *Dr. O.Z. Hussain v. Union of India* [1990] Supp. SCC 688 at 691, & *Direct Recruit Class II Engineering Officers Association v. State of Maharashtra & Others* [1990] 2 SCC 715 and

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other cases. It was contended that *Katyani Dayal's* case upholding the creation of temporary posts outside the service was on the basis which has since been eroded and "equal pay for equal work" with equality in all other conditions of service including avenues of confirmation, absorption, promotion, pension and security have become inflexible postulates of service jurisprudence. On the other hand, learned counsel for the respondents has opposed such method contending that what is being asked is a virtual review of *Katyani Dayal's* case which is not permissible by means of successive writ petitions. Admittedly it is urged that principles of constructive *res judicata* would bar the re-agitation of the issues decided in *Katyani Dayal's* case, if not the strict principles of *res judicata*. Lastly it was urged that when the matter has been settled in this particular service, its unsettling by means of a petition under Article 32 of the Constitution is impermissible.

We were taken through *Katyani Dayal's* case extensively. What we find is that the distinction and the classification of the temporary Assistant Officers and members of the Indian Railway Service of Engineers Class I fell clearly to be identified and marked. The only method of fusion was by means of a phased absorption as noticed in paragraph 9 of the Report detailed above. The scheme having met with approval of this Court cannot by mere passage of time be taken to have become vulnerable by subsequent exposition and dimension of Article 14 of the Constitution. This Court in *Katyani Dayal's* case specifically said that relief of equality was being denied to the then petitioners because of the history, origin, and structure of the Services. No opinion was expressed however as to the validity of the given weightage of half the length of service to Temporary Assistant Officers, subject to a maximum of five years, because of its being questioned elsewhere.

We are unable to make any headway or act in judicial indiscipline towards widening the scope of these matters in the face of the Constitution Bench decision of *Direct Recruit's* case (supra). Amongst the conclusions summed up by the Constitution Bench conclusion (J) and (K) seal the fate of these matters. These are:

"(J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of service to unsettle a settled position.

(K) That a dispute raised by an application under Article 32 of the

A Constitution must be held to be barred by principles of *res judicata* including the rule of constructive *res judicata* if the same has been earlier decided by a competent court by a judgment which became final.”

B The distinction between the two services was well marked in *Katvani*
Dayal's case (supra) and the important question of equality was once for all settled. To find fault with it, at this juncture again on the touch-stone of equality dimension would be to unsettle a settled position. That venture is neither in the interest of justice nor in the interest of service. When there has been complete absorption of the personnel of one service into the other, and the seniority of the absorbees is to be reckoned from their date of absorption as stipulated in their appointment letters and as held by this Court with weightage of half the length of service subject to a maximum of five years, it would otherwise be imprudent now, at this point of time to dig up old issues. The rule of weightage also appears to us to be reasonable and this is a pattern which has been noticed and approved in many a Service. Similarly when the dispute raised between the Officers in a representative capacity and Engineers not so represented, in *Katvani Dayal's* case (supra), still it was a dispute raised before this Court which has been decided finally. A dispute now sought to be raised under Article 32 of the Constitution between the Officers in a representative capacity and Engineers across also in a representative capacity must be held to be barred by principles of *res judicata* as also in the rule of constructive *res judicata*. The cases aforementioned relied upon by learned counsel for the petitioners/appellants do not remove this hurdle, however, broadly may Article 14 and 16 be viewed and expanded. It is thus unnecessary to elaborate those cases and discover their ratio. The argument of learned counsel for the appellant that the State is prohibited to create separate channels of service and create discrimination by making one as an isolated one, and not providing for promotional avenues reasonably, falls to the ground in view of the bar of re-agitation erected by *Direct Recruit's* case (supra). Equally when absorption had been made possible and its pace quickened with weightage, it is difficult to find fault with the scheme at this point of time to look for a substitution at our end, as that would unsettle a settled position, established more than a decade ago. We also do not see any compelling reasons to deviate from the principles enunciated in the judgment. At this point of time the bars erected by *Direct Recruit's* case (supra) appear to us to have further thickened goading us to refrain from the exercise of any undoing. We thus leave the matter as it is.

H It needs mentioning that the appeals being decided instantly are against the judgments and orders of the High Court rejecting writ petitions of the petitioners

before it on the basis of *Karyani Dayal's* case (supra). No details of these cases are necessary to dispose of these appeals for the reasons stated above. A

As a result these petitions and appeals fail, but without any order as to costs. In view of the dismissal of the main matters, no orders are necessary on all the C.M.Ps.

G.N.

Matters dismissed.