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UNION OF INDIA AND ANR.

v.

G.K. VAIDYANATHAN AND ORS.

NOVEMBER 2, 1995

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[K. RAMASWAMY, B.P. JEEVAN REDDY AND
B.L. HANSARIA, JJ.]

Service Law :

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Seniority—Inter-se seniority of direct recruits and promotees—Decision of Tribunal based on concession made by direct recruits—Held : cannot be considered as decision on merits.

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The first respondent was promoted to the post of chargeman Grade—I on January 5, 1981 on a regular basis. The other respondents were appointed as direct recruits to the said post in December 1981. Recruitment to the post of chargeman Grade - I was both by promotion as well as by direct recruitment. When the recruitment was done through both the above methods, a rule of rotation was also in vogue, the ratio between promotees and direct recruits was 80 : 20. The rotation rule in vogue provided that out of every five vacancies, the first four vacancies shall be filled by promotees and the fifth vacancy by direct recruitment.

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For further promotion to the post of Assistant Foreman, they were considered on the basis of the aforesaid seniority, with the result that the direct recruits, who were appointed in December 1981 came to be promoted to the post of Assistant Foreman earlier than the first respondent. During the years 1978 to 1981 both direct recruitments and promotions were being made in excess of the quota. In the seniority list issued in the year 1982, the direct recruits were shown as senior to the first respondent.

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The first respondent filed a petition before the Central Administrative Tribunal praying for a declaration that the seniority list issued in the year 1982 be declared to be illegal and invalid and a further direction to promote him to the post of Assistant Foreman. The Tribunal allowed the petition upon a concession made by the direct recruits that the quota rule had broken down warranting re-fixation of seniority.

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Aggrieved by the Tribunal's judgment, the appellants have preferred the present appeal. A

On behalf of the appellants it was contended that this Court should decide on merits whether the quota rule had indeed broken down during the period 1978 to 1981 *de hors* the concession made on behalf of the direct recruits before the Tribunal. B

On behalf of the respondents it was contended that the quota rule had broken down and that the concession to this effect was rightly made before the Tribunal. C

Allowing the appeal, this Court

HELD : 1.1. The decision of the Tribunal is based upon a concession and cannot, therefore, be treated as a decision on merits. The said concession made by direct recruits cannot and does not bend the appellant, which is equally an affected party in the matter. Even during the years 1978 to 1981 - the period during which the promotees say, there was a break-down in the quota rule - both direct recruitments and promotions were being made though it may be that promotions to the cadre were made in excess of the quota. The correctness of this fact is not disputed or questioned before this Court. Once this is so, the very theory of break-down of the quota rule falls to the ground. The factual situation concludes the issue against the promotees. [724-D-F] D E

Direct Recruit Class II Engineering Officers Association v. State of Maharashtra, [1990] 2 SCC 715, cited. F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4340 of 1995 Etc.

From the Judgment and Order dated 30.10.88 of the Central Administrative Tribunal, Addl. Bench Madras in O.A. No. 731 of 1986. G

Wasim Qadri, P. Parmeshwaran and Ms. Sushma Suri for the Appellants.

M.N. Krishnamani, P.K. Singh, S. Madhusudan Babu and M.M. Kashyap, for the Respondent in C.A. No. 4340/95. H

A The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. Leave granted in Special Leave Petition (C) No. 3930 of 1988.

B A common question arises in these two appeals. Civil Appeal No. 4340 of 1995 is preferred by the Union of India against the decision of the Central Administrative Tribunal (Madras Bench) in Original Application No. 731 of 1981 whereas Civil Appeal arising from Special Leave Petition (C) No. 3930 of 1988 is preferred against an order of the Central Administrative Tribunal (Bangalore Bench) in Original Application No. 380
C of 1987 as well as the order dismissing a review application filed by the appellants. The dispute is between direct recruits and promotees and it relates to determination of the seniority as between them in the post of Chargeman Grade-I in the Ministry of Defence, Department of Defence Production.

D Recruitment to the post of Chargeman Grade-I was both by promotion as well as by direct recruitment. Until 1979, the ratio between promotees and direct recruits was 2/3 : 1/3. From March 3, 1979, it was changed to 80 : 20 and with effect from June 26, 1985 the channel of direct recruitment has been closed altogether; the only method of recruitment is
E promotion from the post of Chargeman Grade-II. When the recruitment was done through both the above methods, a rule of rotation was also in vogue. Inasmuch as we are concerned in these appeals only with the period during which the ratio of 80 : 20 was in vogue, it is sufficient to notice that the rotation rule in vogue provided that out of every five vacancies, the first four vacancies shall be filled by promotees and the fifth vacancy by direct
F recruitment.

In Civil Appeal No. 4340 of 1995, the facts are the following: the first respondent herein (the petitioner before the Madras Tribunal) was promoted to the post of Chargeman Grade-I on January 5, 1981 on a regular basis. The Respondent Nos. 3 to 15 in the Original Application (who are respondent Nos. 2 to 13 in this appeal one of them does not appear to have been impleaded as a respondent in this appeal) were appointed as direct recruits to the said post in December 1981. In the seniority list issued in the year 1982, while the third respondent in the Original Application was shown at Sl. No. 37, the petitioner in the Original
G Application (First respondent in this appeal) was shown at Sl. No. 141. The
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other respondents (direct recruits) were also shown as seniors to the first respondent. For further promotion to the post of Assistant Foreman, they were considered on the basis of the aforesaid seniority, with the result that the direct recruits, who were appointed in December 1981 came to be promoted to the post of Assistant Foreman earlier than the first respondent. Thereupon, the first respondent approached the Central Administrative Tribunal (Madras Bench) by way of Original Application No. 731 of 1986 praying for a declaration that the seniority lists issued in the years 1982, 1983 and 1985 in respect of Chargemen Grade-I be declared to be illegal and invalid and a further direction to promote him (petitioner in the said Original Application) to the post of Assistant Foreman with effect from July 9, 1984, the date on which the second respondent was promoted to that post. His submission was that inasmuch as there was a break-down of the quota rule during the relevant years, the rule of rotation cannot be followed and hence the direct recruits appointed later cannot be made senior to him purporting it to follow the rule or rotation. He submitted further that the injustice inherent in following the rule of rotation in spite of break-down in the quota rule has been recognised by the Central Government which has issued a new set of principles in Office Memorandum dated February 7, 1976. If the principle of the said Office Memorandum is applied to the parties herein, the petitioner in the Original Application (first respondent in this appeal) is entitled to be treated as senior to Respondent Nos. 3 to 15 (direct recruits) in the Original Application.

The learned counsel appearing for Respondent Nos. 3 to 15 in the Original Application (direct recruits) conceded before the Tribunal that the quota rule has broken down warranting re-fixation of seniority. The stand taken by the learned counsel for the direct recruits may better be set out in the words of the Tribunal itself :

"The learned counsel for the respondents conceded that it had broken down, warranting a re-fixation of seniority. He stated that since the Direct Recruits were fitted in slots earmarked for them even though they were appointed very much later than the promotees and this led to their becoming senior to the promotees, he would concede the first prayer of the applicant in regard to his seniority. In view of that we direct the 1st and 2nd respondents to re-fix the applicant's seniority as Chargeman Grade I in the light of the guidelines given by the Department of Personnel & Training

A in their O.M. dated 7-2-1986. Even though that O.M. would have effect only prospectively, the principle laid down therein is a principle of law which has to be applied in cases like this where seniority is challenged on the ground that constitutional provisions have been violated because of the application of rota rule when quota rule has already broken."

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In view of the said concession - (the judgment of the Tribunal does not show whether any counter was filed by the Union of India, and if so, what was its purport) - the Tribunal directed that the petitioner before it is entitled to be treated as senior to the respondents-direct recruits therein and that he is also "entitled to be considered for promotion as Assistant Foreman when the third respondent was considered for that post". The Union of India has come up in appeal against the said decision.

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Identical dispute between the same parties was also raised before the Bangalore Tribunal with this difference. The Original Application before the Bangalore Tribunal was filed by an Association of the promotees and the promotees (Petitioner No.1 and Petitioner Nos. 2 to 39 respectively) claiming seniority over the respondents-direct recruits. The direct recruits were impleaded as Respondent Nos. 4 to 19 who included Respondent Nos. 3 to 15 before the Madras Tribunal. The basis of the claim was identical, viz., the break-down of the quota rule. The direct recruits remained *ex-parte* but Union of India contested the promotees' case. The Bangalore Tribunal looked into the relevant records and found as follows:

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"On an examination of the records, we notice that there was a deviation or departure in adhering to the quotas prescribed for direct recruitment and promotion in the Calendar years from 1978 to 1981 reckoning each year as on unit. In all these years, the posts in the cadre of CGI were filled in from two sources, viz., direct recruitment and promotions. Strange enough, during these years, promotion to the cadre were in excess of direct recruitment. This then is the factual position revealed from the records."

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The Tribunal accordingly found that it was not a case of break-down of quota rule but a case of mere departure or deviation in certain years. It rejected the promotees' case that there has been a break-down of the quota rule. The claim of the promotees for seniority was accordingly rejected. The Tribunal also rejected the promotees' challenge to the Office

Memorandum dated February 7, 1986 insofar as it stated that the principle evolved therein shall have only prospective operation and that seniority already determined in accordance with the existing principles on the date of issue of the said Office Memorandum will not be re-opened. The decision of the Bangalore Tribunal was rendered on October 20, 1987. A

When the petitioners before the Bangalore Bench came to know of the decision of the Madras Tribunal (which was rendered on October 30, 1987), they applied to the Bangalore Tribunal for reviewing its judgment on the basis of the decision of the Madras Tribunal. It was rejected. Both the aforesaid orders are challenged in the appeal arising from Special Leave Petition (C) No. 3930 of 1988. B C

The learned counsel for the appellant-union of India in Civil Appeal No. 4340 of 1995 submits that in the interest of uniformity, this Court should decide on merits whether the quota rule had indeed broken down during the period 1978 to 1981 *de hors* the concession made on behalf of the direct recruits before the Madras Tribunal. He points out that the decision of the Madras Tribunal is based on a concession and that where on such concession was made, i.e., before the Bangalore Tribunal, it has been held on merits that the said rule cannot be said to have broken down. On merits, the learned counsel supported the reasoning and the finding arrived at by the Bangalore Tribunal. D E

Sri Krishnamani, learned counsel appearing for the promotees, on the other hand, submitted that the quota rule must be held to have broken down in the facts and circumstances of these cases and that the concession to that effect was rightly made by the direct recruits before the Madras Tribunal. Once the quota rule is held to have broken down, the learned counsel contended, the rule of rotation cannot be followed, in which event the principles enunciated by the Constitution Bench of this Court in *Direct Recruit Class-II Engineering Officers Association v. State of Maharashtra*, [1990] 2 SCC 715 should be followed. The learned counsel further submitted that following the rule of rotation despite the break-down of the quota rule results in grave discrimination and arbitrariness and that the said fact was recognised by the Government itself which has accordingly issued a fresh set of instructions in its Office Memorandum dated February 7, 1986. Counsel submitted that the principles contained in the said Office Memorandum, being equitable and just, should be applied even for the H

A period anterior to February 7, 1986 in the interest of justice, equity and fairplay. He submitted that the Central Government was not justified in saying that the principles in the said Office Memorandum shall only have prospective operation which really means that the injustice perpetrated earlier to the said Office Memorandum was knowingly affirmed.

B We are of the opinion that the learned Additional Solicitor General is right in his submission that the decision of the Madras Tribunal is based upon a concession and cannot, therefore, be treated as a decision on merits. The said concession made by direct recruits cannot and does not bind the Union of India, which is equally an affected party in the matter.

C No such concession was made by any of the respondents before the Bangalore Bench. As stated above, the direct recruits impleaded as respondents before Madras Tribunal were also impleaded as respondents before the Bangalore Tribunal. Moreover, the said concession is found to be opposed to the record, as found by the Bangalore Tribunal, which has recorded on a perusal of relevant records, that even during the years 1978

D to 1981 the period during which the promotees say, there was a break-down in the quota rule—both direct recruitments and promotions were being made though it may be that promotions to the cadre were made in excess of the quota. The correctness of the facts recorded in Para-28 of the decision of the Bangalore Tribunal is not disputed or questioned before

E us. Once this is so, the very theory of break-down of the quota rule falls to the ground. In such a situation, it is not necessary either to deal with the decisions cited by the parties on the question when the quota rule can be said to have broken down or with the question whether the principle contained in Office Memorandum dated February 7, 1986 can be given

F retrospective effect. The factual situation concludes the issue against the promotees.

G For the above reasons, Civil Appeal No. 4340 of 1995 is allowed and the Civil Appeal No. 9831 of 1995 arising from Special Leave Petition (C) No. 3930 of 1988 is dismissed. The promotees' challenge to the seniority lists prepared in the years 1982, 1983 and 1985 fails as also their challenge to the promotion of direct recruits to the post of Assistant Foreman earlier than the petitioners in Original Application No. 380 of 1987 on the file of Bangalore Tribunal. There shall be no order as to costs.

V.S.S.

Appeal allowed.