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UNION OF INDIA AND ORS.

v.

R. VASUDEVA MURTHY AND ORS.
(Civil Appeal Nos. 9113-9126 of 2003)

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AUGUST 6, 2010

[DALVEER BHANDARI AND DEEPAK VERMA, JJ.]

C *Service Law – Pay scale – Revision of – Entitlement to*
– Office Memorandum dated 19.10.1994 issued by Ministry
of Finance, Government of India in regard to revision of pay
scales of Draughtsmen Grade I, Grade II and Grade III –
Interpretation of – Held: The O.M. must be construed to make
it effective and operative, on the principle expressed in the
maxim “Ut res magis valeat quam pereat” –Particular length
of service alone was not sufficient to entitle an employee to
earn upgradation / revision of pay, it accrued only if the posts
existed, not otherwise – The O.M. did not give an absolute
and blanket right to the Draughtsmen to claim upgradation /
revision in the salary as soon as they put in requisite years
of continuous service on the respective post to become
eligible either for higher pay scale or for promotion – Unless,
there were requisite vacancies in the respective cadres of
Draughtsmen Grade I, Grade II and Grade III, the
Draughtsmen could not be granted the said relief – Maxim –
“Ut res magis valeat quam pereat”.

Interpretation of Statutes – Purposive construction – Held:
The courts must lean against a construction which reduces a
statute to a nullity.

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The pay scales of Draughtsmen Grade I, Grade II and Grade III in all the Government of India offices were revised by the Ministry of Finance vide Office Memorandum dated 19-10-1994.

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Many Draughtsmen approached the different Benches of Central Administrative Tribunals for extending them the benefits of the O.M. Since the benefit was extended to them by the different Tribunals, the Union of India and/or Department of Telecommunications approached the jurisdictional High Courts challenging it.

However, different High Courts interpreted the O.M. differently. While the Karnataka High Court and the High Court of Gujarat held that once a Draughtsman put in requisite length of service, he automatically became entitled for upgradation / revision of his salary as per the O.M.; the Madras High Court and full Bench of Andhra Pradesh High Court held that the upgradation/ revision was applicable only if there existed vacancies in the respective Grades. The order of the Madras High Court was not challenged before the Supreme Court. The instant appeals were filed against the judgments passed by the Karnataka High Court and the High Court of Gujarat.

Disposing of the appeals, the Court

HELD: 1.1. The true, effective, operative and correct interpretation of the Office Memorandum No.13(1)-IC/91 dated 19.10.1994 is that, as and when vacancy arises in the cadre of Grade I Draughtsmen, after putting in requisite minimum service as per said Notification, then and only then the Draughtsmen Grade II would be entitled for the higher pay scale not otherwise. The entitlement for upgradation of salary is dependent on the number of vacancies available and not otherwise. The eligibility to claim higher pay scale/ upgradation is one thing but availability of vacancy is another. One may be eligible to claim higher pay scale or upgradation but it is of course subject to availability of posts. If posts are not available then, no benefit could be accrued to the Draughtsmen.

- A The said O.M. does not give an absolute and blanket right to these Draughtsmen to claim upgradation/revision in the salary as soon as they put in requisite years of continuous service on the respective post to become eligible either for higher pay scale or for promotion.
- B Unless, there are requisite vacancies in the respective cadres of Draughtsmen Grade I, Grade II and Grade III, the Draughtsmen cannot be granted the said relief. [Paras 24, 25] [991-F-H; 992-A-C]

- C 1.2. It is well settled that the courts must lean against a construction which reduces a statute to a nullity. The O.M. must be so construed to make it effective and operative, on the principle expressed in the maxim: "*Ut res magis valeat quam pereat*" meaning thereby that the thing may rather have effect than be destroyed. When the words employed in the O.M are clear, plain and unambiguous, then they are reasonably susceptible to only one meaning. Courts are bound to give effect to the said meaning irrespective of consequences. Clause 3 of the O.M. clearly stipulates that once the Draughtsmen are placed in regular scales, their further promotion would be made against available vacancies in higher Grade and in accordance with the criteria laid down in the Recruitment Rules. Plain and simple reading of the aforesaid Clause 3 makes it clear that upgradation/ revision of pay scale is not as of right by putting in minimum period of service but is attached with riders. Necessary consequence of the reading of the O.M. leaves no amount of doubt that particular length of service alone is not sufficient to entitle an employee to earn upgradation or revision of pay, it would accrue only if the posts exist, not otherwise.
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- G [Paras 8 and 23] [991-A-D; 985-G-H; 986-A; 991-D]

1.3. However, in the instant case, if any of the employees have been given the benefit of the O.M. (on

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mere completion of certain years of service) and payments have been made by the Union of India and/or Department of Telecommunication, it would not be entitled to recovery thereof from the Draughtsmen as it would be too harsh and unreasonable to ask for refund after such a long lapse of time. [Para 26] [992-D]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9113-9126 of 2003.

From the Judgment & Order dated 29.06.2001 of the High Court of Karnataka at Bangalore in Writ Petition Nos. 16870-16883 of 2000.

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WITH

C.A. Nos. 9151-9153 of 2003, 3031 of 2004, 1590 & 1778 of 2007.

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Naresh Kaushik, Subhash Kaushik, Ashok Bhan, A.K. Sharma, (for Shreekant N. Terdal, P. Parmeswaran), T. Anamika, Chandra Mohan Anisetty for the Appellants.

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R.D. Agrawala, Pawan Kumar, S.N. Bhat, N.P.S. Panwar, Amandeep Bawa, N.P.S. Panwar (for Sheela Goel) for the Respondents.

The Judgment of the Court was delivered by

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DEEPAK VERMA, J. 1. In these and connected appeals, we are required to consider the effect and implication of the Office Memorandum No.13(1)-IC/91 dated 19.10.1994 (hereinafter for the sake of brevity shall be referred to as 'O.M.')

issued by Government of India, Ministry of Finance, with regard to revision of pay scales of Draughtsmen Grade I, Grade II and Grade III in all Government of India offices. As it was felt that Draughtsmen of various Departments, even though discharging same functions, were paid different pay scales, thus to bring

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A parity throughout the country with regard to their pay scales, the aforesaid O.M. was issued. The said O.M. came to be considered by the various High Courts namely, High Court of Karnataka, High Court of Andhra Pradesh, High Court of Madras and High Court of Gujarat as many Draughtsmen had approached the different Benches of Central Administrative Tribunals for extending them the benefits of the O.M. Since the benefit was extended to them by the different Tribunals, Union of India and/or Department of Telecommunications had approached the jurisdictional High Courts challenging it. However, there have been divergent views with regard to implementation thereof. Thus, in nut shell we are called upon to set at rest the controversy by giving true, correct, proper, meaningful and purposeful interpretation of the said O.M.

2. Various judgments of the High Courts would also be considered at a later stage. Prior to issuance of the said O.M., a notification was issued on 23rd August 1993 by the Ministry of Communication, Department of Telecommunications dealing with the same subject as mentioned hereinabove. This Notification was issued in the light of various orders passed by the Central Administrative Tribunal and various High Courts from time to time. On account of several representations received from Draughtsmen for introduction of Grades and pay scales at par with those working in CPWD, by the said Notification three grades in the pre-revised payscale of Rs.330-560, Rs.425-700 and Rs.550-750 designated as Draughtsmen Grade III, Draughtsmen Grade II and Draughtsmen Grade I respectively were fixed. The said notification further fixed ratio of 60:30:10 for Draughtsmen Gr.III, Gr.II and Gr.I respectively. The number of posts for Grade II and Grade I were to be worked out on Circle basis as these are Circle cadres.

3. It further contemplated that the revised pay scales will be admissible to these officials notionally from 22.8.1973 but actual financial benefit would accrue to them from 16.11.1978

or from the date of appointment / promotion in each grade, whichever is later. A

4. Another Notification dated 6.7.1994 was issued by the same Ministry in exercise of powers conferred by proviso to Article 309 of the Constitution of India and in supersession of the Telecommunications Department Draughtsmen (Recruitment) Rules 1986. By this Notification, the Rules with regard to regulating method of recruitment to the post of Draughtsmen Grade III, Grade II and Grade I in the Department of Telecommunication were notified, known as the Telecommunications Department (Draughtsman Grade III, Grade II and Grade I) Recruitment Rules, 1994. They were to come into force from the date of its publication in the official gazette. Schedule appended thereto mentions that total number of 900 posts would be available with regard to Draughtsmen Grade III in the pay scale of Rs.1200-30-1560-EB-40-2040, 450 posts of Draughtsmen Grade II would be available in the pay scale of Rs.1400-40-1800-EB-50-2300 and 150 posts would be available for Draughtsmen Grade I in the pay scale of Rs.1600-50- 2300-EB-60-2660 as on 31.12.1992. However, it was subject to variation as per the requirement and need of the Department. B
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5. All these posts were categorised as Group 'C' and DPC of the officers was to be constituted as projected in the said schedule. As already mentioned hereinabove, all the aforesaid cadre posts were in the ratio of 60:30:10. F

6. Impugned O.M. Dated 19.10.1994 clearly mentioned that minimum period of service for Grade III, Grade II and Grade I would be 7 years, 5 years and 4 years respectively, so as to make them entitled to earn upgradation or revision of their salary. G

7. For proper appreciation and examination of O.M., the same is reproduced hereinbelow: H

A " No.13(1)-IC/91
 Government of India
 Ministry of Finance
 Department of Expenditure

B New Delhi, the 19th Oct., 1994

OFFICE MEMORANDUM

C Subject:- Revision of pay scales of Draughtsmen Grade I, II and III in all Government of India offices on the basis of Central Public Works Department.

D The undersigned is directed to refer to this department's O.M.No.F.5(59)-E.III/82 dated 13.3.1984 on the subject mentioned above and to day that a Committee of the National Council (JCM) was set up to consider the request of the Staff Side that the following scales of pay, allowed to the Draughtsmen Grade I, II and III working in CPWD on the basis of the Award of Board of arbitration may be extended to Draughtsmen Gradw I, II and III, irrespective of their recruitment qualification, in all Government of India offices:

	Original Scale	Revised Scales on the basis of the Award
	(Rs.)	(Rs.)
F Draughtsmen Grade I	Rs. 425-700	Rs. 550-750
G Draughtsmen Grade II	Rs. 330-560	Rs. 425-700
Draughtsmen Grade III	Rs. 260-430	Rs. 330-560

H 2. The President is now pleased to decide that the Draughtsmen Grade I, II and III in offices/departments of the Government of India other than in CPWD may also be

placed in the scales of pay mentioned above subject to the following: A

(a) Minimum period of service for : 7 Years placement from the post carrying scale of Rs.975-1540 to Rs.1200-2040 (pre-revised Rs.260-430 to 330-560) B

(b) Minimum period of service for : 5 Years placement from the post carrying scale of Rs.1200-2040 to Rs.1400-2300 (pre-revised Rs.330-560 to 425-700) C

(c) Minimum period of service for : 4 Years placement from the post carrying scale of Rs.1400-2300 to Rs.1600-2660 (pre-revised Rs.425-700 to 550-750) D

3. Once the Draughtsmen are placed in the regular scales, further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the recruitment rules. E

4. The benefit of this revision of scales of pay would be given with effect from 13.5.1982 notionally and actually from 1.11.1983.

Sd/- F

Under Secretary to the Govt. Of India"

8. Clause 3 thereof clearly stipulates that once the Draughtsmen are placed in regular scales, their further promotion would be made against available vacancies in higher Grade and in accordance with criteria laid down in the Recruitment Rules. Plain and simple reading of the aforesaid Clause 3 makes it clear that upgradation/ revision of pay scale is not as of right by putting in minimum period of service of 4 H

A years, 5 years and 7 years as the case may be but is attached with riders. To get upgradation, it is necessary that the vacancies are available, only then the said upgradation would be allowed and it is further subject to the Recruitment Rules applicable to the case of each employee.

B 9. However, different High Courts have interpreted the O.M. differently. In fact, Karnataka High Court and High Court of Gujarat have held that once a Draughtsman puts in requisite length of service, he would automatically become entitled for upgradation of his salary as per the O.M. but Madras High Court and full Bench of Andhra Pradesh High Court have held that it would be applicable only if there exists a vacancy in the respective cadres. Thus, we are required to consider the said matter in the light of the judgments of various High Courts, which we shall do now.

D 10. The Union of India, feeling aggrieved by the Order passed by Central Administrative Tribunal, Bangalore had filed a Writ Petition before a Division Bench of the High Court of Karnataka at Bangalore which came up for consideration on E 29.6.2001. On the said date, while disposing of the said petition, Division Bench passed the following order:

F "Respondents had completed four years of service for being put in the higher grade as per the Notification dated 19.10.1994 much earlier to the withdrawal of the said Notification on 19.2.1997. The Tribunal has rightly granted the benefit of the G.O. Dated 19.10.1994 to the respondents.

G No merit. Dismissed.

Sd/-

Sd/-"

H 11. Thus, the High Court of Karnataka held that the Tribunal was justified in granting the benefit of G.O/O.M dated

19.10.1994, to the respondents working as Draughtsmen.

12. The Union of India, feeling aggrieved by the order passed by the Central Administrative Tribunal, Ahmedabad was pleased to file several Special Civil Applications before a Division Bench of the High Court of Gujarat. The same came to be heard and disposed of on 4.7.2002.

13. The operative and relevant part of the said judgment is reproduced hereinbelow:

"It is, therefore, amply clear that after the implementation of the revised scales at par with CPWD Draughtsmen and in light of the publication of statutory rules for recruitment of Grade-III, II and I Draughtsmen, the proposition of ratio of 60:30:10 introduced by the O.M. Dated 23rd August, 1993 shall obviously stand obliterated. Therefore, it cannot be contended at this stage that the ultimate consequences recorded by the Tribunal in three impugned judgments based on factual matrix and correct interpretation of the government's O.M are in any way, unjust, unreasonable, illegal, perverse or in any way vulnerable. In our opinion, this group of three petitions at the instance of the Union of India against identical three judgements of the Tribunal on common issues in exercise of extraordinary, prerogative and discretionary writ jurisdiction under Articles 226 and 227 of the Constitution of India are devoid of any merits and deserve to be thrown overboard at the admission stage. Therefore, they are rejected at the threshold, Notice shall stand discharged without any order as to costs.

Sd/- Sd/-"

The result of the said judgment is that the order of the Tribunal was upheld and the respondents were granted benefit of the O.M. However, it has not taken into consideration the clause regarding availability of posts or eligibility criteria laid down in the relevant Recruitment Rules.

A 14. The Union of India was also constrained to file W.P.
No.597 of 2000 before a Division Bench of High Court of
Judicature at Madras challenging the order passed by Central
Administrative Tribunal, whereby the application filed by
respondent therein R. Jothimani was allowed. The Tribunal had
B directed that salary of respondent Jothimani be fixed in the
higher pay scale on the basis of his having completed 4 years
of service in the post of Grade II Draughtsmen. The said Writ
Petition also came to be allowed and the order of the Tribunal
was quashed. The operative and relevant para of the said
C judgment of the Division Bench of High Court of Madras is
reproduced hereinbelow:

"The first respondent did not in any manner show that
actually the posts were available in Grade I and that in spite
of such availability, his claim was not accepted which was
D made by making a specific representation. We, therefore,
are unable to agree with the Tribunal and more particularly
its reasoning that since there is no ratio provided in the
Office Memorandum dated 19.10.1994 therefore the first
respondent automatically became entitled to be fixed in the
E higher grade or to be taken to the Grade I Draughtsmen
post on the completion of his four years of service.
According to us, even if the first respondent became
entitled by reason of his continuous service of four years
in Grade II yet he could be entitled to the higher
F emoluments or the higher pay scale only if the post was
available in Grade I in terms with the ratio provided for by
the rules and more particularly by office memorandum
dated 23.8.1993. That being the case, we must hold that
the Tribunal was in error in taking the view that it held. We
G accordingly set aside the order of the Tribunal and order
the dismissal of the original application. The writ petition
is allowed. However, there shall be no orders as to the
costs. W.M.P. No. 869 of 2000 is closed."

H 15. Admittedly, against the order passed by the Madras

High Court, in the aforesaid matter, the respondent therein did not challenge the same before this Court by filing a Special Leave Petition. Thus, the order of the Madras High Court had attained finality. A

16. In the High Court of Andhra Pradesh at Hyderabad, on account of difference of opinion between two Division Benches, matter was referred to a Full Bench of three learned Judges. It pronounced its opinion on 24.9.2004. There also the Union of India had preferred the Writ Petitions against the order of the Central Administrative Tribunal Hyderabad, whereby benefit of the O.M. was given to Draughtsmen. Relying on the relevant portion of the judgment of the Division Bench of the High Court of Madras quoted hereinabove, the Full Bench answered the reference in favour of the Union of India and against the Draughtsmen. B C D

17. In the light of the opinion expressed by the Full Bench, matter was placed before the Division Bench of the said High Court, which allowed the writ Petition filed by the Union of India and dismissed the Original Application filed by the respondents, Draughtsmen. E

18. In the light of the aforesaid judgments of the Division Benches and opinion expressed by the full Bench of the High Court of Andhra Pradesh, we are now required to consider what would be the true correct, proper, meaningful, effective, operative and purposeful interpretation of O.M. dated 19.10.1994 reproduced hereinabove. F

19. Learned counsel appearing for the Draughtsmen argued before us with vehemence that necessary implication of the O.M. is, as soon as Draughtsman Grade II completes 4 years of service, automatically, he would be entitled, if not for promotion, at least for upgradation in his pay scale equivalent to that of Draughtsman Grade I. They further contended that there was no embargo created under the O.M. or any of the service regulations applicable to these employees to deprive H

A them of the benefit of upgradation of pay as the same was necessary consequence and implication of issuance of O.M. dated 19.10.1994.

B 20. On the other hand, learned counsel appearing for the Union of India and Department of Telecommunication forcefully opposed the said contention and submitted that irrespective of whether an employee has fulfilled the eligibility criteria of minimum years of service, upgradation of scale and/or promotion to the respective grade would be available subject to availability of vacancies as per the O.M. For the said purposes, they have placed great reliance on the Rules which have been formulated in exercise of power conferred by proviso to Article 309 of the Constitution of India. These Rules clearly stipulate that the total number of posts of Draughtsmen Grade III would be 900, posts of Grade II would be 450 and that of Grade I would be 150 only as on 31.12.1992 circlewise and this would be of course, subject to variation depending on workload. No other Notification or Rules were brought to our notice meaning thereby that ever since 23.08.1993, when the aforesaid ratio of Draughtsmen was fixed at 60:30:10, there has not been enhancement or modification in the same. Thus, we have to proceed on the assumption that even on this date, the total circlewise cadre strength of the Draughtsmen Grade III, Grade II and Grade I stands as mentioned hereinabove.

F 21. Now, coming to the O.M., Clause 3 thereof is relevant which clearly stipulates that only when the Draughtsmen are placed in the regular scales, they would be entitled to further promotion against available vacancies in higher grade and that too in conformity with the normal eligibility criteria laid down in the Recruitment Rules.

G 22. Despite our repeated and persistent requests made to the learned counsel appearing for the Union of India and the Department, they were not able to inform us if the aforesaid strength fixed on 31.12.1992 has been enhanced or not. We

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were of the opinion that more than 18 years have elapsed and workload having increased considerably, strength must have been increased, but no positive answer was given to us. It appears little surprising that the posts have not been enhanced for a period of last 18 years, which is indeed not very appealing.

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23. It is well settled that the Courts must lean against a construction which reduces a statute to a nullity. In our considered opinion, the O.M. must be so construed to make it effective and operative, on the principle expressed in the maxim:

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"Ut res magis valeat quam pereat" meaning thereby that the thing may rather have effect than be destroyed.

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When the words employed in the O.M are clear, plain and unambiguous, then they are reasonably susceptible to only one meaning. Courts are bound to give effect to the said meaning irrespective of consequences. Necessary consequence of the reading of the O.M. leaves no amount of doubt that particular length of service alone is not sufficient to entitle an employee to earn upgradation or revision of pay, it would accrue only if the posts exist, not otherwise.

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24. In our considered opinion, the said O.M. does not give an absolute and blanket right to these Draughtsmen to claim upgradation/revision in the salary as soon as they put in requisite years of continuous service on the respective post to become eligible either for higher pay scale or for promotion. Unless, there are requisite vacancies in the respective cadres of Draughtsmen Grade III, Grade II and Grade I, the Draughtsmen cannot be granted the said relief. This is what we have been able to decipher from the O.M. dated 19.10.1994, after critical and thorough examination thereof.

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25. Thus, in our opinion, the true, effective, operative and correct interpretation of the said O.M is that, as and when vacancy arises in the cadre of Grade I Draughtsmen, after

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- A putting in requisite minimum service as per said Notification, then and only then the Draughtsmen Grade II would be entitled for the higher pay scale not otherwise. To clarify it further, we hold that the entitlement for upgradation of salary is dependent on the number of vacancies available and not otherwise.
- B also to be noted that eligibility to claim higher pay scale/ upgradation is one thing but availability of vacancy is another. One may be eligible to claim higher pay scale or upgradation but it is of course subject to availability of posts. If posts are not available then, no benefit could be accrued to the
- C Draughtsmen.

26. We make it clear that if any of the employees have been given the benefit of the O.M. and payments have been made by the Union of India and/or Department of Telecommunication, it would not be entitled to recovery thereof

D from the Draughtsmen as it would be too harsh and unreasonable to ask for refund after such a long lapse of time.

27. In the light of this, the appeals preferred by Union of India and Department of Telecommunication are hereby allowed.

E The Orders passed by different Benches of the Central Administrative Tribunal and of Gujarat High Court and Karnataka High Court are set aside and quashed and the appeals preferred by Draughtsmen are dismissed.

28. Looking to the facts and circumstances of the case,

F no order as to costs.

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Appeals disposed of.