



2024:CGHC:28740-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 8786 of 2023

1. Union Of India Through Secretary, Railway Board, Rail Bhawan, Rafi Marg, Raisena Road, New Delhi. 110001.
2. The Chairman, Railway Board Rail Bhawan, Rafi Marg, Raisena Road, New Delhi. 110001.
3. General Manager, New GM Building, South East Central Railway, Bilaspur, Chhattisgarh. 495004.

... Petitioners

versus

1. Santosh Kumar S/o. Sri S.K. Narayan, Aged About 48 Years Presently Working As Sr. PRO/HQ/SECR/BSP, R/o 108/2 Railway Colony, Bungalow Yard, Bilaspur, Chhattisgarh.

... Respondent

For Petitioner : Shri Palash Tiwari, Advocate

For Respondent : Shri Abhishek Sinha, Sr. Advocate with Shri A.V. Sridhar and Ms Kushboo Dua, Advocates

Hon'ble Shri Justice Goutam Bhaduri
Hon'ble Shri Justice Radhakishan Agrawal
Order on Board

Per Goutam Bhaduri, J.

2-8-2024

1. The order dated 26-7-2023 passed by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting : Bilaspur (henceforth 'the CAT'), in OA No.203/63/2017 is under challenge by the petitioner/Railways.

2. The respondent-Santosh Kumar filed the original application (OA) before the CAT seeking a direction towards the Railways to convene the

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						rule 2423-A (C.S.R. 404-B) of the Indian Railway Establishment code volume II	
(1)	(2)	(3)	(4)	(5)	(6)	(6a)	(7)
1. Chief Public Relations Officer	9* (1981) * Subject to variation dependent on work load.	Group 'A'	Rs. 1500-60-1800-100-2000	Selecti on	Not applicable	Not applicable	Not applicable
2. Senior Public Relations Officer	8* (1982) * Subject to variation dependent on work load.	Group 'A'	Rs. 1100-50-1600	Selecti on	Not applicable	Not applicable	Not applicable
3. Public Relations Officer	23* (1981) * Subject to variation dependent on work load.	Group 'B'	Rs. 650-30-740-35-810-EB-35-880-40-100-EB-40-1200	Selecti on	Not exceeding 30 years (Relaxable upto 5 years for Government servants). Note: The crucial date for determining the age limit shall be the closing date for receipt of applications from candidates in India (other than those in Andaman & Nicobar Islands and Lakshadweep)	No	Essential : (i) Degree of a recognised University or equivalent (ii) 3 years experience of Journalistic, publicity or public relationship work in a Government Department or in a newspaper/news agency or a Commercial concern of repute. Note 1: Qualifications are relaxable at the discretion of the Union Public Service Commission in case of candidates

						<p>otherwise well qualified. Note 2: The qualification regarding experience is relaxable at the discretion of the Union Public Service Commission in the case of candidates belonging to the Scheduled Castes and Scheduled Tribes if, at any stage of selection, the Union Public Service Commission is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them. Desirable: Diploma in Journalism from a recognised University or equivalent institution.</p>
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Whether age and educational qualifications prescribed for direct	Period of probation in any	Method of recruitment whether by direct recruitment or by promotion or by	In case of recruitment by promotion/ deputation/ transfer, grades from which promotion/deputation / transfer to be made.	If a Departmental Promotion Committee exists what is its composition	Circumstances in which Union Public Service Commission is to be consulted in making
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recruits will apply in the case of promotees		deputation/transfer and percentage of the vacancies to be filled by various methods.			recruitment.
(8)	(9)	(10)	(11)	(12)	(13)
Not applicable	2 Years	(i) 50% by promotion failing which by transfer on deputation. (ii) 50% by transfer on deputation/transfer	Promotion : Senior Public Relations Officers with 5 years regular service in the grade. Transfer on deputation/ transfer: Officers working in the Ministry of Railways (viz. Zonal Railways, Production Units and Railway Board) failing which officers from the Central Government/ State Governments: (a) (i) holding analogous posts; or (ii) with 5 years service in posts in the scale of Rs. 1100-1600 or equivalent: and (b) possessing at least degree of a recognised University or equivalent and experience of public relations, journalistic or publicity work. (Period of deputation shall ordinarily not exceed 4 years).	Group 'A' Departmental Promotion Committee 1. Chairman Railway Board-Chairman 2. Financial Commissioner -Railways-Member. 3. Three other members of the Railway Board-Members.	Consultation with the Union Public Service Commission necessary while selecting an officer for appointment on deputation (other than those from the Ministry of Railways), transfer and amending/relaxing any of the Provision of these rules.
Not applicable	2 Years	By promotion failing which by transfer on deputation.	Promotion : Senior Public Relations Officers with 8 years regular service in the grade. Transfer on deputation : Officers working in the Ministry of Railways (viz. Zonal Railways, Production	Group 'A' Departmental Promotion Committee 1. Chairman/Member of Union Public Service Commission-Chairman 2. Director	Consultation with the Union Public Service Commission necessary while making promotion, selecting an officer for appointment

			<p>Units and Railway Board) failing which officers from the Central Government/ State Governments:</p> <p>(a) (i) holding analogous posts; or (ii) with 5 years service in posts in the scale of Rs. 700-1300 or equivalent; or (iii) with 8 years service in posts in the scale of Rs. 650-1200 or equivalent; and</p> <p>(b) possessing at least degree of a recognised University or equivalent and experience of public relations, journalistic or publicity work.</p> <p>(Period of deputation shall ordinarily not exceed 4 years).</p>	<p>Management Services Railways Board-Member</p> <p>3. Director Public Relations, Railway Board-Member</p> <p>If non of the officers constituting the Departmental Promotion Committee belongs either to the Scheduled castes or to the Scheduled Tribes, a fourth officer belonging either to the Scheduled Castes or to the Scheduled Tribes holding rank not lower than Junior Administrative Grade may be coopted.</p>	<p>t on deputation and amending/relaxing any of the provisions of these rules.</p>
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5. According to such Rules, 9 posts of CPRO; 8 posts of SPRO; and 23 posts of PRO were created. The posts of CPRO & SPRO were placed at Group 'A' and the post of PRO was placed at Group 'B'.
6. (i) The submission of the petitioner is that the said rules allowed the deviation to be carried out as it was subject to variation dependant on the work load. Consequently, the said posts were to be decadred by order dated 4-5-1989. He would further submit that the posts of PRO and the nature of work discharged was felt by the Railways to be not necessary

to the extant post as primarily their work takes into sweep the work discharged by the Commercial Department like publication of hoardings of Railways, other advertisements, etc. therefore, the posts were reduced as per order dated 4-5-1989. He would submit that albeit this Rule was subject of deliberation before the CAT, Madras and subsequently before the Supreme Court wherein only one post was created for the Southern Railway. Consequently, that cannot be made applicable and the respondent cannot claim parity to claim the post in the SER.

(ii) In support of his contention, learned counsel would place reliance upon the decision rendered by the Supreme Court in the matter of *J. Jayalalitha v Union of India and Another*¹ to submit that in the likewise situation the legislature has left it to the discretion of the Government i.e. Railways as to how the requirement comes up and the number of posts could have been reduced as the rule itself gives liberty and the posts were decaded whereby the Government exercised its discretion to achieve the object of functioning of the Railways. He would also place reliance upon the decision rendered by the Supreme Court in the matter of *Hardev Singh v Union of India and Another*² to submit that when a policy has been declared for filling up the post it has accordingly been made. Consequently, the finding of the CAT is faulty, which needs to be interfered. Learned counsel would raise the issue about the delay.

7. Learned counsel appearing for the respondent, *ex adverso*, would submit that the issue of interpretation of Rules, 1982 came before the CAT, Madras and subsequently, it travelled to the Supreme Court. The Supreme Court in its judgment has interpreted the same to hold that the

1 (1999) 5 SCC 138

2 (2011) 10 SCC 121

administrative instruction cannot be supplant the rules, which has a statutory effect, which would also have a binding effect while interpreting the Rules, 1982. He would further submit that the letter dated 4-5-1989 to decadre the number of posts was not within the administrative domain, as the rules were tried to be transgressed and even the communication of 4-5-1989 the authority concerned was conscious of the fact to amend the rules and accordingly instruction was issued, therefore, the impugned order passed by the CAT, which is further been followed by the CAT, Calcutta & Jaipur the same proposition was followed.

8. We have heard learned counsel appearing for the parties and perused the documents.
9. The notification made subsequently would show that in respect of PRO 23 posts were created in the cadre; for SPRO 8 posts were created; and for CPRO 9 posts were created. These posts were decadred by letter dated 4-5-1989. This issue came up before the Supreme Court in the matter of *Union of India v M. Sanmugham*³. We went through the said decision. The Supreme Court in the judgment has reproduced the submission made. Reading of the same would show that the Supreme Court held that the finding of the Tribunal to hold the policy decision taken on the administrative side cannot violate the existing rules governing the cadre of SPRO. It further observed that if decadre is made the necessary amendment is required to be carried out.
10. The germane of the said issue arose from the order passed by the CAT, Madras, wherein one challenge was made and similar defence was taken.

³ Civil Appeal No.4967 of 1994

Eventually the finding of the CAT was upheld. It is the settled proposition of law that the Government cannot amend or substitute statutory rules by administrative instructions, but if the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules by issuing instructions not inconsistent with the rules.

11. The Supreme Court in the matter of *Union of India and Others v Rakesh Kumar*⁴ held thus at para 19 :

19. In our view, there cannot be any doubt that the Government cannot amend or substitute statutory rules by administrative instructions, but if the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules by issuing instructions not inconsistent with the rules. The Government also can confer certain benefits on its employees by an administrative order. For finding out whether by the GO dated 27-12-1995 the Government has conferred certain benefits on the members of BSF, we would refer to it as a whole, which is as under:

“To,
All Frontier Border,
All SHO BSF including DIG (HQ), New Delhi,
All Training Institutions,
TSU/Cenwosto/CSMT/Signal Regt./HQ
Arty./SIW/SRO,
All Bns. BSF,
All Arty. Regts. BSF.

Sub: Grant of pensionary benefits on resignation under Rule 19 of the BSF Rules, 1969.

1. Attention is invited to this HQ Letter No. F35036/3/78- Staff/ BSF/ dated 4-11-1981 conveying the decision of the Ministry of Home Affairs in the matter of admissibility of pensionary benefits on acceptance of resignation under Rule 19 of the BSF Rules, 1969.

2. In this connection the undersigned is directed to inform that the matter was again referred to the Government to review their decision in order to give pensionary benefit to members of BSF on tendering

resignation under Rule 19 of the BSF Rules, 1969. The Ministry of Home Affairs in consultation with the Department of Pension and Pensioners' Welfare has agreed to our proposal and decided not to amend Rule 19 of the BSF Rules, 1969 till such time separate Pension Rules for the BSF personnel are framed. The Government has also agreed to our view that a member of the Force is entitled to get pensionary benefits on resignation under Rule 19 of the said Rules provided he has put in requisite number of years of service and fulfils all other eligibility conditions.

3. A number of ex-BSF personnel have filed petitions in various courts of law claiming for the grant of pension on their resignation from service under the provisions of Rule 19 of the BSF Rules, 1969. Besides this a number of notices under Section 80 CPC are also being received in this regard.

4. Rule 19(1) of the BSF Rules, 1969 provides that the competent authority may, having regard to special circumstances of the case permit a member of the Force to resign from the Force before attainment of the age of retirement or before putting in such number of years of service as may be necessary under the Rules to be eligible for retirement. The authority competent to grant such permission is also empowered to make such reductions in the pension or other retirement benefits of a member of the Force if so eligible as it may consider just and proper in the circumstances of the case.

5. In view of the provisions contained in Rule 19 of the BSF Rules, 1969 as mentioned in para 4 above and based on the approval of the MHA as per para 2 above, in future the authorities who accept the resignation of a member of the Force shall specify in the order the reduction to be made in the pension if any as per the provisions contained in provision (ii) to Rule 19(i) of the BSF Rules, 1969. In case no such reduction is specified in the order regarding acceptance of resignation it would imply that no reduction in the pension has been made.

6. In order to decide all pending cases including the ones which are presently under adjudication it is incumbent on all authorities to undertake thorough review of all pending cases. For this purpose cases of resignation accepted in respect of members of the Force who have not been allowed pensionary

benefits will be reviewed and necessary orders passed within the shortest possible time-limit. In this regard Frontier is G and Heads of Training Institutions will ensure that these instructions have been complied with by the units/establishments under their administrative control.”

12. Likewise in the case of *Union of India and Others v Mange Lal*⁵ the Supreme Court laid down the principle that the executive instructions can supplement a statute or cover areas to which the statute does not extend and a statutory rule cannot be modified or amended by executive instructions.
13. Reading of the letter dated 4-5-1989, it is manifest that the Union of India was also conscious of the fact that the rules are required to be amended, therefore, copy of the said instruction was forwarded with an expectation for amendment in recruitment rules of PR cadre and TT&CD cadre.
14. The submission of the petitioner that the subject rules gives the power to make vary the posts cannot be considered, as the rules itself are specific and the policy on which the Railways want to bank upon would show that the specific policy having been declared for filling up posts cannot run contrary to the rules.
15. The other aspect of the issue is that even if the similar rules have been interpreted by the Supreme Court and the validity of the rules has been upheld over the executive instructions, the Railways being one and the same it cannot be applied in a part and piecemeal. It cannot be said that the judgment will only confine its territory and boundaries to the Southern Railway. This interpretation of the rule would be a judgment

5 Civil Appeal No.5006 of 2012

in *rem* as no adverse finding can be arrived to interpret it otherwise. There cannot be hiding of spot when it has already been deliberated by the Supreme Court.

16. The Supreme Court in the matter of *State of Uttar Pradesh and Others v Arvind Kumar Srivastava and Others*⁶, held thus at para 22.3 :

22.3 However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in *rem* with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see *K.C. Sharma v. Union of India*). On the other hand, if the judgment of the court was in *personam* holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

17. In respect of the issue raised by the petitioner with regard to delay is concerned, we are not not impressed with the said submission, as it is a continuous cause of action and the Railways cannot be allowed to raise a ground of estoppel against the statute.
18. In view of the aforesaid facts and circumstances of the case, the order impugned passed by the CAT, which we find that it is in parallel and narrative have been correctly been posed on the dictum of the Supreme Court, no fault can be attached to interfere with the order.

6 (2015) 1 SCC 347

19. As a sequel, the writ petition, *sans substratum*, is liable to be and is hereby dismissed, leaving the parties to bear their own cost(s).

Sd/-

Sd/-

(Goutam Bhaduri)
Judge

(Radhakishan Agrawal)
Judge

Gowri

HEAD NOTE

Government cannot amend or substitute statutory rules by administrative instructions, and the same can only be used to fill the gaps or supplement the rules.

शासन वैधानिक नियमों को प्रशासनिक निदेशों द्वारा संशोधित या प्रतिस्थापित नहीं कर सकता, प्रशासनिक निदेशों का प्रयोग केवल नियम की कमी को दूर करने या उसकी प्रतिपूर्ति करने में किया जा सकता है।