

ITEM No.103

Court No.11

SECTION XIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.7298 of 1997

JOHN MATHEW

Appellant (s)

VERSUS

UNION OF INDIA & ORS.

Respondent (s)

(With Office Report)

WITH

C.A.No.7297/1997

Date : 17/02/2004 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE BRIJESH KUMAR

HON'BLE MR. JUSTICE ARUN KUMAR

For Appellant (s) Mr.B.V.Deepak,Adv.
Mr.Dilip Pillai,Adv.
Mr.Ajit Pudussery,Adv.

For Respondent (s) Mr.Roy Abraham,Adv.
Ms.Seema Jain,Adv.
Mr.Himinder Lal,Adv.

For UOI Mr.L.N.Rao,ASG (N/P)
Mr.P.P.Malhotra,Sr.Adv.
Mr.Ajay Sharma,Adv.
Ms.Sushma Suri,Adv. (N/P)
Ms.Anil Katyar,Adv.

UPON hearing counsel the Court made the following

O R D E R

Mr.P.P.Malhotra, learned senior counsel appearing for the Union of India started his arguments at 2.25 p.m. and concluded at 3.00 p.m. Thereafter, Mr.Roy Abraham, learned counsel appearing for the respondents, made his submissions from 3.00 p.m. to 3.20 p.m. The appeals are allowed and the impugned order of the Tribunal is set aside in terms of the signed order.

(Promila Nagpal)

(N.K.Gandhi)

COURT MASTERASSISTANT REGISTRAR

[Signed order is place on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7298 OF 1997

JOHN MATHEW... APPELLANT (S)

VERSUS

UNION OF INDIA & ORS.... RESPONDENT (S)

WITH

CIVIL APPEAL NO.7297 OF 1997

O R D E R

The point in these two appeals is common. Hence, we dispose of the same by one order. The controversy relates to promotion to the post of Foreman (Engine Fitting). The feeder post is Senior Chageman. According to the Rules 80% posts of Foreman (Engine Fitting) are to be filled up by promotion and 20% by direct recruitment. In this ratio, the first four vacancies were liable to be filled up by promotion of departmental candidates and the 5th one by direct recruitment. But it appears, as submitted, that by mistake first five vacancies were filled up by promotion during the period from 1972-1988. The fifth vacancy was filled up in the year 1988. Realising the mistake indicated above, the Government, it appears, decided to fill up the 6th vacancy by direct recruitment. On such a decision being taken, K.A.Raghavan, respondent in Civil Appeal No.7297/1997 filed an O.A. before the Central Administrative Tribunal in June 1995. It is informed that an interim order was passed that the post if filled up by direct recruitment shall be subject to the result of the petition. John Mathew, the appellant in Civil Appeal

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No.7298/1997 was selected as a direct candidate and was appointed on September 4, 1995. The Tribunal ultimately allowed the O.A. holding that the 6th vacancy should have been filled up by promotion and the respondent, K.A.Raghavan should not be made to suffer, by resorting to process of direct recruitment for the 6th vacancy, for no fault of his. If any, the mistake was that of the department.

The Union of India and John Mathew, the direct recruit, both have preferred the appeals in hand. The main contention raised on behalf of the respondent, K.A.Raghavan, is that if the department had acted according to the Rules only the first four vacancies would have been filled up by promotion. The 5th one by direct recruitment and the 6th vacancy would have again been filled up by promotion. Learned counsel for the respondent submits that in the year 1988 when promotional exercise was undertaken he was not eligible or qualified and the person junior to him was promoted but in the meantime he became qualified for promotion in the year 1990. That being the position, if the 6th vacancy was filled up by promotion in accordance with the Rules, the respondent would have got promotion in 1995 instead in 1998. The above-noted contention has found favour with the Tribunal but we find some variation in the factual position which is also not in dispute. True the 5th vacancy which has been filled up in the year 1988 though earmarked for direct recruitment, under some mistake, by promotion but for the purpose of promotion, a departmental test was held. Admittedly, the respondent took part and participated in the test but he could not make it and a person junior to him

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had qualified in the test as a result of which he was promoted in the year 1988 against the 5th vacancy. We feel that the respondent had himself participated in the promotional exercise held in 1988 for the 5th vacancy. It is not open for him later to turn round and make a grievance that the 5th vacancy could be filled up only by direct recruitment, therefore, 6th vacancy could not be filled up by direct recruitment. He did not challenge the appointment made in the 5th vacancy in 1988. To see it in totality, the fact remains that the respondent was entitled to be considered for promotion as against the four vacancies and after the 5th vacancy again in the next vacancy which would have been available for promotion. Thus, upto filling up of the 6th vacancy he was to be considered for five vacancies out of six. Having participated in promotional exercise upto the 5th vacancy in the year 1988 he could not raise a grievance about filling up of 6th vacancy by direct recruitment. The respondent, it is submitted, was the seniormost Chageman which is the feeder cadre but in the test he had not been able to qualify, hence person junior to him was given chance for promotion. In the aforesaid background, we do not find that there is any justification on the part of the respondent to raise an

y grievance for filling up of the 6th vacancy by direct recruitment. The respondent had full chance of being considered in the five vacancies which have been filled up by promotion counting the 6th one. There is no allegation of mala fides, rather the action of the Government seems to be bona fide in setting right a mistake occurred earlier.

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In view of the discussion held above, we find that the order passed by the Tribunal is not sustainable. Both the appeals are, therefore, allowed and the impugned order of the Tribunal is set aside.

.....J.
[BRIJESH KUMAR]

.....J.
[ARUN KUMAR]

New Delhi,
February 17, 2004.