

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7946 OF 2013
(Arising out of SLP (C) No.4511 of 2007)

B.S.N.L. LTD. & ORS.

...Appellants

Versus

MAGGHU PRASAD TIWARI (DEAD) & ANR.

...Respondents

WITH

- C.A.No. 7948 of 2013 (Arising out of SLP(C) NO. 6202 of 2007)
- C.A.No. 7949 of 2013 (Arising out of SLP(C) NO. 7358 of 2007)
- C.A.No. 7950 of 2013 (Arising out of SLP(C) NO. 18269 of 2007)
- C.A.No. 7951 of 2013 (Arising out of SLP(C) NO. 18268 of 2007)
- C.A.No. 7952 of 2013 (Arising out of SLP(C) NO. 18266 of 2007)
- C.A.No. 7953 of 2013 (Arising out of SLP(C) NO. 18270 of 2007)
- C.A.No. 7954 of 2013 (Arising out of SLP(C) NO. 18267 of 2007)
- C.A.No. 7955 of 2013 (Arising out of SLP(C) NO. 18271 of 2007)
- C.A.No. 7956 of 2013 (Arising out of SLP(C) NO. 12678 of 2007)
- C.A.No. 7957 of 2013 (Arising out of SLP(C) NO. 21741 of 2007)
- C.A.No. 7958 of 2013 (Arising out of SLP(C) NO. 19575 of 2007)
- C.A.No. 7959 of 2013 (Arising out of SLP(C) NO. 19569 of 2007)
- C.A.No. 7960 of 2013 (Arising out of SLP(C) NO. 19572 of 2007)
- C.A.No. 7961 of 2013 (Arising out of SLP(C) NO. 19576 of 2007)
- C.A.No. 7962 of 2013 (Arising out of SLP(C) NO. 19577 of 2007)
- C.A.No. 7963 of 2013 (Arising out of SLP(C) NO. 19571 of 2007)
- C.A.No. 7964 of 2013 (Arising out of SLP(C) NO. 21052 of 2007)
- C.A.Nos.7965-66 of 2013(Arising out of SLP(C) NO. 22713-22714 of 2008)
- C.A.Nos.7967-69 of 2013(Arising out of SLP(C) NO. 27377-27379 of 2010)
- C.A.No. 7970 of 2013 (Arising out of SLP(C) NO. 9758 of 2007)
- C.A.No. 7971 of 2013 (Arising out of SLP(C) NO. 9753 of 2007)
- C.A.No. 7972 of 2013 (Arising out of SLP(C) No. 8013 of 2007)
- C.A. No. 7491 of 2008
- C.A. No. 7567 of 2008
- C.A. No. 7569 of 2008
- C.A. No. 7568 of 2008
- C.A. No. 7542 of 2008
- C.A. No. 7543 of 2008
- C.A. No. 4799 of 2009
- C.A. No. 7368 of 2009
- C.A. No. 7378 of 2009
- C.A. No. 7372 of 2009
- C.A. No. 8704 of 2009
- C.A. No. 7376 of 2009
- C.A. No. 7369 of 2009
- C.A. No. 7371 of 2009
- C.A. No. 7370 of 2009
- C.A. No. 7377 of 2009
- C.A. No. 7375 of 2009
- C.A. No. 3315 of 2011
- C.A. No. 3639 of 2011

Leave granted.

These appeals have a chequered history with several rounds of litigation between the parties or those similarly situate behind them. The controversy here primarily relates to promotions made under what is known as "Biennial Cadre Review" Scheme (BCR) which aimed at removing stagnation by providing promotional avenues in the form of financial upgradation admissible to the eligible employees serving in the appellant-Corporation. The scheme, inter alia, provided that upon completion of 26 years of service the eligible employees could be placed in Grade III comprising a pay scale of Rs.1600-2600 revised to Rs.5000-8000. The scheme further envisaged that 10% of posts in Grade III would be given Grade-IV that carried a pay scale of Rs.2000-3200 revised to Rs.6500-10500. Employees who had opted for restructured cadres were excluded from getting the benefit of 10% Grade IV pay-scale in terms of Circular dated 22nd October, 1993 but by an order dated 16th June, 1997, that anomaly was subsequently removed.

Promotions from Grade I to Grade II under the Scheme were by seniority-cum-merit to the extent of 2/3rd vacancies. The remaining 1/3rd vacancies were to be filled up by a limited Departmental Competitive Examination. This necessarily meant that those successful in the competitive examination would enter Grade II earlier than the rest who had to wait for their upgradation in terms of the Scheme on a time-bound basis, upon completion of 16 years of service. Promotions from Grade II under the Scheme to Grade III were similarly on the basis of seniority-cum-merit upon satisfaction of the conditions of eligibility stipulated for that purpose.

In the present batch of cases, there is no dispute concerning promotions from basic Grade I to Grade II or those made from Grade II to Grade III. What is in dispute are the promotions made from Grade III to Grade IV under the Scheme. The Appellant-Corporation was making these promotions from Grade III to Grade IV on the basis of seniority in Grade III which in turn was determined by the date of their substantive entry into that grade. Since promotions to Grade IV were limited only to 10% of the posts in Grade III, such of the candidates as had entered Grade III earlier on account of having passed the competitive examination stood a better chance to get into Grade IV earlier as compared to those who were senior to such employees in Grade-I but had to wait for their promotions to the next higher grades on the basis of their seniority in basic Grade I. Such employees it appears stood no or little chance of getting into Grade IV and were for that reason aggrieved. For redressal of their grievance these employees approached the Central Administrative Tribunal, New Delhi, ("Tribunal", for short) in O.A. No.1455 of 1991 whereby they assailed the method of promotion from Grade III to Grade IV. According to them, promotions from Grade III to Grade IV ought to be made on the basis of their seniority in Grade I and not in Grade III. They argued that if promotions to Grade IV were made on the basis of seniority in Grade III, promotions to Grade IV would all be claimed by those who had stolen a march over others on account their success in the competitive examination adversely affecting the prospects of the rest to rise to Grade IV on the basis of their seniority. That contention found favour with the Tribunal who by order dated 7th July, 1992 held that promotions to Grade IV under the Scheme ought to be made on the basis of seniority in the pay-scale of Grade I. The Tribunal observed:

"Analysing facts and arguments in the case, we find that the scale of Rs.2000-3200 is clearly a part of the BCR scheme 10% of the posts in 1600-2660 are placed in the scale 2000-3200. It appears that BCR provided for this since these scamming under BCR, would hardly have any opportunity to go to the higher scale of Rs.2000-3200 by virtue of seniority. The Promotion to 2000-3200 should be based on seniority of officials maintained with reference to basic cadres vide clarification in Telecommunication Deptt's letter of 11.3.91. Basic cadre in various posts are shown in para 2 (vi) of the BCR scheme of 16th Oct, 90. The scale of Rs.2000-3200 is like a new functional scale under BCR and the mere drawal of this scales will not entitle the drawee to any preferential seniority in the scale of Rs.1600-2660."

Since the above direction would necessarily result in some of the employees already promoted to Grade IV getting ousted on account of their being junior to the petitioners before the Tribunal, the Tribunal directed that the appellant-Corporation could protect the interests of such of the employees as were rendered vulnerable to ouster on account of the interpretation placed by it upon the scheme by creating supernumerary posts.

The decision rendered by the tribunal was affirmed by this Court by order dated 9th September, 1993 whereby this Court dismissed Civil Appeal No.3201 of 1993 filed against the same. This Court held:

"In view of the clear provision in the letter dated 3-4-1991 (at page 116 of the paper book) read with the letter dated 18-10-1990 (at page 119 of the paper book) that completion of 26 years service on the crucial date along with the fact of being a regular employees on 1.1.1990 are essential requirements for obtaining the benefit under the Biennial Cadre Review Scheme, the direction given, by the Tribunal in the impugned order in favour of the respondent cannot be faulted. On this conclusion, it is obvious that no case for interference in this appeal is made out. The appeal is dismissed.

No costs"

The above led to the appellant-Corporation creating supernumerary posts to protect those promoted to Grade IV against ouster consequent upon the view taken by the Tribunal and affirmed by this Court. Promotions to Grade IV continued on seniority of the employees in Grade-III till 13th December, 1995 when the appellant-Corporation adopted the view taken by the Tribunal in Santosh Kapoor's case (O.A.No.1455 of 1991) (supra), as the basis for future promotions to Grade IV under the Scheme.

The respondents who are similarly situate as those who were parties to the first round of litigation on the subject were promoted to Grade IV sometime in the year 1998-99. Their promotion was, however, cancelled by the appellant-Corporation after they had served for nearly one year in the higher grade on the ground that the same had been made contrary to the standing orders especially Circular dated 16th June, 1997. Aggrieved by the cancellation of their promotions the respondents filed a batch of petitions before the Tribunal assailing the order passed by the appellant-Corporation on several grounds. The Tribunal examined the matter and by its order dated 17th August, 2000 set aside the order passed by the appellant-Corporation on the ground that the respondents had not been heard before cancellation of their promotion was ordered. The Tribunal directed that the Corporation could pass fresh orders on the subject after affording to the respondents an opportunity of being heard in the matter.

The appellant-Corporation accordingly issued notices to the respondents, received their objections but once again passed orders canceling their promotions. These fresh orders dated 5.9.2002 and 6.9.2002 were then assailed by the respondents in a batch of writ petitions filed before the High Court of Judicature at Allahabad. A learned Single Judge of that court who heard the matter took the view that the orders of cancellation were unjustified not only because the cancellation was inequitable but also because the appellant-Corporation had by creating supernumerary posts and by promoting respondents against the available vacancies committed no illegality so as to call for its cancellation. The High Court noted that several of the respondents who had worked in the higher Grade IV had either retired or passed away. This is evident from the following passage from the order passed by the High Court:

"The Court further find that the equity also supports the petitioners. All most all the petitioners except a few have retired. It would be unjust and inequitable to withdraw the benefits drawn by the petitioners much before their retirement from their death-cum-retrial gratuity. The fact that they have been given benefit of promotion retrospectively and have actually worked about one year also does not take away the equity which has come into play after the petitioners have retired."

On the merit of the case, the High Court's reasoning was as follows:

"The department, however, admits in the impugned order that the persons junior to the petitioners in the basic grade seniority, were promoted in Grade IV. They were, however, not reverted to supernumerary posts were created by its circular letter dated 10.05.1996., to accommodate those who became ineligible. The Department, however, subsequently, in the year 1995, decided to abolish supernumerary posts and cancelled the promotion as these persons had become ineligible for promotion by virtue of their seniority in the basic grade. The department found that the promotion orders in favour of the petitioners were issued due to misinterpretation by the department of telecommunication's instruction dated 16.06.1992 and 02.09.1998 without observing the prescribe limit of 10% and were consequently cancelled on 20.07.1999. In these letters were issued to provide promotions to the eligible staff working only in restructured cadres and were not applicable to the petitioners. Since the petitioners were not eligible for being accommodated against the supernumerary posts, they could not be promoted. In substance and basically the objections taken to petitioners promotion are that the department decided to protect all those, who were promoted and had to be reverted in terms of the orders of the Principal Bench of the Central Administrative Tribunal, New Delhi dated 07.07.1992. In the process the restriction of 10% would neither be relaxed/extended by the department nor by the Central Administrative Tribunal, the petitioners promotion found to be wrongly made in order to remove the discrimination requires to be cancelled. The department admitted that the promotions, to the petitioners vide office order dated 23.11.1998 was issue due to misinterpretation of department instruction dated 16.06.1997 and 02.09.1998."

The orders passed by the appellant-Corporation canceling the promotion of the respondents were on the above rationale quashed. An appeal preferred by the appellant-Corporation before the Division Bench having failed, the present appeals have been filed assailing the correctness of the orders passed by the Tribunal and the High Court.

We have heard learned counsel for the parties at considerable length who have taken us through the orders passed by the Tribunal in the earlier round of litigation as also the orders passed by the High Court. Our attention was drawn by Mr. R.D. Agrawal, learned senior counsel for the appellant-Corporation, to the decision of this Court in *Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2) and Others - (2011) 4 SCC 374* who contended that the benefit of protection against ouster was available to only such of the employees who are parties to the first round of litigation. The same could not therefore be extended to the respondents in the present case. Two considerations which have primarily weighed with the High Court in quashing the cancellation orders have been noticed by us above. Both of them are independently of each other sufficient to justify the reversal of the view taken by the appellant-Corporation. It is common ground that the respondents were in no way responsible for their promotions to the next higher grade. The High Court has in our opinion correctly relied upon the decisions of this Court in *State of Orissa v. Adwait Charan Mohanty - (1995) Supp. 1 SCC 470*, *Union of India v. Sita Ram Dheer - 1994 SCC (L&S) 1445*, *Nand Kishore Sharma v. State of Bihar - (1995) Supp.3 SCC 722* and *State of Karnataka v. Mangalore University Non Teaching Employees' Assn. - (2002) 2 SCC 302* to hold that the respondents having worked in the higher grade could not be reverted from the same without a lawful justification or any allegation that they had secured an undeserved benefit by fraud or misrepresentation. It was also correct in holding that the appellant-Corporation having granted promotion to the respondents with effect from the date their juniors in the basic Grade I were promoted to the Grade IV, there was no reason to undo the promotions. The grant of promotion and the creation of supernumerary posts was rightly held to be a step taken with a view to preventing miscarriage of justice which was evident if a junior was picked up for promotion ignoring the claims of the senior. Reliance upon decision in *Ghanshyam Dass's* case does not in the facts and circumstances of the case at hand lend any assistance to the appellant.

C.A. No.7956 of 2013 (arising out of SLP(C) NO. 12678 of 2007) (With office report)

C.A. No.7957 of 2013 (arising out of SLP(C) NO. 21741 of 2007) (With appln. for c/delay in filing SLP and c/delay in refiling SLP and office report)

C.A. No.7958 of 2013 (arising out of SLP(C) NO. 19575 of 2007) (With appln. for c/delay in filing SLP and deletion of the name of respondent and office report)

C.A. No.7959 of 2013 (arising out of SLP(C) NO. 19569 of 2007 (With appln. for c/delay in filing SLP and office report)

C.A. No.7960 of 2013 (arising out of SLP(C) NO. 19572 of 2007) ((With appln. for c/delay in filing SLP and with prayer for interim relief and office report)

C.A. No.7961 of 2013 (arising out of SLP(C) NO. 19576 of 2007) (With appln. for c/delay in filing SLP and office report)

C.A. No.7962 of 2013 (arising out of SLP(C) NO. 19577 of 2007) (With appln. for c/delay in filing SLP and office report)

C.A. No.7963 of 2013 (arising out of SLP(C) NO. 19571 of 2007) (With appln. for c/delay in filing SLP and office report)

C.A. No.7964 of 2013 (arising out of SLP(C) NO. 21052 of 2007) (With office report)

C.A. Nos.7965-66 of 2013 (arising out of SLP(C) NO(s). 22713-22714 of 2008) (With appln. for c/delay in filing SLP and office report)

C.A. Nos.7967-69 of 2013 (arising out of SLP(C) NO(s). 27377-27379 of 2010 (With office report)

C.A. No.7970 of 2013 (arising out of SLP(C) NO. 9758 of 2007) (With appln. for c/delay in filing SLP and office report)

C.A. No.7971 of 2013(arising out of SLP(C) NO. 9753 of 2007)(With appln. for c/delay in filing SLP and office report)

C.A. No.7972 of 2013(arising out of SLP(C) No. 8013 of 2007) (with appln. for substitution of LRs of the deceased respondent and c/delay in filing substitution appln. and with prayer for interim relief and office report)

C.A. No. 7491 of 2008 (with office report)

C.A. No. 7567 of 2008 (with office report)

C.A. No. 7569 of 2008 (with office report)

C.A. No. 7568 of 2008 (with office report)

C.A. No. 7542 of 2008 (with office report)

C.A. No. 7543 of 2008 (with office report)

C.A. No. 4799 of 2009 (with office report)

C.A. No. 7368 of 2009 (with office report)

C.A. No. 7378 of 2009
(with office report)

C.A. No. 7372 of 2009
(with office report)

C.A. No. 8704 of 2009
(with office report)

C.A. No. 7376 of 2009
(with office report)

C.A. No. 7369 of 2009
(with office report)

C.A. No. 7371 of 2009
(with office report)

C.A. No. 7370 of 2009
(with office report)

C.A. No. 7377 of 2009
(with office report)

C.A. No. 7375 of 2009
(with office report)

C.A. No. 3315 of 2011
(with appln. for directions and office report)

C.A. No. 3639 of 2011

C.A. No. 4527 of 2006
(with appln. for permission to submit addl. documents)

C.A. No. 4528 of 2006

SLP(C) No.7089 of 2009
(with prayer for interim relief and office report)

SLP(C) No. 29997 of 2010
(with appln. for c/delay in filing SLP and office report)

SLP(C) No. 36608 of 2010
(with appln. for c/delay in filing SLP and office report)

C.A. No. 3626 of 2011

Date: 10/09/2013 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE VIKRAMAJIT SEN

For Petitioner(s) Mr. R.D.Agrawala, Sr. Adv.
Mr. Pavan Kumar, Adv.
Mr. Prithvi Pal, Adv.

For Respondent(s) Mr. S.R.Singh, Sr. Adv.
Mr. Ankur Yadav, Adv.
Mr. Ankur Prakash, Adv.
Mr. A. Ramshiromani Yadav, Adv.
Mr. Abhishth Kumar, Adv.

Mr. Ranbir Yadav, Adv.

Ms. Anzu K Varkey,Adv.
Mr. P. Kakra,Adv.

Mr. S.R. Upadhyay,Adv.

Mr. Viresh kumar Yadav,Adv.

Mr. Asad Alvi,Adv.
Mr. Riaz Faizi,Adv.
Mr. Satya Mitra,Adv.

Ms. Asha Gopalan Nair,Adv.

Mr. Rameshwar Prasad Goyal,Adv.

Mr. D.N. Dubey,Adv.
Mr. Manoj K.Mishra,Adv.
Mr. Pradeep Kumar, Adv.

Mr.Arvind K.Sharma,Adv.

Mr. Pankaj Gupta,Adv.

Mr. P. Narasimhan,Adv.

Respondent-in-Person

UPON hearing counsel the Court made the following
O R D E R

SLP(C) No.36608 of 2010, SLP(C) No.29997 of 2010, SLP(C)
No.7089 of 2009, Civil Appeal No.4527 of 2006, Civil Appeal
No.3626 of 2011 and Civil Appeal No.4528 of 2006 are detagged.
Post on Tuesday, the 1st October, 2013.

Heard remaining matters.

Delay condoned.

Substitution allowed.

Leave granted.

The appeals are dismissed in terms of the signed order.

(Mahabir Singh)		(Veena Khera)	
Court Master		Court Master	

(Signed order is placed on the file)