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C.A.No. 12260 OF 1996
ITEM NO.104

COURT NO.7

SEC -XV

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(S).12260 OF 1996@@
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UOI & Anr.

Appellant(s)

VERSUS

Devaram & Anr.

Respondent(s)

(with appln. for stay and office report)

DATE: 18-12-2002 This matter was called on for hearing today.@@
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CORAM :

HON'BLE MR. JUSTICE DORAISWAMY RAJU
HON'BLE MR. JUSTICE ARUN KUMAR

For Appellant (s) : Mr. Wasim A Qadri, Adv. for
Mrs. Anil Katiyar, Adv.
Mr. Arvind Kr. Sharma, Adv. (NP)

For Respondent(s) :

UPON hearing counsel the Court made the following
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Mr. Wasim Qadri, learned counsel for the appellants
started his arguments at 11.10 a.m. and concluded at 11.45 a.m.
The respondent, though served, has chosen not to appear
or to be represented.
The appeal is allowed in terms of the signed order.
No costs.

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(D.L. Chugh) (K.K. Chadha)
Court Master Court Master
Signed order is placed on the file

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CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.12260 OF 1996@@
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U O I & Anr.Appellants

VERSUS

Devaram & Anr.Respondents

O R D E R@@
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The above appeal has been filed against the order of the Central Administrative Tribunal, Jodhpur Bench in OA No.80 of 1992 dated 27th September, 1994 whereunder the Tribunal, while allowing the claim of the first respondent herein for promotion to the post of E.L.F. (Electrical) Fitter Grade-II) on the basis of a trade test held on 28-4-1987 in which he was said to have been declared successful, without appearing for and undergoing successfully the suitability test once again. In the process of granting the relief the Tribunal also held to be violative of Articles 14 and 16 of the Constitution of India what in its view was the offending portion of Rule 224 of the Indian Railway Establishment Manual Volume -I providing that an "employee has again to appear for a suitability test when his turn for promotion comes". A time limit for implementation of the order was also stipulated but it is seen from the file of this appeal, not only interim orders have been obtained but the said interim orders have been ordered to be continued pending disposal of the appeal.

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The respondent though served with notice has chosen not to appear in person or through counsel to contest the claim.

Learned counsel appearing for the appellants challenge the decision of the Tribunal that in the light of a specific stipulation contained in Rule 214 (c) (iv), the provision contained in Rule 224 (II) (i) insisting upon the appearance for a suitability test again when the turn for promotion comes subsequently though after he refused to accept on two occasions the offer of promotion, would be arbitrary and unreasonable and denial of the right acquired by the first respondent by virtue of the earlier passing of the suitability test. Rule 214 (c) (iv) and Rule 224 (II) (i) are as under:

"214 (c) (iv). An employee who has passed a suitability test once need not be called for the test again and should be eligible for promotion as and when vacancies arises.

224. (II) (i). Non-selection Posts@@
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Such an employee should be debarred for future promotion for one year but not be transferred away from that station for one year if unavoidable domestic reasons exists. He should again be debarred for promotion for one year in case he refuses promotion again after the first year of debarment or refusal of promotion for second time, the Administration can however transfer him to outstation in the same grade and the employee has again to appear for a suitability test when his turn for promotion comes."

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One reason which weighed with the Tribunal also seems to be that Rule 214 (c)(iv) which was inserted by a proceeding dated 13th October, 1967 had the effect of overriding Rule 224 II(i) which came to be included as a part of the Rules on 14th October, 1966. On that basis the Tribunal felt that the so called offending portion of Rule 224 II (i) noticed above which had the effect of not only debarring a person who got into the select list removed from the same but subjecting him once over again to undergo the suitability test which in the opinion of the Tribunal amounted to double jeopardy. We find also a casual reference in the order of the Tribunal that the Rules contained in the Manual in question has no statutory force. In a decision of this Court reported in 1978 (1) SCC 158 entitled The Railway@
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Board and others vs. P.R. Subramaniam and others it has@@
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been observed as under:

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"In the Indian Railway Establishment Code, Volume I are the Rules framed by the President of India under Article 309 of the Constitution. Contained in the said code is the well-known Rule 157 which authorises the Railway Board, as permissible under Article 309, to have "full powers to make rules of general application to non-gazetted railway servants under their control". The Railway Board have been framing rules in exercise of this power from time to time. No special procedure or method is prescribed for the making of such rules by the Railway Board. But they have been treated as rules having the force of rules framed under Article 309 pursuant to the delegated power to the Railway Board if they are of general application to non-gazetted railway servants or to a class of them.

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The assumption to the contra by the Tribunal without any further exercise does not appear to be correct.

The specification "when his turn for promotion comes" in Rule 224 would mean the turn for promotion for the third time comes, after earlier two turns which had come to him and the authorities were prepared to promote him, but which he declined. Viewed, thus, it cannot be assumed there is any inconsistency whatsoever between these two provisions. The other reason assigned by the Tribunal that the relevant portion of Rule 214 was in later point of time, cannot in any way have the effect of superseding the provisions contained in Rule 224 noticed above, for the reason that they deal with two different stages involved in the consideration of claim for promotions. The provision contained in Rule 224, in our view, is not only just, reasonable but necessary to prevent abuse by the employee concerned also to keep avoiding promotions in their due turn when offered to be promoted, to ...7/-

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the detriment of both administrative exigencies and public interest. Consequently, the reasoning of the Tribunal that it had the effect of inflicting double jeopardy and suffered the vice of arbitrariness or unreasonableness cannot be upheld or approved by us. The order of the Tribunal, therefore, is hereby set aside.

The appeal is allowed. No costs.

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(ARUN KUMAR)@@
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New Delhi,
December 18, 2002