

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS.1366-1367 OF 2004

NAGESH SINGH & ANR.

Appellant(s)

Versus

B.D. VIRDI & ORS.

Respondent(s)

O R D E R

We have heard learned counsel for the parties.

These appeals by special leave are directed against the order passed by the Division Bench of the Delhi High Court dated 22nd July, 2003. The Division Bench of the Delhi High Court in a writ petition filed by the respondent herein set aside the order passed by the Administrative Tribunal dated 7th January, 1999. The order reads as under :-

“In the result these two O.As succeed and are allowed to the extent that following the Supreme Court's Judgment in Shri Mohanty's case (supra) the promotions made of those SC/ST candidates under Rule 13 (unamended), IES Rules, 1961 without considering the case of the applicants in the two O.As before us, is held by us to be legally unsustainable. Furthermore, the retrospective

operation of the amendment to Rule 13, IES Rules to the extent that the same takes away the vested rights of the applicants and other general category candidates is also unreasonable, arbitrary and as such violative of Articles 14 and 16 of the Constitution and is, therefore, struck down.

In the light of the above, respondents are directed to review the impugned promotions and consider the cases of the applicants for promotions from the date the impugned promotions were made, with all consequential benefits. While doing so the respondents should make all efforts to protest the promotions of reserved category candidates to the extent possible, but if it becomes absolutely necessary to revert them from the higher posts to which they have been promoted under the unamended or amended Rules, that may be done. While doing so, however, any financial benefits given to them while working in the higher posts should not be withdrawn and should be protected as personal to them.”

Aggrieved against this order, the writ petition was filed by the respondents herein and the Division Bench of the Delhi High Court set aside the aforesaid direction and held that :

“We have, therefore, no other alternative but to set aside the judgments of the Tribunal and remit the

matter back to it for consideration of the matter afresh.”

So far as CWP No.223 of 2001 is concerned, the Division Bench held that it is not maintainable and directed the petitioners to approach the Central Administrative Tribunal. CM No.5066 of 2001 an application made by Mr. Gyan Prakash in this writ petition is concerned, Court decline to implead applicant as party.

We may at outset mention that we are not concerned with the facts relating to the CWP No.223 of 2001. We have been informed that the matter is pending before the Tribunal pertaining to this subject. Therefore, we are not going into the facts pertaining to CWP No.223/2001.

The present appeals were filed by two persons namely Nagesh Singh and B.S.Bhandari who filed the O.A. before the Tribunal praying the following reliefs :

- i) “The Hon'ble Tribunal may be pleased to declare the applicants having been promoted to Grade III as per Rule 8(1)(b)(i) for his juniors have been promoted before them.**
- ii) That out of turn promotion from Grade IV to Grade III of the IES to junior officers belonging to SC/ST in supersession of claims of seniors belonging to the general category be**

struck down as violative of the statutory rules of the IES, 1971 and A 14, 16(1) and 335 of the Constitution of India,

iii) This Hon'ble Tribunal may be pleased to quash the impugned amendment dated 22.9.1989 (Annexure C) amending Rule 13 as being void,

iv) That the applicants be deemed to be promoted to Grade III of the IES from the date their juniors have been promoted, which were granted by the Tribunal and that have been set aside by the Division Bench. Therefore, we are concerned with the grievance of these two appellants before us vis-a-vis the respondents who are party before us. We are not touching the rights of other parties in any manner.”

Both these appellants i.e Nagesh Singh and B.S. Bhandari joined Grade IV (Assistant Director) in the Indian Economic Service (IES) on 1st September, 1982. The other respondents joined the service after them. Respondent No.1 joined the service on 1.12.1982 and Respondent Nos.2 to 5 joined the service on 29th August, 1983. Respondent No.1 was promoted on 25th May, 1988 as Grade III (Deputy Director) by the Order dated 25th May, 1988 and respondent Nos. 2 to 5 were promoted as Grade III

(Deputy Director) on 7th July, 1988. Against these accelerated promotions against reserved quota was challenged by petitioner Nos. 1 and 2 by filing a representation but without any result. Therefore, they were driven to file O.A. before the Central Administrative Tribunal under Section 19 of the Administrative Tribunal's Act, 1985. The main grievance of these petitioners before the Tribunal was that as per Rule 13 as it stood in 1988 there was no reservation quota in promotion for SC/ST and they have been wrongly promoted under the garb of so called administrative instruction issued on 27th November, 1972. The validity of this Notification dated 27th November, 1972 was also challenged. It may be relevant to mention here that the Indian Economic Service Rules, 1961 were framed under proviso to Rule 309 of the Constitution and they came into force when they were published under the Gazette of India (Extra Ordinary) dated 1st November, 1961 and in that Rule 13 as it stood reads as under :-

13. Reservation for Scheduled Castes, Scheduled Tribes etc. -
Appointments to the Service made otherwise than by promotion will be subject to orders regarding special representation in the Services for Scheduled Castes and Scheduled Tribes issued by the Ministry of Home Affairs from time to time.”

The grievance of the petitioners was that Rule 13 did not contemplate any reservation against in promotion quota. It clearly mandates that appointment of service made otherwise than by promotion will be subject to orders regarding special representation in service for SC/ST issued by the Ministry of Home Affairs from time to time. Therefore, according to Rule 13, the reservation could only be made in service otherwise than by way of promotion. It means that the only area in which the reservation could be made is in the direct appointment. In our opinion Rule 13 clearly mandates that the reservation was only in recruitment and not in promotion. However, this issue has been a subject matter of litigation before this Court in number of cases but no useful purpose will be served by highlighting all those cases because subsequently, Rule 13 was amended by Notification dated 22nd September, 1989 and the amended rule reads as under :-

“13. Reservation for Scheduled Castes and Scheduled Tribes, etc. - Appointment to the service shall be made subject to the orders relating to reservation for Scheduled Castes and Scheduled Tribes issued by the Central Government from time to time.”

As a result of this amendment the hurdle imposed in unamended Rule 13 was taken away and the area was left

open for reservation in direct recruitment as well as in promotions but this amended rule dated 22nd September, 1989 was made retrospective effect with effect from 27th November, 1972. On 27th November, 1972 an order was issued by the Government for providing a reservation for promotion quota also but it had no legal sanction at that time. Therefore, now a legal sanction was given by amending Rule 13 and substituting the new rule making it retrospective from 27th November, 1972 so as to protect all the promotions which have been done from 27th November, 1972. This amended Rule 13 had come up for interpretation in identical service rules i.e. in the Indian Statistical Service before this Court and the amended rule in the Indian Statistical Service is *pari materia* with the present rule which reads as under :-

13. Reservation for Scheduled Castes and Scheduled Tribes etc. - Appointment to the service made otherwise than by promotion will be subject to orders regarding special representation in the Service for Scheduled Castes and Scheduled Tribes issued by the Government from time to time.” This rule was also given retrospective operation from 27th November, 1972.

This rule came up for interpretation before this Court and Their Lordships after examining the various

other decisions of this Court concluded that retrospectivity cannot be given to the rule and it was observed that the legislature and the competent authority under Article 309 of the Constitution of India have the power to make laws with retrospective effect. This power, however, cannot be used to justify the arbitrary, illegal or unconstitutional acts of the Executive. When a person is deprived of an accrued right vested in him under a statute or under the Constitution and he successfully challenges the same in the court of law, the legislature cannot render the said right and the relief obtained nugatory by enacting retrospective legislation.

It was also observed that the retrospective operation of the amended rule 13 cannot be sustained.

It was observed in para 14 and 15 in Union of India and Others vs. Tushal Ranjan Mohanty and Others case reported in (1994) 5 SCC 450 which read as under :-

14."The legislatures and the competent authority under Article 309 of the Constitution of India have the power to make laws with retrospective effect. This power, however, cannot be used to justify the arbitrary, illegal or unconstitutional acts of the Executive. When a person is deprived of an accrued right vested in him under a statute or under the Constitution and he successfully challenges the same in the Court of law, the legislature cannot render the said right and the relief obtain nugatory by enacting retrospective legislation.

15. Respectfully following the law laid down by this Court in the judgments referred to and quoted above, we are of the view that the retrospective operation of the amended Rule 13 cannot be sustained. We are satisfied that the retrospective amendment of Rule 13 of the Rules takes away the vested rights of Mohanty and other general category candidates senior to Respondents 2 to 9. We, therefore, declare amended Rule 13 to the extent it has been made operative retrospectively to be unreasonable, arbitrary and, as such, violative of Articles 14 and 16 of the Constitution of India. We strike down the retrospective operation of the rule. In the view we have taken on the point it is not necessary to deal with the other contentions raised by Mohanty.”

Therefore, ratio of this case is equally applicable in this service also.

The net result of above discussion is that at the time when the respondents were promoted there was no rule and it was only administrative instruction which was sought to be given a legal sanction by amending the Rule 13 from 1972 but that retrospectivity has already been set aside in the case of Mohanty(supra).

Therefore, on the basis of the reasoning given by the Hon'ble Sawant, J. in Union of India vs. V. Mohanty's, we read down the Rule 13 that it cannot be given retrospectivity. Accordingly, we set aside the order of the Division Bench of the Delhi High Court and restore the order of the Tribunal passed in OA No.1206/93 and direct

that the case of both these appellants before us shall be considered by the respondents from the date when their juniors were promoted to the post of Deputy Director, Grade III. However, we direct that whatever monetary benefits which have been accrued to these respondents shall not be deprived to them.

We have been informed that both these appellants have already been granted retrospective promotion and all the benefits flowing therefrom.

The appeals are allowed and the order of the Delhi High Court is set aside. All the applications filed by Appellant No.3 – in person – are permitted to be withdrawn.

No order as to costs.

.....J.
(A.K.MATHUR)

.....J.
(P. SATHASIVAM)

New Delhi,
July 24, 2008