

PETITIONER:
PALURU RAMKRISHNAIAH & ORS. ETC.

Vs.

RESPONDENT:
UNION OF INDIA & ANR.

DATE OF JUDGMENT 28/03/1989

BENCH:
OJHA, N.D. (J)
BENCH:
OJHA, N.D. (J)
PATHAK, R.S. (CJ)
SHARMA, L.M. (J)

CITATION:
1990 AIR 166 1989 SCR (2) 92
1989 SCC (2) 541 JT 1989 (1) 595
1989 SCALE (1) 830

ACT:

Administrative Law: Executive instructions---cannot
override any provision of the Statutory Rules.
Civil Services: Indian Ordnance Factories (Recruitment
and Conditions of Service of Class III Personnel) Rule
1956: Rules 8, 12 and circular dated November
6, 1962--Supervisors Grade 'A' promotion to Chargeman II
on completion of two years satisfactory service--Whether there
is discrimination and any condition of service of Supervisors
'A' affected.

HEADNOTE:

The petitioners in the writ petitions were appointed
Supervisors Grade 'A' in various ordnance factories between
1962 and 1966, in pursuance of circular dated 6th November
1962 issued by the Director General of Ordnance Factories.
The circular further provided for promotion from Supervisors
'A' to Chargeman II, on completion of two years' satisfactory
service.

75 Supervisors Grade 'A' had moved a writ petition
in the Allahabad High Court in 1972. Their grievance was that
even though quite a large number of Supervisors Grade 'A'
had been promoted to the post of Chargeman Grade II

completion of two years' satisfactory work, in pursuance of the circular dated 6th November, 1962, they had been discriminated against and had not been so promoted immediately on the expiry of two years' service.

The writ petition was contested on the ground that the promotion from Supervisor Grade 'A' to Chargeman II was governed by the Indian Ordnance Factories (Recruitment and Conditions of Service of Grade III Personnel) Rules, 1956 and such promotions could be made only in accordance with the procedure prescribed by Rule 8 of these Rules.

The learned Single Judge dismissed the writ petition on the ground of unexplained laches. The Division Bench did not find any substance in the submission made on behalf of the petitioners and dis-

missed their special appeal. According to the Division Bench, it was difficult to read in the circular that after two years of satisfactory service there would be automatic promotion from Supervisor Grade 'A' to Chargeman II as such a view would militate against Rule 12 of the Rules, which provided that no appointment shall be made otherwise than as specified in the Rules. It was further held by the Division Bench that even assuming that some Supervisors Grade 'A' had been automatically promoted on completion of two years' service, without the recommendation after screening by the Promotion Committee, as provided in Rule 8, no right would accrue in favour of the appellants inasmuch as such promotions would be in the teeth of Rule 12.

Against the judgment of the Division Bench, Civil Appeal No. 441 of 1981 (Virendra Kumar and Others v. Union of India and Others, [1981] 3 SCC 30) was preferred and this Court by its order dated 2.2.1981 directed that the cases of the appellants in Civil Appeal No. 441 of 1981 be considered for promotion as Chargeman Grade II and they be so promoted unless found to be unfit.

Another group of 125 Supervisors Grade 'A' got the

he benefit of the Circular dated 6.11.1962 in pursuance of
an order passed by the Madhya Pradesh High Court on 4th Apr
il 1983 on the basis of the judgment of this Court in Civ
il Appeal No. 441 of 1981. Special Leave Petitions against t
he judgment of the Madhya Pradesh High Court were dismissed
by this Court.

The petitioners in the present writ petitions pray th
at the same relief may be granted to them as had been grant
ed in Civil Appeal No. 441 of 1981.

il In the Civil Miscellaneous petitions now filed in Civ
Appeal No. 441 of 1981, the petitioners, apart from t
he prayer for initiating proceedings for contempt against t
he respondents for disobedience of the order of this Cou
rt dated-2.2.1981, have prayed for orders directing the r
e- spondents to implement in true letter and spirit the sa
id order and to promote the petitioners to the next high
er posts after giving them the benefit of the directions
of that order. Their grievance is that their promotion tant
amounts to implementation of the order of this Court dat
ed 2.2.1981 only on paper inasmuch as they have not been gran
t- ed the difference of back wages and promotion to high
er posts on the basis of their back-date promotion as Chargem

an II.

e- Before this Court it has been urged on behalf of the r
spondents

94

A' that (i) promotions of employees including Supervisor ,
p- were governed by the Rules and in view of Rule 12 no a
n; pointment could be made otherwise than as specified therei
to (ii) appointments by promotion were to be made according
er Rule 8 on the basis of selection list prepared in the mann
ic provided there in and there was no scope for automat
us promotion merely after expiry of 2 years of continuo
r, service on the basis of the circular dated 6th Novembe
1962; (iii) the circular which was in the nature of

an executive instruction prescribed 2 years' service as Supervisor 'A' to make them only eligible for promotion; and (i) after the issue of the subsequent order dated 28th December, 1965 and circular dated 20th January, 1966 no Supervisor could claim to have become eligible for promotion merely on completion of 2 years' satisfactory service and his promotion thereafter could be effected only in accordance with the normal Rules.

Dismissing the writ petitions and disposing of the miscellaneous petitions, it was,

HELD: (1) An executive instruction could make a provision only with regard to a matter which was not covered by the Rules and such executive instruction could not override any provision of the Rule. [103E]

B.N. Nagarajan v. State of Mysore, [1966] 3 SCR 68
Sant Ram Sharma v. State of Rajasthan, [1968] 1 SCR 11
Ramchandra Shenkar Deoghar v. The State of Maharashtra, [1974] 1 SCC 317; Union of India v. Somasundaram Viswanath, [1988] 3 SC. Judgments Today 724, referred to.

(2) Notwithstanding the issue of instructions dated 6 November, 1962 the procedure for making promotion as laid down in Rule 8 of the Rules had to be followed, and the said procedure could not be abrogated by the executive instructions dated 6th November 1962. [103F]

(3) The only effect of the circular dated 6th November 1962 was that Supervisors 'A' on completion of 2 years' satisfactory service could be promoted by following the procedure contemplated by Rule 8. This circular had indeed the effect of accelerating the chance of promotion. The right to promotion on the other hand was to be governed by the Rules. This right of promotion as provided by the Rules was neither affected nor could be affected by the circular.

[103F-G]

95

(4) After the coming into force of the order dated 28 December, 1965 and the circular dated 20th January, 19

66 promotions could not be made just on completion of 2 year
s' satisfactory service under the earlier circular dated 6
th November, 1962, the same having been superseded by the lat
er circular. [106H; 107A-B]

(5) Circular dated 20th January, 1966 could not
be treated to be one affecting adversely any condition
of service of Supervisors 'A'. Its only effect was that t
he chance of promotion which had been accelerated by the circ
u- lar dated 6th November, 1962 was deferred and made depende
nt on selection according to the Rules. Though a right to
be considered for promotion was a condition of service, me
re chances of promotion were not. [106G-H]

Ramchandra Shankar Deodhar v. The State of Maharashtr
a, (supra) and Mohammad Shujat Ali & Ors. v. Union of India

JUDGMENT:

Ors., [1975] 3 SCC 76, referred to.

(6) Supervisors 'A' who had been promoted before t
he coming into force of the order dated 28th December, 1965 a
nd the circular dated 20th January, 1966 stood in a cla
ss separate from those whose promotions were to be made ther
e- after. The fact that some Supervisors 'A' had been promot
ed before the coming into force of the order dated 20th Jan
u- ary, 1966 could not, therefore, constitute the basis for
an argument that those Supervisors 'A' whose cases came up f
or consideration thereafter and who were promoted in due cour
se in accordance with the Rules, were discriminated agains
t. [107B-C]

(7) There were sufficient indications that when Civ
il Appeal No. 441 of 1981 was heard by this Court either t
he subsequent order dated 28th December, 1965 as well as t
he circular dated 20th January, 1966 and the legal consequenc
es flowing therefrom were not brought to the notice of t
he learned Judges by the learned counsel for the respondent
s, or the same was not properly emphasized. [105E-F]

(8) The findings of the Madhya Pradesh High Court in its judgment dated 4th April stood approved by this Court when the Court dismissed the special leave petition against the judgment. The appellants in Civil Appeal No. 441 of 1981 therefore deserved to be granted the same benefit as regards back wages and further promotion as were given by the Madhya Pradesh High Court to such of the petitioners before the Court who were Supervisors 'A' and were granted promotion as Chargeman I1 by its judgment dated 4th April, 1983. [108D] 109D] 96

(9) This was not a fit case for initiating any proceedings for contempt against the respondents. [109F]

ORIGINAL JURISDICTION: Writ Petition (Civil) No. 530 of 1983 etc.
(Under Article 32 of the Constitution of India).

V.A. Bobde, Shyam Mudaliar, V.M. Tarkunde, G.L. Sanghvi, A.K. Sanghi, Mrs. R. Karanjawala, Mrs. Meenakshi Karanjawala, N.M. Popli and V.J. Francis for the Petitioners.
Ms. A. Subhashini, D.N. Dwivedi, Girish Chandra, C.V. Rao, M.C. Dhingra and N.K. Sharma for the Respondents.
The Judgment of the Court was delivered by

OJHA, J. The petitioners in the aforementioned writ petitions claim to have been appointed as Supervisors Grade 'A' in various Ordnance factories between 1962 to 1966 and have filed these writ petitions with the prayer that the same relief may be granted to them also as was granted by this Court to 75 appellants in Civil Appeal No. 441 of 1981 vide its order dated 2nd February, 1981. The three civil miscellaneous petitions referred to above on the other hand have been made by the appellants of Civil Appeal No. 441 of 1981 asserting that the direction given by this Court on 2nd February, 1981 has not been complied with in the manner it ought to have been by the respondents and they should consequently be required to comply with the said direction. The exact nature of the prayer made in these miscellaneous

he applications shall be indicated after referring to t
relief granted on 2nd February, 1981 in Civil Appeal No. 4
41 of 1981.

The 75 appellants of Civil Appeal No. 441 of 1981 fil
ed a writ petition in the Allahabad High Court in 1972 asser
t- ting that they had been appointed as Supervisors Grade 'A'
on various dates in pursuance of a circular dated 6th Novembe
r, 1962 issued by the Director General of Ordnance Factorie
s,

the relevant portion whereof reads as hereunder:-

"Subject: NON-INDUSTRIAL ESTABLISHMENT PROMOTION
D.G.O.F. has decided that Diploma holders serving as
97

Supervisor 'A' (Tech)/Supervisor 'B'/(Tech) and in equiv

alent grades should be treated as follows

(i) All those Diploma holders who have been appointed
as Supervisor 'B' (Tech) (and in equivalent grades) should
on completion of one year's satisfactory service in ordnan
ce factories be promoted to Supervisor 'A' (Tech) and in equi
v- alent grades.)

(ii) All those Diploma holders who work satisfactorily
as Supervisor 'A' (Tech) or in equivalent grades for 2 years
in

Ordnance Factory should be promoted to Chargeman.

Kindly acknowledge receipt.

Sd/-K.G. Bijlani

ADGOF/Est. for D.G.O.F.

Their grievance in the writ petition was that ev
en though quite a large number of Supervisors Grade 'A' h
ad been promoted to the post of Chargeman grade II on compl
e- tion of two years' satisfactory work they had been discrim
i- nated against and had not been so promoted immediately
on the expiry of two years' in pursuance of the aforesa
id circular even though their work was satisfactory. The reli
ef prayed for in the said writ petition was for the issue of
a writ of mandamus directing the Union of India through t
he Director General of Ordnance Factories to promote the appe
l- lants to the post of Chargeman II. The writ petition w
as contested by the respondents thereto inter alia on t
he ground that under the rules of promotion from Supervisor '
A'

to Chargeman II first Departmental Promotion Committee at the factory level and then a Departmental Committee at the Central level screens the service record of each of the Supervisors 'A' who comes within the range of eligibility and then finally the Director General of Ordnance Factories draws up a list and sanctions promotions. It was further asserted that in accordance with the said rule the cases of all the appellants were screened by the Promotion Committee at the factory level and then at the Central level and those not having been found fit were not promoted. It appears that the criterion of promotion is seniority-cum-merit. The learned Single Judge, however, did not go into the merits of the controversy and dismissed the writ petition on the ground of unexplained laches and also on the ground that a previous petition for similar relief had not been presented.

Against the

98

judgment of the learned Single Judge the appellants preferred a special appeal before a Division Bench of the Court. The learned Judges who decided the special appeal did not consider it appropriate to uphold the dismissal of the writ petition on the technical ground which found favour with the learned Single Judge and they went into the merits of the respective contentions of the parties. They, however, did not find any substance in the submission made on behalf of the appellants and accordingly dismissed the special appeal on 8th February, 1977. The learned Judges pointed out that it was admitted that the conditions of service applicable to the case of the appellants were governed by the Indian Ordnance Factories (Recruitment and Conditions of Service of Class III Personnel) Rules, 1956 (hereinafter referred to as the Rules) framed by the President of India under Article 309 of the Constitution. It was further pointed out that Rule 8 contemplated that appointments by promotion

tion were to be made on the basis of a selection list prepared for the different grades by duly constituted Departmental Promotion Committees laid down in the said rule whereas Rule 12 provided that no appointment to the posts which these rules apply shall be made otherwise than specified therein. With regard to the circular dated 6 November, 1962 the learned Judges took the view that it was difficult to read in that circular any intention or deliberation on the part of the Director General of Ordnance Factories that as soon as two years were completed by a diplo holder in the Grade of Supervisor 'A' there would be automatic promotion to the post of Chargeman II. According to the learned Judges such a view would militate against Rule 12 of the Rules mentioned above. It was further held that even if it was to be assumed that the Director General of Ordnance Factories automatically promoted some Supervisors 'A' immediately on the completion of 2 years of service to the post of Chargeman II without the recommendation after screening by the Promotion Committee no right would accrue in favour of the appellants inasmuch as such promotion would be in the teeth of Rule 12 and could not confer a legal right on the appellants to be likewise promoted in breach of Rule 12. With regard to the plea based on Article 16 of the Constitution. it was held "A half-hearted argument was raised at the end of the hearing on behalf of the appellant-petitioners that they have been discriminated against by depriving them the benefit of automatic promotion in violation of constitutional guarantee under Article 16 of the Constitution. This was an argument, neither pleaded as a ground for the petition nor was raised before the learned Single Judge. Moreover, we do not think any case, on the basis of violation of Article 16 of the Constitution can

found in favour of the appellant-petitioners only because some supervisors, equally placed, were promoted against the rule of service. No formal foundation has been raised in the pleadings in the writ petition in support of the ground based on Article 16 of the Constitution."

It is against this judgment that Civil Appeal No. 441 of 1981 was preferred in this Court. Since the order dated 2 February, 1981 passed in Civil Appeal No. 441 of 1981, so speak, constitutes the basis for the writ petitions mentioned above, it is in our opinion expedient to reproduce the said order. It reads:--

"Heard counsel. Special leave granted.
"Our attention has been invited by learned counsel for both sides to the relevant rules which govern promotion to the post of Chargeman Grade II. It appears that a large number of persons have been promoted to those posts though they have completed only two years of service. The Government now appears to insist that in so far as the appellants are concerned they cannot be considered for promotion unless they complete three years of service. We see no justification for any such differential treatment being given to the appellants. If a large number of other persons similarly situated have been promoted as Chargeman Grade II after completing two years of service, there is no reason why the appellants should also not be similarly promoted after completing the same period of service. We are not suggesting that the appellants are entitled to be promoted to the aforesaid posts even if they are found unfit to be promoted.

We Therefore direct that the concerned authorities will consider the cases of the appellants for promotion to Chargeman Grade II and promote them to the said posts unless they are found to be unfit. If the appellants are promoted, they will naturally have to be promoted with effect from the

date on which they ought to have been promoted.
This order will dispose of the appeal. There will be

order as to costs."

As already pointed above the petitioners in the writ petitions refer-

100

red to above have prayed for the same relief which was

granted in Civil Appeal No. 441 of 1981. Now we shall revert

to the exact prayers made in the three miscellaneous petitions

aforsaid. The prayer made in Civil Miscellaneous

Petition No. 3325 of 1987 is for the issue of an interim

order restraining the respondents from making any further

promotions during the pendency and final hearing of the

miscellaneous petition and for initiating contempt proceedings.

Almost analogous prayer had been made in Miscellaneous

Petition No. 9357 of 1983 also namely that the respondents

may be restrained from promoting officers to the next higher

posts on the basis of recommendations of certain Departmental

Promotion Committees without complying with the directions

of this Court in its order dated 2nd February, 1981.

The reliefs prayed for in the above two civil miscellaneous

petitions are thus of an interim nature. The main reliefs

which have been prayed for apart from for initiating proceedings

for contempt for disobedience of the order of the

Court dated 2nd February, 1981 are reliefs (i), (ii) and

(iii) contained in Civil Miscellaneous Petition No. 9356

1983. They are as hereunder:--

"(i) pass appropriate orders directing the respondents

to implement in true letter and spirit, the judgment of the

Hon'ble Court dated 2.2.1981 in Civil Appeal No. 441 of 1981;

(ii) issue appropriate directions commanding the respondents

to promote the appellants to the next higher posts

Chargeman Grade I, Assistant Foreman, and Foreman, with

effect from the date they are entitled to, after giving them

the benefit of the directions of this Hon'ble Court dated

ed 2.2.1981;

(iii) issue appropriate directions to the respondents

to give all consequential benefits to the appellants, including payment of arrears."

The aforesaid writ petitions came up for hearing before a bench of two learned Judges of this Court on 9th September, 1987. On the view that the judgment of this Court dated 2nd February, 1981 in Civil Appeal No. 441 of 1981 in the case of Virendra Kumar and Others v. Union of India & Ors [1981] 3 SCC Page 30 may require reconsideration, the petitions were directed to be placed before a three Judge Bench "where inter alia the correctness of the judgment could be looked into and the nature of relief available to the petitioners on the

101 facts now stated would also be considered." It is in view of this order that these matters have been listed before us.

Learned counsel for the petitioners contended that the reason which weighed with this Court in allowing Civil Appeal No. 441 of 1981 applies to these writ petitions also and the same relief may accordingly be granted to the petitioners. It was also brought to our notice that similar placed 125 employees got the benefit of the circular dated 6th November, 1962 in pursuance of an order passed by the Madhya Pradesh High Court on 4th April, 1983 in writ petitions filed by them. It was urged that in case the same relief is not granted to the petitioners they are likely to become juniors to some of the appellants in Civil Appeal No. 441 of 1981 and the petitioners in the writ petitions decided by the Madhya Pradesh High Court on 4th April, 1983.

For the respondents on the other hand it was urged that service conditions including promotion of employees including Supervisors 'A' in the Indian Ordnance Factories were governed by the Rules and in view of Rule 12 no appointment to the various posts to which the Rules applied could

made otherwise than as specified therein; According to learned counsel since Rule 8 of the Rules contemplated that appointments by promotion were to be made on the basis of selection list prepared in the manner provided therein, there was no scope for automatic promotion merely after expiry of 2 years of continuous service on the basis of the circular dated 6th November, 1962. According to learned counsel the Rules did not prescribe the minimum number of years of service as Supervisors 'A' which would make them eligible for promotion as Chargeman II and the circular dated 6th November, 1962 which was in the nature of executive instruction prescribed 2 years' service as Supervisor 'A' to make him eligible for promotion. However, merely on completion of two years' service a Supervisor 'A' could not claim automatic promotion. On the other hand, promotion depended, inter alia, on availability of posts and the incumbent being found fit by the Departmental Promotion Committee for being included in the selection list. It was only such a Supervisor Grade 'A' whose name found place in the selection list who could be promoted to the post of Chargeman II as and when vacancies were available. It was further urged that the petitioners of these writ petitions were on the basis of the Rules considered for promotion and it is not disputed that all of them have in due course been promoted as Chargeman II and some of them have even been promoted to higher posts. Our attention was further invited by learned counsel for the respondents to an order communicated among others to the Director

102

General of Ordnance Factories, vide letter dated 28th December, 1965 of the Government of India, Ministry of Defence saying inter alia that a minimum period of service of three years in the lower grade should be fixed for promotion to the next higher grade. It was pointed out that this had be

found necessary not only because it would be in conformity with the practice obtaining in other Ministries but also because on merits this period is necessary to judge the performance in the lower post and the potentialities for promotion to a higher post. He also brought to our notice a subsequent circular dated 20th January, 1966 by the Director General of Ordnance Factories who had issued the earlier circular dated 6th November, 1962 which provides:--

"Sub: N.G. Establishment--Treatment of Diploma Holders and ex-apprentices serving as Supr. A Gr. or equivalent grades in the matter of promotion.

Ref: This office confidential No. 673/A/NG dt. 6.11.62 and 4416/A/NG dt. 29.6.65.

The question of promotion of Diploma holders Mech/Elec. Engineering and Ex-apprentices serving as Supr. 'A' Gr. or in equivalent grades has received further consideration of the D.G.O.F. who has decided that in future promotions of all such individuals will be effected in accordance with the normal rules i.e. on the basis of the listing by the relevant D.P.C. and not merely on completion of 2 years satisfactory continuous service as Supr. A Gr. or equivalent grades."

It was urged that after the issue of the subsequent order dated 28th December, 1965 and circular dated 20th January, 1966 no Supervisor 'A' could claim to have become eligible for promotion merely on completion of 2 years satisfactory service and his promotion thereafter could be effected only in accordance with the normal Rules.

Having heard learned counsel for the parties we find substance in the submission made by the learned counsel for the respondents. Relying on two earlier decisions in *B. Nagarajan & Ors. v. State of Mysore & Ors.*, [1966] 3 SCR 682 and *Sant Ram Sharma v. State of Rajasthan & Anr.*, [1968] 1 SCR 111 it was held by a Constitution Bench of this Court in *Ramachandra Shankar Deodhar and Ors. v. The State of Mah*

of legislative Rules it was competent to the State Government to take a
103
decision in the exercise of its executive power under Article 162 of the Constitution. The matter has been considered in a recent decision of this Court in the case of Union India & Ors. v. Sh. Soraasundararn Viswanath & Ors., [1983 S.C. Judgments Today 724 wherein it has been held:--
"It is well settled that the norms regarding recruitment and promotion of officers belonging to the Civil Services can be laid down either by a law made by the appropriate Legislature or by rules made under the proviso to Article 309 of the Constitution of India or by means of executive instructions issued under Article 73 of the Constitution of India in the case of Civil Services under the Union of India and under Article 162 of the Constitution of India in the case of Civil Services under the State Governments. If there is a conflict between the executive instructions and the rules made under the proviso to Article 309 of the Constitution of India, the rules made under the proviso to Article 309 of the Constitution of India prevail, and if there is a conflict between the rules made under the proviso to Article 309 of the Constitution of India and the law made by the appropriate Legislature, the law made by the appropriate Legislature prevails."

It is thus apparent that an executive instruction could make a provision only with regard to a matter which was not covered by the Rules and that such executive instruction could not override any provision of the Rule. Notwithstanding the issue of instruction dated 6th November, 1962 therefore, the procedure for making promotion as laid down in Rule 8 of the Rules had to be followed. Since Rule 8 in the instant case prescribed a procedure for making promotion to

said procedure could not be abrogated by the executive instruction dated 6th November, 1962. The only effect of the circular dated 6th November, 1962 was that Supervisors 'A' on completion of 2 years' satisfactory service could be promoted by following the procedure contemplated by Rule 8. This circular had indeed the effect of accelerating the chance of promotion. The right to promotion on the other hand was to be governed by the Rules. This right was conferred by Rule 7 which inter alia provides that subject to the exception contained in Rule 11, vacancies in the posts enumerated therein will normally be filled by promotion of employees in the grade immediately below in accordance with the provisions of Rule 8. The requirements of rule 8 have already been indicated above. Rule 12 provides that no appointment to the posts to which these rules apply shall be made otherwise than, as specified in these rules. This right of promotion as provided by the Rules was neither affected nor could be affected by the circular. The order dated 28th December, 1965 which provided a minimum period of service of three years in the lower grade for promotion to the next higher grade and the circular dated 20th January 1966 which provided that promotions in future will be effected in accordance with the normal rules and not merely completion of 2 years' satisfactory continuous service had the effect of doing away with the accelerated chance of promotion and relegating Supervisors 'A' in the matter of promotion to the normal position as it obtained under the Rules.

In the case of Ramchandra Shankar Deodhar & Ors (supra) the petitioners and other allocated Tehsildars from ex-Hyderabad State had under the Notification of the R. Pramukh dated September 15, 1955 all the vacancies in the posts of Deputy Collector in the ex-Hyderabad State available

able to them for promotion but under subsequent rules of July 30, 1959 fifty per cent of the vacancies were to be filled by direct recruitment and only the remaining fifty per cent were available for promotion and that too on divisional basis. The effect of this change obviously was that now only fifty per cent vacancies in the post of Deputy Collector being available in place of all the vacancies was to take almost double the time for many other allocated Tehsildars to get promoted as Deputy Collectors. In other words it resulted in delayed chance of promotion. It was, inter alia, urged on behalf of the petitioners that the situation brought about by the rules of July 30, 1959 constituted variation to their prejudice in the conditions of service applicable to them immediately prior to the reorganisation of the State and the Rules were consequently invalid. While repelling this submission the Constitutional Bench held:--

"All that happened as a result of making promotions to the posts of Deputy Collectors divisionwise and limiting such promotions to 50 per cent of the total number of vacancies in the posts of Deputy Collector was to reduce the chance of promotion available to the petitioners. It is now well settled by the decision of this Court in *State of Mysore v. G.B. Purohit* that though a right to be considered for promotion is a condition of service, mere chances of promotion are not. A rule which merely affects chances of promotion cannot be regarded as varying a condition of service.

In *Purohit's case* the districtwise seniority of sanitary inspectors was changed to Statewise seniority, and as a result of this change the respondents went down in seniority and became very junior. This, it was urged, affected the chances of promotion which were protected under the provision to Section 115, sub-section (7). This contention was neg

tived and Wanchoo, J., (as he then was), speaking on behalf of this Court observed: "It is said on behalf of the respondents that as their chances of promotion have been affected their conditions of service have been changed to their disadvantage. We see no force in this argument because chances of promotion are not conditions of service." It is, therefore, clear that neither the Rules of July '30, 1959, nor the procedure for making promotions to the posts of Deputy Collector divisionwise varies the conditions of service of the petitioners to their disadvantage."

The same view was reiterated in Mohammad Shujat Ali & Ors. v. Union of India & Ors., [1975] 3 SCC 76. In the brief written submission filed on behalf of the petitioners Writ Petition Nos. 9522-27 of 1983 it has been pointed out that employees who had joined much later than 20th January, 1966, namely, the date of the subsequent circular of the Director General of Ordnance Factories superseding his earlier circular dated 6th November, 1962, have also got benefit under the orders of this Court dated 2nd February, 1981 aforesaid as also under the orders of the Madhya Pradesh High Court dated 4th April, 1983 in the writ petition filed before that Court. This circumstance by itself is sufficient to indicate that when Civil Appeal No. 441 of 1981 was heard by this Court either the subsequent order dated 28th December, 1965 as well as the circular dated 20 January, 1966 and the legal consequences flowing therefrom were not brought to the notice of the learned Judges by the learned counsel for the respondents, or the same was not properly emphasised, the judgment dated 2nd February, 1981 being completely silent on the point and the appeal was allowed only on the ground that some Supervisors having been promoted as Chargeman II on expiry of 2 years of the service in view of the circular dated 6th November, 1962 to

in non-promotion of the appellants was discriminatory being
ya violation of Article 16. As regards the order of the Madh
ed Pradesh High Court dated 4th April, 1983 .it may be point
on out that the said High Court in an earlier writ petiti
he being Misc. Petition No. 596 of 1978 had disallowed t
ng relief for the petitioners of that writ petition bei
ce treated as Chargeman II on completion of two years' servi
is as Supervisor 'A' by its order dated 16th April, 1979 as
ut apparent from the said judgment dated 4th April, 1983 b
the subse-
106
quent writ petitions which seem to have been filed after t
he decision of this Court dated 2nd February, 1981 in Civ
il Appeal No. 441 of 1981 were allowed in view of the aforesa
id decision of this Court.

In this connection it is also of significance to noti
ce that it does not seem to have been the case of the appe
l- lants in Civil Appeal No. 44 1 of 198 1 that those w
ho according to them had been promoted in pursuance of t
he circular dated 6th/November, 1962 on completing two year
s' service were junior to them. At this place it will be usef
ul to refer to an affidavit dated 19th November, 1983 of D.
P. Gupta, who is one of the appellants in Civil Appeal No. 4
41 of 1981, filed in C.M.P. Nos. 9356-57 of 1983. Annexure I
to the said affidavit gives a break-up of the total diplo
ma holders recruited in the Department due to acute need
of Ordnance Department following the chinese aggression.
It indicates that approximately 125 diploma holders were r
e- cruited in 1962, 550 in 1963, 250 in 1964, 150 in 1965 a
nd 100 in 1966, the total number of such recruits being appro
x- imately 1175. The said Annexure further indicates that o
ut of the 1175 recruits about 625 were promoted to the post
of Chargeman II in 1965-66 under the 2 year policy contained
in circular dated 6th November, 1962 and that approximately 5

in diploma holders were denied promotion which resulted
ll discrimination. From this break-up it is apparent that a
50 the diploma holders recruited in 1962 whereas 500 out of 5
of recruited in 1963 were promoted on expiry of 2 years
rs service. It appears that the remaining 50 diploma holde
he recruited in 1963 and those who had been recruited in t
ch begning of 1964 or thereafter could not be promoted inasmu
on as by the time their cases could be considered for promoti
to the subsequent order dated 28th December, 1965 had come in
th force and had also come into force the circular dated 20
th January, 1966 which had superseded the circular dated 6
of November, 1962 and had provided that in future promotions
he all such individuals will be effected in accordance with t
rs normal rules and not merely on the completion of two yea
of satisfactory continuous service.

It cannot be disputed that the Director General
th Ordnance Factories who had issued the circular dated 6
u- November, 1962 had the power to issue the subsequent circ
al lar dated 20th January, 1966 also. In view of. the leg
ot position pointed out above the aforesaid circular could n
of be treated to be one affecting adversely any condition
he service of the Supervisors 'A'. Its only effect was that t
u- chance of promotion which had been accelerated by the circ
nt lar dated 6th November, 1962 was deferred and made depende
he on selection according to the Rules. Apparently, after t
coming into force of the

107
th order dated 28th December, 1965 and the circular dated 20
e- January, 1966 promotions could not be made just on compl
er tion of 2 years' satisfactory service under the earli
en circular dated 6th November, 1962 the same having be
at superseded by the later circular. It is further obvious th
en in this view of the matter Supervisors 'A' who had be
ed promoted before the coming into force of the order dat

28th December, 1965 and the circular dated 20th January, 1966 stood in a class separate from those whose promotions were to be made thereafter. The fact that some Supervisors 'A' had been promoted before the coming into force of the order dated 28th December, 1965 and the circular dated 20 January, 1966 could not, therefore, constitute the basis for an argument that those Supervisors 'A' whose cases came for consideration for promotion thereafter and who were promoted in due course in accordance with the rules were discriminated against. They apparently did not fall in the same category.

It may also be noticed that even though the petitioners on their completion of 2 years' service as Supervisor 'A' were not promoted as Chargeman 11 in or about the year 1966 they chose to wait for about 17 years to file these writ petitions which were filed in 1983, and nearly 2 years even after the decision dated 2nd February, 1981 in Civil Appeal No. 441 of 1981, which indicates that but for the decision in Civil Appeal No. 441 of 1981 they would perhaps not have even thought of filing these writ petitions inasmuch as the meantime they had not only been promoted in the normal course as Chargeman 11 but some of them had been promoted even to higher posts in the hierarchy.

For aught we know if the effect of the order dated 28 December, 1965 and the circular dated 20th January, 1966 had been properly emphasised at the time of hearing of Civil Appeal No. 441 of 1981 its result may have been different. In this connection, reference may also be made to the counter affidavit of Sobha Ramanand, Deputy Director, Ordnance Factory Cells G. Block, Ministry of Defence, filed in Writ Petition (Civil) Nos. 3812-19 of 1983 with regard to the matter relevant for promotion. In paragraph 2(i) it has been stated that during 1962-63 due to sudden expansion of Ordnance Factories Organisation in the wake of Chinese aggression

sion a large number of posts of Chargeman II and other posts were created and as a result thereof persons already in service as Supervisors 'A' were promoted to the posts of Chargeman II on completion of 2 years' service. It has further been stated therein that after the newly created posts were thus filled by promotion, chances of promotion of those who were appointed subsequently diminished and for want of sufficient number of

108 vacancies as Chargeman II they could not be promoted to that post soon after the completion of 2 years' service. There is a further averment in the said counter affidavit that petitioners were duly considered in their turn and their names were brought on the approved panel. They were thereafter promoted as soon as vacancies became available and that during the period that they were on the approved panel no person junior to them or of equal seniority superseded them. Nothing substantial has been brought to our notice on behalf of the petitioners on the basis of which the aforesaid statements made in the counter affidavit may be doubted.

In view of the foregoing discussion, we find it difficult to grant the reliefs prayed for in the aforesaid writ petitions simply on the basis of the judgment of this Court dated 2nd February, 1981 in Civil Appeal No. 441 of 1981. These writ petitions, therefore, deserve to be dismissed.

Since, however, the judgment of this Court dated 2nd February, 1981 in Civil Appeal No. 441 of 1981 has not been challenged and has become final, the next question which falls for consideration is as to what further relief, if any, are the appellants in Civil Appeal No. 441 of 1981 entitled in pursuance of the Civil Miscellaneous Petition referred to above filed by them. The reliefs which they have claimed have already been indicated above. It is now not disputed that the appellants of this appeal have in purs

ance of the order of this Court dated 2nd February, 1981 only on paper inasmuch as they have not been granted the difference of back wages and promotion to higher position on the basis of their back date promotion as Chargeman. As already noticed earlier certain writ petitions filed in Madhya Pradesh High Court were allowed by that Court on 4th April, 1983 relying on the judgment of this Court dated 2nd February, 1981 in Civil Appeal No. 441 of 1981. Against the aforesaid judgment of the Madhya Pradesh High Court dated 4th April, 1983 Special Leave Petitions (Civil) Nos. 5987-92 of 1986 were filed in this Court by the Union of India and were dismissed on 28th July, 1986. The findings of the Madhya Pradesh High Court in its judgment dated 4th April, 1983 thus stand approved by this Court. In this view of the matter to put them at par it would be appropriate that the appellants in Civil Appeal No. 441 of 1981 may also be granted the same relief which was granted to the ¹⁰⁹petitioners in the writ petitions before the Madhya Pradesh High Court. As regards back wages the Madhya Pradesh High Court held:
"It is the settled service rule that there has to be no pay for no work i.e. a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of a higher post although after due consideration he was given a proper place in the gradation list having been deemed to be promoted to the higher post with effect from the date his junior was promoted. So the petitioners are not entitled to claim any financial benefit retrospectively.

the most they would be entitled to refixation of the present salary on the basis of the notional seniority granted to them in different grades so that their present salary is not less than those who are immediately below them." In so far as Supervisors 'A' who claimed promotion

Chargeman 11 the following direction was accordingly given by the Madhya Pradesh High Court in its judgment dated 4 April, 1983 aforesaid:--

"All these petitioners are also entitled to be treated as Chargeman Grade II on completion of two years satisfactory service as Supervisor Grade-A. Consequently, notional seniority of these persons have to be refixed in Supervisor Grade A, Chargeman Grade-II, Grade-I and Assistant Foreman in cases of those who are holding that post The petitioners are also entitled to get their present salary re-fixed after giving them notional seniority so that the same is not lower than those who are immediately below them."

In our opinion, therefore, the appellants in Civil Appeal No. 441 of 1981 deserve to be granted the same limited relief. We are further of the opinion that it is not fit case for initiating any proceedings for contempt against the respondents.

In the result, the writ petitions fail and are dismissed. The Civil Miscellaneous Petitions in Civil Appeal No. 441 of 1981 are disposed of by issuing a direction to the respondents to give the appellants in the said Civil Appeal the same benefits as were given by the Madhya Pradesh High Court to such of the petitioners before that Court who were Supervisors 'A' and were granted promotion as Chargeman II by its judgment dated 4th April, 1983. In the circumstances of the case, however, there shall be no order as

costs.
R.S.S.
110

Petitions dismissed.

JUDIS