AJEET SINGH SINGHVI ETC.

v.

STATE OF RAJASTHAN AND OTHERS ETC.

FEBRUARY 20, 1991

[MADAN MOHAN PUNCHHI AND R.M. SAHAI, JJ.]

Rajasthan Administrative Service Rules, 1954—Rules 6, 28-B and 32—'Higher post' 'highest post'—Identification of—Super time scale posts—Whether highest post.

The appellants are high ranking officers in the Rajasthan Administrative Service governed by the Rajasthan Administrative Service Rules, 1954. Consequent upon the amendment caused to the said rules on July 17, 1987, they felt that the amendment had affected their further promotional chances. They therefore filed writ petitions before the High Court challenging the vires of the amendment dated 17.7.1987 contending that the creation of Super Time scale did not have the automatic effect of creating highest post/posts to be filled by merit alone, and that the posts to which Super Time Scale was attracted remained 'higher posts' in contrast to 'highest posts' available to the members of the Rajasthan Administrative Service on the prescribed percentage of 50 per cent on merit and the remaining fifty per cent on seniority-cum-merit. Their case was that selection to the highest posts made under the amended rule solely on the basis of the merit was bad in law. Before the High Court challenge to the vires of the amendment was abandoned and the High Court considered the questions (i) whether the Super time scale is/are the highest post/posts in the service and

(ii) if it is so, whether the post/posts is/are to be filled on the basis of seniority-cum-merit in the proportion of 50:50 or on merit alone in accordance with sub-rule (7) of Rule 28-B of the Rules:

The High Court rejected the writ petitions opening that the Super Time Scale post/posts was/were the highest post/posts in the service and those are required to be filled on merit alone and not in the proportion of 50:50 on the basis of merit and seniority-cum-merit. Hence these appeals by the appellants.

Dismissing the appeals this Court

HELD: The terms 'higher post' and 'highest post' occurring in

Rules 28-B and 32 by all means are relative ones expected to be created in singular or plural terms under Rule 6 whereunder the strength of posts in each grade was determinable by the government from time to time. Sub-rule (7) even before the amendment of 17.7.1987 postulated a highest post/posts capable of being filled on the basis of merit alone. [590G-H]

Super Time Scale posts are the highest posts in the service and selection for promotion and appointment on that basis in the service has to be made on the basis of merit alone and not on the basis of seniority-cum-merit in the proportion of 50:50. [591G]

J.K. Cotton Spinning & Weaving Mills Co. Ltd. **v.** *State of U.P. and Ors.* **[1961] 3. SCR 185;** *Lt. Col. Prithi Pal Singh Bedi etc.* **v.** *Union of India and Ors.* **[1983] 1. SCR 393—referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4032 & 4033 of 1989.

From the Judgment and Order dated 30.4.1988 of the Rajasthan High Court in D.B. Civil W.P. Nos. 694 & 696 of 1988.

Appellant in person in C.A. No. 4032 of 1989. Rajinder Sachher, and Ravinder Bana for the Appellant in C.A. No. 4033 of 1989.

Aruneshwar Gupta for the Respondents in both the appeals.

The Judgment of the Court was delivered by

PUNCHHI, J. The identification of the highest post/posts in the Rajasthan Administrative Service, capable of being filled by merit alone, under sub-rule (7) of Rule 28-B of the Rajasthan Administrative Service Rules, 1954 (hereafter referred to as the 'Rules'), is the search undertaken in these two connected appeals by special leave.

The respective appellants herein are Ajeet Singh Singhvi, who appeared in person, and Jagbir Singh who appeared through his learned counsel. Both the appellants, at the time they moved the Rajasthan High Court by means of their respective writ petitions, were high ranked officers in the Rajasthan Administrative Service but found their further chances to promotion obstacled on account of the amendments caused in the said Rules with effect from July17, 1987. Proadly stated, on such amendments a Super Time scale was created which statedly was to remove stagnation in service. The contention of

the appellants before the High Court was, and is, that the creation of Super Time scale did not have the automatic effect of creating highest post/posts to be filled by merit alone, and that the posts to which Super Time scale was attractive remained 'higher posts' in contrast to 'highest posts' available to the members of the Rajasthan Administrative Service on the prescribed percentage of 50 percent on merit and the remaining fifty percent on seniority-cum-merit. The appellants challenged the vires of the amendments dated 17-7-1987 for confining the selection to the highest posts made thereafter solely on the basis of merit. Before the High Court, however, the question of vires of the amendments was given up and thus the High Court invited its attention to the following two questions:

> (i) whether the Super Time scale is/are the highest post/posts in the service; and
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> (ii) if it is so, whether that post/posts is/are to be filled on the basis of seniority-cum-merit in the proportion of 50:50 or on merit alone in accordance with sub-rule (7) of Rule 28-B of the Rules?

The High Court by a long and an elaborate judgment, dated 30.4.1988 traced the history of the Rules and the amendments made to Rules 28-B and 32 from time to time, expressed the opinion that Super Time scale post/posts was/were the highest post/posts in the service and those required to be filled on merit alone and not in the proportion of 50:50 on the basis of merit and seniority-cum-merit. It is to challenge that view that these matters are here before us and we have had the opportunity of hearing the party in person and learned counsel on both sides.

We begin by taking note that the word 'highest' has not been given a definitive meaning in the Rules, and has to be understood and employed in the context in its ordinary meaning and diction. Rule 6 prescribes the strength of the service. It mandates that the strength of posts in each grade of the service shall be such as may be determined by the government from time to time. The proviso thereto leaves all the possible flexibility with the Government in the creation of any post of any kind and nature and for its abolition. The latest notification in that regard, as was placed before us, is Notification No. F1(2) Karmik/Ka-IV/79 dated January 12, 1988 issued from the Department of Personnel and Administrative Reforms, Government of Rajasthan specifying that as per Rule 6 of the Service Rules, the strength of posts

in each grade of Rajasthan Administrative Service is determined therein. The said notification is found in a compilation prepared by the Rajasthan Administrative Service Association, amended upto June, 19,1988. It demonstrates posts with their titles divided into seven categories. The first category is of Super Time Scale posts in the grade of Rs.3900-125-4400-150-5300. The second category is of selection scale post in the grade of 2975-75-3050-100-3650-125-4400-150-4700. Thereafter there are lesser pay-scales given in the third category of senior scale posts and in the fourth category, junior scale posts followed by special ex-cadre posts, training reserve and leave reserve posts. The Super Time Scale posts are 25 in number and those posts are named and numbered as follows:

S. No.	Name of the Post	No. of Posts
1.	Director of Agriculture Marketing & Ex-Officio Dy. Secy. to Govt.	1
2.	Director, Local Bodies	1
3.	Comissioner, Devasthan Deptt.	1
4.	Revenue Appellate Authority	10
5.	Principal, A.P.R.T.S., TONK	1
6.	Addl. Divisional Commissioners	6
7.	Addl. Director, HCM RIPA, Udaipur	1
8.	Addl. Commissioner, Col. Cum-R.A.A., Bikaner	1
9.	Addl. Commissioner, TAD	1
10.	Addl. Commissioner, Desert Dav.	1
11.	Addl. Commissioner, Transport	1
		25

Now whether these posts are the highest posts in the Rajasthan Administrative Service or are just higher posts, so as to identify the criteria applicable for promoting to these posts their personnel.

'Service' has been defined in Rule 4-L to mean the Rajasthan Administrative Service. Sub-rule (7) of Rule 28-B prescribes that

selection for promotion to the highest post/posts in the State Service shall always be made on the basis of merit alone. As said before, 'highest posts' has nowhere been defined. Prior to the amendment of July 17, 1987, sub-rule (7) read as follows:

> "Selection for promotion to the highest post or highest category of posts in the State Service shall always be made on the basis of merit alone."

According to the appellants, prior to July 17, 1987, the highest post was never identified and equally the highest category of posts were nowhere visible. The posts now falling in the Super Time Scale, tabulation of which stands incorporated above, were always considered as higher posts and in terms of sub-rule (6) of rule 28-B, Selection for promotion to all other higher posts/higher category of posts in the State Service were required to be made on the basis of merit and seniority-cum-merit in the proportion of 50:50. The proviso, however, to sub-rule (6) provided that if the Committee (appointed under Rule 28) was satisfied that suitable persons are not available for selection by promotion strictly on the basis of merit in a particular year, selection by promotion on the basis of seniority-cum-merit may be made in the same manner as specified in these Rules. The two appellants maintained that before the introduction of the Super Time scale vide amendment dated July 17, 1987, there were only three categories, namely, ordinary scale posts (alternatively known as junior scale), senior scale posts and selection scale posts in the Service and these continued as such despite the amendments. Before the High Court the exercise to identify the Super Time selection posts would have been easy had the government notification dated 12th January, 1988 been brought to its notice. In any event after the issuance of the Government notification dated 12th January, 1988, those very posts in the Service have now been designated as junior scale, senior scale, selection scale and super time scale posts and for valid administrative reasons have Super Time scale posts been treated as highest posts even though they may have hitherto belonged to the category of higher posts; the State Service remaining the same.

Rule 15 prescribes eligibility for consideration for promotion on the basis of qualifying service for promotion. Rule 28 prscribes the procedure for promotion and postulates the Constitution of a Committee. Rule 28-B, so far as is relevant for our purpose, is called out below:

"28-B. REVISED CRITERIA, ELIGIBILITY AND

PROCEDURE FOR PROMOTION TO JUNIOR, SENIOR AND OTHER POSTS ENCADRED IN THE SERVICE-

(i) As soon as the appointing authority determines the number of vacancies (under rule 9 of these Rules) and decides that a certain number of posts are required to be filled in by promoton, it shall, subject to provisions of sub-rule (9), prepare a correct and complete list of senior-most persons who are eligible and qualified under these Rules for promotion on the basis of seniority-cum-merit or on the basis of merit to the class of posts concerned.

(2) For appointment to the Service by promotion, the eligible persons included in the list mentioned in rule 28 shall be considered.

(3) xxxxxxxxxxx

(4) Selection for promotion in the reguler line of promotion from the post/posts not included in Service to the lowest post or category of post in the Service shall be made strictly on the basis of merit and on the basis of seniority-cum-merit in the proportion of 50:50.

PROVIDED that if the Committee is satisfied that suitable persons are not available for selection by promotion strictly on the basis of merit in a particular year, selection by promotion on the basis of seniority-cum-merit may be made in the same manner as specified in these Rules.

(5) Subject to the provisions of sub-rule (7), selection for promotion from the lowest post or category of post in the State Service to the next higher post or category of post in the State Service and for all posts in the Subordinate Services and in the Ministerial Services shall be made strictly on the basis of seniority-cum-merit from amongst the persons who have passed the qualifying examination, if any, prescribed under these Rules, and have put in atleast five years service, unless a different period is prescribed elsewhere in these Rules, on the first day of the month of April of the year of selection on the post or category of post from which selection is made:

PROVIDED that in the event of non-availability of the persons with the requisite period of Service of five years, the Committee may consider the persons having less than the prescribed period of Service, if they fulfil the qualifications and other conditions for promotion prescribed elsewhere in these Rules, and are found otherwise suitable for promotion on the basis of seniority-cum-merit.

(6) Selection for promotion to all other higher posts or higher categories of posts in the State Service shall be made on the basis of merit and on the basis of seniority-cum-merit in the proportion of 50:50.

PROVIDED that if the Committee is satisfied that suitable persons are not available for selection by promotion strictly on the basis of merit in a particular year, selection by promotion on the basis of seniority-cum-merit may be made in the same manner as specifed in these Rules.

EXPLANATION: If in a Service, in any category of post, number of posts available for promotion is an odd number then for purpose of determining the vacancies for selection by promotion on the basis of seniority-cum-merit and merit in the proportion of 50:50, the following cyclic order shall be followed:

The first vacancy by seniority-cum-merit; The subsequent vacancy by merit; The cycle to be repeated.

(7) Selection for promotion to the highest post/posts in the State Service shall always be made on the basis of merit alone:

PROVIDED that—

(a) in a Service or Groups or Sections thereunder, where there are only two scales e.g. junior scale or senior scale and there is only one promotion then promotion shall be made on the basis of seniority-cum-merit alone;

(b) in a Service or Groups or Sections thereunder, where there are three scales e.g. junior scale, and selcetion scale and there are two promotions then promotion shall be as under:

(i) first promotion on the basis of seniority-cum-merit.

(ii) second promotion on the basis of seniority-cum-merit and merit in the proportion of 50:50;

(c) in Services or Groups or Sections thereunder, where there are more than two promotions then first promotion shall be made on the basis of seniority-cum-merit alone and promotions to subsequent higher posts shall be made on the basis of seniority-cum-merit and merit in the proportion of 50:50 except to the highest post.

PROVIDED further that if the Committee is satisfied that suitable persons are not available for selection by promotion to highest post/posts, strictly on the basis of merit in a particular year, selection by promotion to highest post/posts on the basis of seniority-cum-merit may be made in the same manner as specified in these rules.

(8) The persons having been selected and appointed by promotion to a post or category of post on the basis of merit, shall be eligible for promotion to the next higher post or category of post, which is to be filled in by merit, only when they have put in after regluar selection, at least five years' service, unless a higher period of Service is prescribed elsewhere in these Rules, on the first day of the month of April of the year of selection on the post or category of post from which selection is to be made:

PROVIDED that the condition of five years' service shall not be applicable to a person, if any person junior to him is eligible for consideration for promotion on the basis of merit.

PROVIDED further that in the event of non-availability of persons equal to the number of vacancies to be filled in, eligible for promotion in the category of posts next lower from which promotion is made, the Committee may consider the persons having less than five years' service, if they are found otherwise suitable for promotion on the basis of merit alone.

EXPLANATION: If any doubt arises about the categorisation of the post as the lowest, next higher or highest post in the Service, the matter shall be referred to the Government in the Department of Personnel and Administrative Reforms whose decision thereon shall be final.

(9) The zone of consideration of persons eligible for promotion shall be as under:

i)	no. of vacancies	no. of eligible persons to be considered
a)	for one vacancy	Five eligible persons
b)	for two vacancies	Eight eligible persons
c)	for three vacancies	Ten eligible persons
d)	for four or more vacancies	Three times the number of vacancies.

ii) Where, the number of eligible persons for promotion to higher post is less than the number specified above, all the persons so eligible shall be considered.

iii) Where, adequate number of candidates belonging to the Scheduled Castes or the Scheduled Tribes, as the cases may be, are not available within the zone of consideration specified above, the zone of consideration may be extended to five times the number of vacancies and the candidates belonging to the Scheduled Castes or the Scheduled Tribes, as the case may be, (and not any other) coming within the extended zone of consideration shall also be considered against the vacancies reserved for them.

iv) For the highest post in a State Service

a) if promotion is from one category of post, eligible persons upto five in number shall be considered for promotion;

b) if promotion is from different categories of the post in the same pay scale, eligible persons upto two in number from each category of posts in the same pay scale shall be considered for promotion;

c) if promotion is from different categories of posts carrying different pay scales, eligible persons in the higher pay scale shall be considered for promotion first and if no suitable person is available for promotion on the basis of merit in the higher pay scale then only the eligible persons of other categories of posts in lower pay scales shall be considered for promotion and so on and so forth. The zone of consideration for eligibility in this case shall be limited to five senior-most eligible persons in all.

10. xxxxxxxx

11. a) xxxxxx
b) xxxxxx
c) xxxxxx

12. xxxxxx

13. xxxxxx

14. xxxxxx

15. xxxxxx

16. xxxxxx

Rule 32 after the amendment reads as follows:

"32. APPOINTMENT TO SENIOR POST-(1)[In accordance with vacancies determined according to the provisions laid down in rule 9] appointment to [senior scale, selection scale and super-time scale] post shall be made by Government from amongst the members of the Service in accordance with the selection having been made on the basis of merit and seniority-cum-merit on the recommendations of a Committee which shall consist of following:

1. Chairman, Rajasthan Public Service Comission ...Chairman
2. Chairman, Board of Revenue ...Member
3. Secretary to Government in Super-time scale of the

Indian Administrative Service, as may be nominated by the State Government ...Member

4. Special Secretary to Govt. in the Department of Personnel ...Member Secretary

PROVIDED that in case any Member or Member Secretary, as the case may be constituting the Committee has not been appointed to the post concerned the officer holding charge of the post for the time being shall be the Member or Member-Secretary, as the case may be of the Committee.

(2) Except as provided in this rule, the procedure and the principles for selection by merit shall, in so far it may apply, be the same as provided in rule 28-B. For selection by seniority-cum-merit, the Committee shall consider the cases of all the persons eligible for promotion by examining their Confidential Rolls and Personal Files and interviewing such of them as they may deem necessary, and shall select a number of candidates equal to the number of vacancies likely to be filled by promotion by seniority-cum-merit.

PROVIDED (1) that appointment to the senior or selection grade post [or super-time scale] post may be made by Government by appointing thereto temporarily a person eligible for appointment by the promotion to the Service under the provisions of these Rules.

(2) No appointment made under [proviso (1)] above shall be continued beyond a period of one year without referring it to the Commission for their concurrence and shall be terminated immediately on their refusal to concur".

Argument was sought to be built that in Rule 32, Super Time scale was introduced with effect from 17-7-1987 whereunder the Government was required to make an appointment on the basis of merit and seniority-cum-merit on 50:50 basis in accordance with sub-rule 6 of rule 28-B in the absence of identification of posts. The argument looses its thrust in entirety when viewed on the basis of sub-rule (2) whereunder the procedure and principles for selection by merit

A shall, in so far it may apply, is the same as provided in rule 28-B. which embodies sub-rule (7) as well. We have in the context to apply the Rule of harmonious construction. In *The J.K. Cotton Spinning & Weaving Mills Co. Ltd.* v. *The State of Uttar Pradesh & Others*; [1961] 3 SCR 185 this Court applied the rule of harmonious construction even to subordinate legislation and laid down as follows:

B

> "In applying the rule however we have to remember that to harmonise is not to destroy. In the interpretation of statutes the courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. These presumptions will have to be made in the case
> C of rule making authority also."

Then again in *Lt. Col. Prithi Pal Singh Bedi etc.* v. *Union of India & Others*, [1983] 1 SCR 393 at pages 404-05 it was observed as follows:

> "The dominant purpose in construing a statute is to ascertain the intention of the Parliament. One of the well recognised canons of construction is that the legislature speaks its mind by use of correct expression and unless there is any ambiguity in the language of the provision the Court should adopt literal construction if it does not lead to an absurdity. The first question to be posed is whether there is any ambi-
> E guity in the language used in rule 40. If there is none, it would mean the language used, speaks the mind of Parliament and there is no need to look somewhere else discover the intention or meaning. If the literal construction leads to an absurdity, external aids to construction can be resorted to. To ascertain the literal meaning it is equally necessary
> F first to ascertain the juxtaposition in which the rule is placed, the purpose for whcih it is enacted and the object which it is required to subserve and the authority by which the rule is framed. This necessitates examination of the broad features of the Act."

G On the application of above principles, it is noticeable that the terms 'higher post' and 'highest post' occuring in Rules 28-B and 32 by all means are relative ones expected to be created in singular or plural terms under Rule 6 whereunder the strength of posts in each grade was determinable by the government from time to time. Sub-rule (7) even before the amendment of 17-7-1987 postulated a highest post/posts
H capable of being filled on the basis of merit alone. The fact that they

remained un-identified gives no basis to the plea that the State was incapacitated to identify at a later stage the highest posts in the State Service required to be filled on the basis of merit alone. It seems to us, on a close analysis, and on the language employed in Rules 28-B and 32 that the highest post/posts conceptually were part of the Rules but their effectuation and identification has surfaced only by means of the amendments of July 17, 1987 and the notification of January 12, 1988. A B

Another significant factor which leans towards such an interpretation is the stance of the State which militates against the views canvassed on behalf of the appellants. There is an inbuilt safety kept in the explanation added to sub-rule (8) of Rule 28-B which prescribes that if any doubt arises, amongst others, about the categorisation of the posts as the highest posts in the Service, the matter shall be referred to the government in the Department of Personnel and Administrative Reforms, whose decision there on shall be final. The appellants could easily have raked up and got referred the matter to the government to have a decision thereon. The view of the government in maintaining that the Super Time scale posts are highest posts is not only a bare and literal interpretation given by it to the Rules but also is reflective of its policy in this regard and no decision needs to be given by the Court in normal circumstances to amend or alter such policy. In such a realm even contemporaneous exposition of a similar rule in an other set of rules cannot play their part to influence either the Court or the Government to give the same interpretation or exposition to the rules requiring interpretation herein. Besides the government being the author of the rule, has kept to itself, as a matter of prudence; the right to remove any ambiguity about the identification of any post including the highest post/posts. The stance of the government in this regard should have clinched the matter but since the same had been put forth as a defence in the High Court, its view nonetheless are entitled to great weight and the burden of the appellants to lift that weight, an uphill task by all means, has remained unfulfilled. C D E F

To sum up, our interpretation of the rules is in accord with the interpretation of the rules as put by the High Court holding that the Super Time scale posts are the highest posts in the Service and selection for promotion and appointment on that basis in the Service has to be made on the basis of merit alone and not on the basis of seniority-cum-merit and merit in the proportion of 50:50. In the facts and circumstances of the case, however, we pass no order as to costs, while dismissing the appeals. G

Y.L. Appeals dismissed.