A N.S.K. NAYAR AND ORS.

v.

UNION OF INDIA AND ORS.

DECEMBER 12, 1991

B [K. N. SINGH, CJ AND KULDIP SINGH, J.]

Service Law:

Telegraph Engineering Service (Class I) Rules, 1965: rr. 3, 5, 26, 27, 28—Telecommunication Service Group A—Senior Time Scale posts—Temporary appointments—Continuing for 10-15 years—Claim for regularisation in the cadre—Whether can be allowed.

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Constitution of India, 1950:

Articles 16, 32—Telecommunication Service Group A—Senior Time Scale posts—Temporary appointments—Non-regularisation in the cadre and deprivation of consequential benefits even after the officers continued on the posts for 10-15 years—Whether violative of Article 16.

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The Telegraph Engineering Service (Class I) Rules, 1965 provide for recruitment and conditions of service of Telecommunication Service Group A. Under Rule 3 of the Rules, Group A Service consists of four grades—Junior time grade (JTS), senior time grade (STS), Junior Administrative grade (JAG) and Senior Administrative grade (SAG). Rules 5 and 26 provide that vacancies in the JTS, which is the starting point of group A service be filled up 50% by direct recruitment and 50% by promotion from Telegraph Engineering service, Class II. As per rule 27(a), although the vacancies in the next higher grade of STS are to be filled up on the basis of seniority in the JTS subject to rejection of unfit, yet the direct recruits not having completed 5 years, are not ordinarily eligible to be promoted to STS. However, as the posts in JTS are much less in number than those in STS, giving the picture of an inverted-pyramid, and there are not sufficient vacancies in JTS to accommodate Class II officers, it was provided by rule 27(b) that posts in STS may be filled up by promotion of permanent class II officers who are on the approved list for promotion to JTS on purely temporary basis in an officiating capacity to hold charge. The promotion to JAG is made by selection on merit from amongst officers in STS promoted under rule 27(a). Further promotion to SAG is made by selection on merit from amongst the officers in JAG.

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The petitioners, who were brought on the approved list of JTS and were promoted to STS under rule 27(b) on various dates between January, 1975 and January, 1979 and were, except petitioner No. 1, who has since retired, continuously holding the posts for 10/15 years, filed the Writ Petitions under Article 32 of the Constitution challenging the promotion policy in so far as it related to the promotion of officers in STS to JAG contending that though they were continuing in STS for 10-15 years and from a date much earlier than the direct recruits, promoted under rule 27(a), they were not being treated as regular members of STS and were not being considered for promotion to the next higher grade of JAG, whereas the direct recruits promoted under rule 27(a) much later and having much less service than the petitioners had long been promoted to JAG.

On the question; whether the service rendered by the petitioners in the Senior Time Scale for over a decade entitled them to claim that they were regular holders of the post in the Senior Time Scale of Group A service,

Allowing the Writ Petition, this Court,

HELD: 1. Taking work from the petitioners in the Senior Time Scale posts for 10/15 years and denying them the right of regularisation and the consequent benefits in the said grade, is wholly arbitrary and is violative of Article 16 of the Constitution of India. [p. 408 A]

2. Although the regular channel of promotion to Group A Service provided to the officers of the Telegraph Engineering Service Class II under the Rules is to the Junior Time Scale and Rule 27(b) has been enacted to enable the Government to meet an ad-hoc shortage of officers and to fill the large number of vacancies in Senior Time Scale by appointing Class-II officers with a frog-leap from class-II to STS by-passing the JTS, in order to provide a source of appointment to meet an administrative exigency of short tenure, yet it could never be the intention of the framers of the Rule to permit the appointments under the said Rule to go on for 10 to 15 years. The appointments for such a long period cannot be considered to be purely temporary/officiating or to hold charge. [407A-H; 408A]

3. The promotee-officers who have worked in STS for a continuous period of five years and are continuously holding the posts shall be deemed to be regular members of Group A Service in STS. They shall be entitled to count their seniority in the STS from the date of completing the said period of five years and shall be entitled to be considered for further promotion to JAG and SAG on the basis of the said seniority. [p. 408 CD]

However, the petitioners or other officers similarly situated who have already retired shall not be entitled to the benefit of the judgment. [p. 408 D]

4. The direct recruits who have already been promoted to STS, JAG or SAG shall not be reverted as a consequence of the judgment. If necessary the Government shall create supernumerary posts in STS, JAG and SAG to accommodate the petitioners and other officers similarly situated. [p. 408 D-E]

ORIGINAL JURISDICTION: Writ Petition (Civil) Nos. 4525-33 of 1985.

(Under Article 32 of the Constitution of India).

M.C.Bhandari, Gobinda Mukhoty, Ms. C.K.Sucharita and Y.P.Rao for the Petitioners.

Ms. Shaymla Pappu, K.T.Anantharaman, Kahitan, Murthy, Ms. Kitty Kumaramagalam and Ms. Sushma Suri for the Respondents.

The Judgment of the Court was delivered by

KULDIP SINGH, J. The petitioners are promotee-members of the Indian Telecommunication Service Group 'A' (hereinafter called 'Group A Service'). They are working as officiating Divisional Engineers in the Senior Time Scale. The recruitment and conditions of service of the persons appointed to Group A Service are governed by statutory rules called "The Telegraph Engineering Service (Class I) Rules, 1965 (hereinafter called 'the Rules'). Rules 3, 5, 26, 27 and 28 which are relevant are reproduced hereunder:

> "3. *Composition of the Service:* There shall be four grades in the Services namely:
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> (i) Junior Time Scale Rs. 400-400-450-30-600-35-670-EB-35-950.
>
> (ii) Senior Time Scale Rs. 700-40-1100-50/2-1250.
>
> (iii) Junior Administrative Grade Rs. 1300-60-1600.
>
> (iv) Senior Administrative Grade Rs. 1800-100-2000.
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> 5. Filling of vacancies in the Junior Time Scale:

Fifty percent of the vacancies in the Junior Time filled by competitive examination as provided in Part II of these rules and fifty percent reserved for promotion as provided in Part III of these rules.

26. Appointment by promotion to the junior time scale in the service shall be made by selection on merit from among officers of the *Telegraph Engineering Service Class-II* ordinarily with not less than eight years approved service in Class II on the recommendations of a duly constituted Departmental Promotion Committee and in consultation with the Commission. The period of probation shall be two years.

27. (a) Appointments to the Senior Time Scale in the service shall be made by promotions of officers in the Junior Time Scale in the order of seniority subject to the rejection of the Unit. A directly recruited Assistant Divisional Engineer shall not ordinarily be promoted as Divisional Engineer unless he has put in five years service and has passed the prescribed departmental tests.

(b) *Posts in the senior time scale, may however, be filled* as a purely temporary measure, in an officiating capacity to hold charge by the promotion of permanent members of *Telegraph Engineering and Wireless Service, Class II*, who are on the approved list for promotion to the Junior Time Scale.

28. Appointments to the Junior Administrative Grade in the Service shall be made by selection on merit from amongst officers ordinarily with not less than five years' permanent service in Senior Time Scale of T.E.S. on the recommendations of a duly constituted D.P.C."

The petitioners who were permanent members of Telegraph Engineering Service Class II, were promoted to the Senior Time Scale of Group A Service under Rule 27(b) of the Rules during the period 1975 to 1979. Their appointment under the Rules was purely temporary in officiating capacity and to hold charge. It is, however, not disputed that petitioners 2 to 9 are continuously working in the Senior Time Scale till date. Petitioner No.1 retired, in the year 1987, from a post in the Senior Time Scale. The question for our consideration is whether the service rendered by the petitioners in the Senior Time Scale for over a decade entitles them to claim that they are regular holders of the posts in the Senior Time Scale of Group A Service.

A We may notice the Scheme of the Rules relevant for the purposes of the present petition. Under Rule 3 of the Rules the Group A Service consists of four grades namely, Junior Time Scale (JTS), Senior Time Scale (STS), Junior Administrative Grade(JAG) and Senior Administrative Grade(SAG). JTS is the starting point of Group A Service. Rules 5 and 26 provide that the vacancies in the JTS are to be filled 50% by direct recruitment and 50% by promotion
B from the Telegraph Engineering Service Class-II. Rule 27(a) lays down that the vacancies in the next higher grade of STS are to be filled on the basis of seniority in the JTS subject to rejection of the unfit. Directs recruits in the JTS are ordinarily not eligible to be promoted to STS till the time they have put in five years of service. Rule 27(b) provides that posts in STS may be filled by promotion of permanent officers of Telegraph Engineering Service Class II
C who are on the approved list for promotion to JTS. Such promotions, under the Rule, are purely temporary, in an officiating capacity to hold charge. Further promotion to JAG is made by selection on merit from amongst the officers in STS. Similarly promotion to the SAG is made by selection on merit from amongst the officers in JAG.

D It is obvious from the Scheme of the Rules that regular channel of promotion for the members of the Telegraph Engineering Service Class-II is to the JTS in Group A Service. Rule 27(b), however, provides that posts in the STS-which is a grade higher than the JTS-may be filled, as a temporary measure, in an officiating capacity to hold charge, by promoting members of
E the Telegraph Engineering Service Class II who are on the approved list for promotion to the JTS. In other words as soon as a member of the Telegraph Engineering Service Class II is brought on the approved list for promotion to the JTS he can be promoted to a post in STS without being appointed to a post in the JTS. The number of posts in JTS is limited whereas the number of posts in the next higher grade of STS is substantial. In an affidavit filed by Mr.
F R.Parthasarthy dated January 19, 1988 on behalf of Union of India it has been stated that total number of permanent vacancies in JTS and STS grades at that time were 451 and 724 respectively. In the written arguments on behalf of Union of India it has been mentioned that the number of posts in JTS and STS on February 1, 1985 was 451 and 1146 respectively. Generally the grade structure in a service is pyramidal in the sense that the number of posts in a
G lower grade are more than that in the higher grade, but on the contrary in Group A Service the posts in JTS are small in number whereas the number of posts in STS is large. The structure is that of an inverted-pyramid. It is difficult to fill all the posts in STS from amongst the officers in JTS and as such there is an administrative-compulsion to fill the STS posts by promoting the members of Telegraph Engineering Service Class II. The posts in JTS being less in
H number there are not many vacancies to accommodate the Class II officers who

are on the approved list for promotion to the said cadre. There is, thus, no option for the Government but to make appointments under Rule 27(b) of the Rules.

Petitioner No.1 Mr. N.S.K.Nayar was selected in the year 1975 for promotion to the JTS. He was however, promoted to STS under Rule 27B of the Rules on July 14, 1975. He continuously worked in STS till June 30, 1987 when he retired from service. Petitioners 2 to 9 were brought on the approved list for promotion to JTS during the period 1976-78. They were promoted to the STS on October 21, 1976, October 30, 1976, January 16, 1978, October 30, 1978, October 30, 1978, October 31, 1978, June 27, 1979 and June 27, 1979 respectively. These petitioners are holding the posts in STS to-date. They were also appointed substantively to JTS during that period but they never held the posts in the said grade. What emerges is that Petitioner 1 retired from service after holding the post in STS for about 12 years and the other petitioners are holding the posts in STS from 12 to 15 years. The grouse of the petitioners is that in spite of holding the posts in STS for such a long period they are not being treated as regular members thereof. To buttress their claim further it is stated that the direct recruits with much lesser service have long been promoted to the higher posts in JAG. For example Mr. Rajesh Wadhwa, respondent No. 5 joined JTS as direct recruit on December 29, 1975. He was promoted to STS on December 29, 1979 and was further promoted to the JAG on February 22, 1984. The petitioners are not being considered for promotion to the JAG because they are not regularised in the cadre of STS inspite of the fact that they have put in 10 to 15 years of service in the said grade.

We have heard learned counsel for the parties at length. It is no doubt correct that the regular channel of promotion to Group A Service provided to the officers of the Telegraph Engineering Service Classs II under the Rules is to the JTS and their promotions under Rule 27(b) are only to meet the administrative-exigency of short-tenure. We are of the view that Rule 27(b) of the Rules has been made to enable the Government to meet an ad-hoc shortage of officers to man the posts in STS. The class II officers have long experience to their credit and the nature of their work is almost identical to that of the posts in JTS. The direct recruits to JTS are deputed to work in Class-II posts to acquire experience. It is also not disputed that a class-II officer who is on the approved list for promotion is competent and eligible to work in JTS and STS. It is in this background that Rule 27(b) has been enacted to enable the Government to fill the large number of vacancies in STS by appointing Class-II officers with a frog-leap from class-II to STS by passing the JTS. The object of having Rule 27(b) of the Rules is to provide a source of appointment to meet an administrative exigency of short tenure. It could never be the intention of

A the framers of the Rule to permit the appointments under the said Rule to go on for 10 to 15 years. The appointments for such a long period cannot be considered to be purely temporary/officiating or to hold charge. Taking work out of the petitioners in the STS posts for 10/15 years and denying them the right of regularisation and the consequent benefits in the said grade, is wholly arbitrary and is violative of Article 16 of the Constitution of India.

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We have given our thoughtful consideration to the question as to what relief under the circumstances can be given to the petitioners and other officers similarly situated. While doing justice to the petitioners. We do not wish to cause any prejudice to the direct recruits. Rule 27(a) of the Rules provide that a direct recruit to JTS shall not ordinarily be promoted to STS unless he has put C in five years service in JTS. Taking cue from the said Rule we hold that the promotee-officers who have worked in STS for a continuous period of five years and are holding the posts to-date shall be deemed to be regular members of Group A Service in STS. They shall be entitled to count their seniority in the STS from the date of completing the said period of five years and shall be entitled to be considered for further promotion to JAG and SAG on the basis D of the said seniority.

We make it clear that the petitioners or other officers similarly situated who have already retired shall not be entitled to the benefit of this judgment. We further direct that none of the direct recruits who have already been promoted to STS, JAG or SAG shall be reverted as a consequence of this E judgment. If necessary the Government shall create supernumerary posts in STS, JAG and SAG to accommodate the petitioners and other officers similarly situated.

The writ petitions are allowed in the above terms with no order as to costs.

R.P. Writ petition allowed.