

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : SERVICE MATTER

Writ Petition (Civil) No. 2562 of 2002

Judgment reserved on: July 7, 2008

Judgment delivered on: December 5, 2008

1. Central Engineering Service Class I (DR) Association
Through its Additional Secretary

2. Umesh Bansal
S/o J.P. Bansal
K-1, Indraprastha Apartments
Patparganj, New Delhi - 92

3. Sunil Sharma
S/o J.P. Sharma
28, Prashanth Apartments
Patparganj, New Delhi - 92

4. Mohammed Sagheer
S/o M.K. Usman
TH-11, CPWD Transit Hostel
Aliganj, Jorbagh, New Delhi - 3
Through Mr. P.P. Rao, Senior Advocate with
Mr. V.K. Rao, Mr. Ayushya Kumar and
Mr. Arun Dhiman, Advocates

....Petitioners

Versus

1. The Union of India
through
(1A) The Secretary
Ministry of Urban Affairs and Employment
Nirman Bhawan, New Delhi “ 1

(1B) The Secretary
Department of Personnel and Training
North Block, New Delhi - 1

2. Director General (Works)
Central Public Works Department
Nirman Bhawan, New Delhi - 1

3. The Chairman
Union Public Service Commission
Dholpur House, New Delhi - 11

4. Central Administrative Tribunal
Through its Registrar
Principal Bench
Faridkot House, New Delhi - 1

5. Shri B.M. Singhal
S/o late Shri Jyoti Prasad
C-11/158, Yamuna Vihar, Delhi

6. Shri S.K. Jain
S/o Shri S.L. Jain
R/o 4/1712, Mittal Sadan
Bhola Nath Nagar, New Delhi.

7. Ashwini Kumar
OC, Costrn Squadron
National Security Guards
CGO Complex, Lodhi Road
New Delhi - 3.

8. P.K. Dixit
Executive Engineer
Indore Central Dn, CPWD
Indore.
Through Mr. H.K. Gangwani, Advocate for
Respondent No.1
Mr. P.P. Khurana, Senior Advocate
with Mr. Sachin Sood and Mr. Vikram
Saini, Advocates for Respondents

....Respondents

No.5 and 6

WITH

Writ Petition (Civil) No. 489 of 2000

V.K. Jain

724, Laxmibai Nagar

New Delhi-110023. "Petitioners

Through Mr. P.P. Rao, Senior Advocate with

Mr. V.K. Rao, Mr. Ayushya Kumar and

Mr. Arun Dhiman, Advocates

Versus

1. The Union of India

through

The Secretary

Ministry of Urban Affairs and Employment

Nirman Bhawan, New Delhi -110011.

2. Secretary

Union Public Service Commission

Shahjehan Road

New Delhi-110011.

3. Shri B.M. Singhal

C/o Mr. Sohan Lal, Advocate

C-6/244, Yamuna Vihar

Delhi-110053. "Respondents

Through Mr. H.K. Gangwani, Advocate for

Respondent No.1

Mr. Sandeep Sethi, Senior Advocate

with Mr. Sachin Sood and Mr. Vikram

Saini, Advocates.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE J.R. MIDHA

MADAN B. LOKUR, J.

The rather limited question for our consideration is: Whether, in exercise of the power of relaxation conferred by statutory rules, the Central Government is entitled to divert vacancies, en bloc, belonging to the quota of direct recruits to the quota of promotees, in order to regularize their promotion” Given the facts and circumstances of the case, as well as the legal position, our answer to this question is in the affirmative.

2. The aggrieved parties before us are directly recruited Assistant Executive Engineers (Civil), Class I (for short AEEs) whose quota of vacancies for promotion to the grade of Executive Engineer was diverted in favour of Assistant Engineers (for short AEs). Broad facts of the case:

3. The statutory rules that we are concerned with are presently called the Central Engineering Service Group “A” Recruitment Rules, 1954 (for short the 1954 Rules). The power to relax the statutory rules is conferred upon the Central Government by Rule 25 of the 1954 Rules and this reads as follows:-
“25. Power to relax: Where the Central Government is of opinion that it is necessary or expedient to do so, it may, by order, relax, in consultation with the Union Public Service Commission, any of the provisions of these Rules with respect to any class or category of persons.”

4. At this stage, it may be mentioned that the Ministry of Urban Affairs and Employment (Department of Urban Development), Central Engineering (Civil) Group “A” Service Rules, 1996 (for short the 1996 Rules) superseded the 1954 Rules. However, as far as we are concerned, this is of no serious consequence for answering the question that we have set out above. We shall, however, be dealing with the alleged impact of the 1996 Rules.

5. Rule 3 of the 1954 Rules provides for recruitment to the Central Engineering Service, Class I, by a competitive examination, by promotion and by transfer. The posts that we are concerned with are of Executive

Engineer (Civil), Class I, and they can be filled up by promotion of directly recruited Assistant Executive Engineers, Class I (AEEs) and by promotion of Assistant Engineers (AEs). AEs who can be considered for promotion as Executive Engineers, include both graduate engineers as well as diploma-holders.

6. The 1954 Rules provide a quota for filling up the posts of Executive Engineer, Class I. As the 1954 Rules originally stood, 75% of the vacancies were to be filled up by promotion of AEEs and the rest by promotion of AEs. However, this quota underwent changes on more than one occasion but we are not really concerned with the amendments made. Suffice it to say that even though direct recruitments were said to have been made to the post of AEEs on a yearly basis, there remained a substantial shortfall of AEEs available for promotion to the grade of Executive Engineer, Class I. The result of this was that to keep the work going, the Central Government promoted AEs as ad hoc Executive Engineers. The promotions made were quite disproportionate to the quota and the fall-out of this was that many of the AEs continued as ad hoc Executive Engineers and even retired as such without the benefit of regularization.

7. As one would expect, promotions of AEs in excess of their quota led to litigation, but our attention has particularly been drawn to a decision of the Supreme Court in *J.N. Goel and others v. Union of India and others*, (1997) 2 SCC 440. What happened in that case was that graduate AEs had challenged, before the Central Administrative Tribunal, the entitlement of diploma-holder AEs for ad hoc promotion as Executive Engineers, inter alia, on the ground that the educational qualification postulated by Rule 21(3) of the 1954 Rules did not permit it. During the pendency of the challenge, the Central Government retrospectively incorporated a proviso to Rule 21(3) of the 1954 Rules to the effect that a diploma-holder AE having an outstanding record and ability could be promoted as an Executive Engineer in relaxation of the educational qualification required. This was also challenged before the Central Administrative Tribunal (for short the Tribunal).

8. While upholding the proviso, the Supreme Court noticed that the 1996 Rules had come into force, but observed that they were prospective in operation and that the promotions made prior to the promulgation of the 1996 Rules would be governed by the 1954 Rules. The Supreme Court concluded: “The promotion of diploma-holder Assistant Engineers who have been promoted on the post of Executive Engineer on ad hoc basis, will have

to be reviewed by the authorities and regular promotions against vacancies which occurred prior to the promulgation of the 1996 Rules will have to be made in accordance with the 1954 Rules.”

9. Apparently taking a cue from the observations of the Supreme Court, the Central Government decided to undertake a wholesale review of ad hoc promotions made to the grade of Executive Engineer and to regularize the services of the incumbents. There was some correspondence between the Ministry of Urban Development and the Union Public Service Commission (for short UPSC) in this regard. But finally, the proposed action was justified by the Secretary in the Ministry of Urban Development in his letter dated 4th June, 1999 addressed to the Chairman of the UPSC. The salient points mentioned in the letter are to the following effect: a. There has been consistent under recruitment of AEEs to fulfill their quota. Consequently, AEs have been promoted in excess of their quota on an ad hoc basis to carry on the work of the department. (Paragraph 2). b. The existing arrangements have led to frustration amongst ad-hoc Executive Engineers, many of whom have retired without any benefit of regularization. (Paragraph 3). c. To abolish the ad hocism, to wipe out the huge backlog of vacancies and to operate the 1996 Rules on a clean slate, a one-time relaxation of the 1954 Rules is necessary. There is no alternative but to regularize the ad hoc promotion of AEs who have been working as Executive Engineers for more than 10 years. (Paragraph 4). d. This is a conscious and deliberate policy decision of the government to streamline the cadre management of the CPWD to facilitate the smooth working of the department. (Paragraph 5). e. “The proposed course of action shall not in any manner whatsoever adversely affect the interest of AEEs.” (Paragraph 6) f. “In fact the promotion of AEEs in future shall also not be delayed for want of their quota vacancies.” (Paragraph 6).

10. On the basis of the above, the UPSC accorded approval to the Central Government to divert 430 vacancies falling under the promotion quota of AEEs (Civil) in the CPWD to the promotion quota of AEs by relaxation of the 1954 Rules, with retrospective effect over a period of three years, that is, 1994-95 to 1996-97 upto 28th October, 1996.

11. Soon thereafter, the Central Government exercised the power of relaxation conferred on it by Rule 25 of the 1954 Rules and issued the following Office Memorandum on 6th July, 1999: “No 30/5/98-EC-I/EW-1
GOVERNMENT OF INDIA MINISTRY OF URBAN DEVELOPMENT

New Delhi, the 6th July, 1999. OFFICE MEMORANDUM Subject: Diversion of backlog vacancies from AEE's quota to AE's quota for promotion to the grade of EE (C) and EE (Elect.) As per provisions of 1954 Rect Rules, promotion to the post of EE in the CPWD is made from two sources namely, the AEEs Group-A and AE's Group-B in the following ratio prescribed from time to time. AEE AE 25.8.49 to 6.9.55 3 1 7.9.55 to 31.3.72 2 1 1.4.72 to 31.3.84 1 1 1.4.84 to 28.10.96 2 1 Revised RR's were promulgated on 29.10.96. The AEE's were not available in adequate number to fill up their quota vacancies which resulted in backlog in the quota of AEE's and corresponding excess in the promotion of AE's on adhoc basis against such quota. The backlog in the quota of AEE's till 28.10.96 was 430 in case of Civil and 120 in the case of Electrical. After careful consideration the Govt. has in exercise of the powers conferred under Rules 23/25 of the Central Engineering Service, Group A, Recruitment Rules, 1954 (SRO-1842) and rule 21 of the Central Electrical and Mechanical Engineering Service Group-A Recruitment Rules, 1954 (SRO-1843), decided to divert the said backlog of 430 vacancies in the quota of AEE's (C) and 120 in the quota of AEE (E) to the Asstt. Engineer (Civil and Electrical) over a period of 3 years namely, 1994'95, 95-96 and 96-97 (upto 28.10.96) with a view to regularising the adhoc promotion of AE's working against these vacancies. This is subject to the condition that retired officers will also be considered, as per existing policy of the Govt. This issues with the approval of DPT vide their Dy. No. 337/US (RR-1)/97 dt. 20.5.97 and UPSC vide their Lr. No. 11/11(3)98 " AP2 dt. 30.6.99. Sd/- (S.K. Bhatnagar) Under Secretary to the Govt. of India Tel. No. 3014151"

12. The aforesaid Office Memorandum was challenged by the Petitioners in the Central Administrative Tribunal by filing O.A. No. 1968 of 1999. That O.A. came to be dismissed by an order dated 13th February, 2001. This order passed by the Tribunal is now under challenge before us in WP(C) No. 2562 of 2002.

13. A perusal of the order dated 13th February, 2001 shows that the Tribunal relied, inter alia, on its earlier decision in O.A. No. 2134 of 1999 (V.K. Jain v. Union of India and ors) decided on 6th January, 2000. The decision rendered in V.K. Jain is under challenge before us in WP (C) No. 489 of 2000. Both writ petitions were heard together and the present decision will govern both of them. What is the effect, if any, of the supersession of the 1954 Rules"

14. Learned counsel for the Petitioners contended that the 1954 Rules having been superseded by the 1996 Rules, the Central Government could not exercise the power of relaxation conferred by Rule 25 of the 1954 Rules because it was no longer available to it. Therefore, it was submitted that the diversion of vacancies was without jurisdiction.

15. Our attention was drawn by learned counsel to paragraphs 65 and 66 of *State of Orissa v. Titaghur Paper Mills Co. Ltd.* 1985 Supp SCC 280. It was submitted on the basis of this decision that the effect of supersession of the 1954 Rules by the 1996 Rules is that the 1954 Rules have been wiped off from the statute book and replaced by the 1996 Rules. Consequently, the power of relaxation conferred by Rule 25 of the 1954 Rules can no longer be of any assistance to the Central Government.

16. Reliance was also placed on *Gajraj Singh v. STAT*, (1997) 1 SCC 650 particularly paragraphs 22 and 29 of the Report to submit that when an Act of Parliament is repealed, “it must be considered, except as to transactions past and closed, as if it had never existed. The effect thereof is to obliterate the Act completely from the record of Parliament as if it had never been passed; it never existed except for the purpose of those actions which were commenced, prosecuted and concluded while it was an existing law.” The effect that repeal has on vested rights and inchoate rights has also been discussed in that decision.

17. Finally, reference was made to *India Tobacco Ltd. v. CTO*, (1975) 3 SCC 512 which says much the same as *Gajraj Singh*, the point being made that for all intents and purposes the 1954 Rules do not exist.

18. We do not agree with the view canvassed by learned counsel. In the first instance, we are concerned only with the promotions made pre-1996. Those promotions could be governed and were governed only by the 1954 Rules and not by any other rule. Apart from the fact that this is quite natural, it was also made explicit by the Supreme Court in *J.N. Goel*. In paragraph 8 of the Report, it was observed: “Since the 1996 Rules are prospective in operation, the promotions made prior to the making of the 1996 Rules would be governed by the 1954 Rules “..” Similarly, in paragraph 15 of the Report, the Supreme Court reiterated its view in the following words: “The promotion of diploma-holder Assistant Engineers who have been promoted on the post of Executive Engineer on ad hoc basis, will have to be reviewed by the authorities and regular promotions against vacancies which occurred prior to

the promulgation of the 1996 Rules will have to be made in accordance with the 1954 Rules. Regularisation of diploma-holder Assistant Engineers who are working as Executive Engineers on ad hoc basis against vacancies which occurred after the promulgation of the 1996 Rules will have to be made in accordance with the provisions of the 1996 Rules.”

19. Secondly, the 1996 Rules make it clear that though they supersede the 1954 Rules, they do so “except as respects things done or omitted to be done before such supersession”. One of the things done by the Central Government under the 1954 Rules was to make promotions of AEs as Executive Engineers far in excess of their quota. This resulted in an anomalous situation in as much as a large number of AEs could not be regularized as Executive Engineers in spite of having worked as such for more than 10 years (some of them even retired as ad hoc Executive Engineers) and this naturally bred frustration amongst them. The mandate of the Supreme Court in J.N. Goel was to rectify this situation with reference to ad hoc diploma-holder AEs. But, this was not possible without taking into consideration similar aspirations of the graduate AEs, who could not (obviously) be left out in the cold. It was to set right the anomalous situation caused by the omission of the Central Government to adhere to the quota that it had to resort to Rule 25 of the 1954 Rules, there being no other alternative or viable option.

20. Effectively, therefore, all that the Central Government has done is to acknowledge the existence of a complex situation of its own making; appreciate the need to rectify it in terms of the observations of the Supreme Court in J.N. Goel; utilize the power available to it under Rule 25 of the 1954 Rules; and, correct the course of events caused by “things done or omitted to be done” by it. In our opinion, on the plain language of the 1996 Rules, this power was available to the Central Government under the 1954 Rules in respect of pre-1996 promotions.

21. The matter may be looked at from another point of view. Has any prejudice been caused to the Petitioners or have they been adversely affected in any manner whatsoever” In this context, it is necessary to advert to the letter dated 4th June, 1999 addressed by the Secretary in the Ministry of Urban Development to the Chairman of the UPSC. In this letter, it is categorically stated that “The proposed course of action shall not in any manner whatsoever adversely affect the interest of AEEs. “.” Therefore, by correcting the course of events, no prejudice has been caused to the AEEs.

Indeed, as far as we are concerned, nothing was shown to us to even remotely suggest that the Petitioners were prejudicially affected. That being so, we fail to see the grievance that any of the Petitioners could have to the remedial action taken by the Central Government.

22. It was suggested by learned counsel for the Petitioners that prejudice was caused to his clients in as much as their seniority was adversely affected because there is no period specified for promotion of AEEs (such as the Petitioners) to the post of Executive Engineer. Theoretically, therefore, they could have been promoted on the very first day that they joined the service and the diversion of vacancies has denied this opportunity to them. This submission is mentioned only to be rejected forthwith. No such case was ever put forward by the Petitioners before the Tribunal and no instance has been brought to our notice of any AEE having been promoted to the post of Executive Engineer on the very day that he joined the service. The submission seems to be entirely hypothetical and one of desperation by clutching at a straw. In the absence of anything worthwhile or substantial, we are not inclined to seriously consider the completely illusory and imaginary situation set out by learned counsel.

23. Contrast this with the averment made by the Petitioners in paragraph 19 of the writ petition. It is averred therein that: "The Petitioners herein were directly recruited as AEEs (Civil) through the Competitive Examination for the Combined Engineering Services conducted by the UPSC during the years 1988 onwards. Accordingly, after completing the requisite qualifying service as per the 1954 Rules and as per the 1996 Rules (dealt with hereinafter), they were promoted as EEs (Civil) within their lawful quota."

24. To our mind, this clearly suggests that not only were the Petitioners required to undergo a qualifying period of service for promotion to the post of Executive Engineer, but that their promotions were made under the 1996 Rules and not under the 1954 Rules. This really confirms that the Petitioners have not been prejudicially affected in any manner whatsoever.

25. The follow-up to the contention urged, in the larger canvas, is that the 1996 Rules occupy the field and the Central Government cannot resort to the 1954 Rules to remedy the situation. Even this submission is without any substance. It is quite clear that the 1996 Rules are prospective in nature (as held in J.N. Goel) and they do occupy the field but only in so far as promotions post-1996 are concerned. It is equally clear that for pre-1996

promotions, the 1996 Rules cannot be made applicable “ they are not retrospective and were not in existence before 28th October, 1996. The only rules that could be considered for application to pre-1996 promotions are undoubtedly the 1954 Rules and it is only the power conferred by those rules that the Central Government has invoked. If any other authority is needed for this general proposition, one need only look at Y.V. Rangaiah v. J. Sreenivasa Rao, (1983) 3 SCC 284. [“We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.”]

26. Learned counsel submitted that Rule 7 of the 1996 Rules dealing with future maintenance of the service would be the applicable rule to deal with the situation that we are confronted with. With respect, this is not correct. Rule 7 of the 1996 Rules deals with filling up of vacant duty posts, by way of future maintenance of the service created by the 1996 Rules. In the present case, the situation contemplated by learned counsel does not at all arise because by the order dated 6th July, 1999 all promotions of ad hoc AEs were regularized leaving no “vacant duty posts” to be filled up. In fact, by virtue of their regularization, the AEs became members of the Central Engineering (Civil) Group “A” Service on its initial constitution under Rule 6 of the 1996 Rules. To sum up, there is no visible impact of the 1996 Rules on the 1954 Rules as far as this case is concerned. Does the power of relaxation enable diversion of vacancies”

27. The next submission of learned counsel for the Petitioners was that assuming the Central Government was entitled to invoke the 1954 Rules, even then, Rule 25 thereof did not enable it to divert vacancies from one category (AEEs) to another (AEs). It was also submitted, in this context, that Rule 25 did not enable the Central Government to alter the statutorily fixed quota applicable for promotions to the post of Executive Engineers. It was further submitted that the statutorily fixed quota could be altered only by amending the 1954 Rules, as had been done from time to time, and not by administrative instructions.

28. The power of relaxation conferred by Rule 25 of the 1954 Rules is extremely wide. It enables the Central Government to relax any provision of the 1954 Rules with respect to any category or class of persons. Of course, this is possible only in consultation with the UPSC. In this case, the power has been exercised by the Central Government with respect to the entire category or class of AEs. What has been done is to relax the provisions of

the rules requiring filling up the posts of Executive Engineer in a particular manner, that is, by relaxing the adherence to a quota. This has been achieved, though in a slightly circuitous manner, by diverting vacancies from the quota of AEEs to the quota of AEs.

29. It is nobody's case that Rule 25 of the 1954 Rules confers arbitrary powers or has been applied arbitrarily. Indeed, this cannot even be the case of the Petitioners because there does appear to be adequate justification for invoking the power of relaxation in its widest amplitude. The power is available and has been used, inter alia, to mitigate the hardship caused to a category or class of persons, many of whom were not able to obtain the benefits of regularization even though they had worked as Executive Engineers for as long as ten years and many of them had even retired without reaping any such benefits.

30. Learned counsel for the Petitioners referred to *Suraj Parkash Gupta v. State of JandK*, (2000) 7 SCC 561. This decision of the Supreme Court is rather instructive but, in our opinion, it does not support the absolute view canvassed by learned counsel, which is to the effect that the power of relaxation given in Rule 25 of the 1954 Rules relates only to relaxation of the conditions of service and not to relaxation of the quota.

31. In the first place, as held in paragraph 31 of the Report, the case was one of implied relaxation, though pertaining to relaxation in the quota, but nevertheless one of implied relaxation, unlike in the case that we are dealing with where the relaxation is specific. Secondly, the Public Service Commission was not consulted, again unlike in the case that we are dealing with. Thirdly, on facts, the relaxation was held to be bad because of insufficient reasons given in the Cabinet note. In the case that we are dealing with, there is no challenge to the relaxation on facts. Fourthly and finally, *Suraj Parkash Gupta* itself recognizes that there may be extraordinary situations warranting a departure from the general rule laid down therein.

32. The Supreme Court held in *Suraj Parkash Gupta* that there are various kinds of relaxation. For instance, there could be: Relaxation of conditions of service, Relaxation of rules, Relaxation in any particular case, Relaxation in favour of a person, Relaxation in favour of a class of persons.

33. Reference was made by the Supreme Court to *Narender Chadha v. Union of India*, (1986) 2 SCC 157 and although it was held to be an

exceptional case, the facts of that case as analyzed by the Supreme Court are quite similar to the facts of the case that we are dealing with. The Supreme Court noted that in Narender Chadha the promotees occupied not only their own quota but also the direct recruitment quota to some extent. They were held entitled to regular promotion on the theory of implied relaxation of the recruitment rules to all posts within and outside the promotion quota. Since the promotees were not regularized for 15 to 20 years, it was held that their non-regularization over such a long period violated Articles 14 and 16 of the Constitution. The Supreme Court went on to say that the recent trend is towards strict compliance of the recruitment rules.

34. Obviously, there can be no quarrel with the law laid by the Supreme Court to the effect that Narender Chadha is to be treated as an exception and not as a rule and that there should be strict compliance with the recruitment rules, in matters such as the present. However, if one compares this mandate with the facts of the case in hand, it is clear that there was strict compliance in respect of the power of relaxation under the 1954 Rules in as much as the Central Government consulted the UPSC and only then took a decision. As already mentioned, the rationale or justification for relaxation is not under challenge. However, we may note that the rationale or justification given itself explains the unusual situation faced by the Central Government.

35. What is the unusual situation that we are concerned with” As explained in the letter dated 4th June, 1999 sent by the Secretary in the Ministry of Urban Development to the Chairman of the UPSC, the unusual features are: there was consistent under-recruitment of AEEs; to continue the (smooth or efficient) working of the department it was necessary to promote AEs far in excess of their quota; non-regularization of the services of the AEs led to frustration amongst them; a situation arose whereby many of the Executive Engineers from amongst the AEs continued in an ad hoc capacity for more than ten years and many of them retired without even reaping the benefits of regularization; there was a need to get rid of the ad hocism and operate the 1996 Rules on a clean slate; for achieving this, a conscious and deliberate policy decision was taken by the Central Government to streamline the cadre management of the CPWD to facilitate the smooth working of the department; and finally, the AEEs were not prejudiced in any manner whatsoever. Taking all these aspects into consideration as well as the fact that there was strict compliance with the procedure laid down in the 1954 Rules, we are of the opinion that not only was an extremely wide power of relaxation available to the Central Government, but that it did right in

exercising that power conferred by the 1954 Rules. If in doing so, there was a change in the quota rule, it was quite justified and permissible, if not inevitable. Moreover, given the facts of the case, we are not inclined to upset the apple cart on this ground alone.

36. Another decision referred to by the Supreme Court (though distinguished by it) is that of *G.S. Lamba v. Union of India*, (1985) 2 SCC 604 wherein it was generally stated that the rule relating to relaxation of any of the provisions also comprehends the rule relating to quota. It is not normal, but is certainly possible in a given case, to relax the quota rule should the situation so necessitate.

37. Could the Central Government alter the quota by executive instructions, without amending the 1954 Rules? It is difficult to answer the question in an absolute yes or an absolute no. As we have indicated above, the power of relaxation conferred by Rule 25 of the 1954 Rules is extremely wide. It is not hedged in by any substantive conditions, only a procedural one. In that sense, the power can be used to alter the quota. But, at the same time, the power cannot be used wantonly and arbitrarily so as to emasculate the power of amendment. A middle path, therefore, has to be taken. In the present case, the middle path was taken by using the power of relaxation as a one-time measure and given the exigencies of the situation. Normally, the appropriate course would have been to amend the 1954 Rules to alter the quota, as was done from time to time, but the same result was achieved by utilizing the power of relaxation, without adversely affecting anybody's rights. Given the wide power of relaxation, we cannot, on the facts of this case, find fault with the course adopted by the Central Government.

38. Learned counsel for the Petitioners contended that when it came to the crunch, the Central Government did have an alternative available for dealing with excess promotions. In this, he may be right, but it is really for the Central Government to decide what course of action to adopt. The Central Government may, to keep the wheels of administration moving, create ex-cadre posts, make ad-hoc appointments, make supernumerary appointments or resort to other out-of-the-way expedients, as observed in *N.K. Chauhan v. State of Gujarat*, (1977) 1 SCC 308. Compulsions of the rules cannot go to the extreme extent of requiring the Central Government to keep posts vacant. As far as the present case is concerned, the Central Government took a deliberate policy decision to regularize the promotions to streamline the cadre management for facilitating the smooth working of the department.

This policy decision is certainly not arbitrary or whimsical, nor has it been shown to be so.

39. Learned counsel further submitted that the Central Government was obliged to follow the law and the principles laid down by the Supreme Court in *A.K. Subraman v. Union of India*, (1975) 1 SCC 319 and *P.S. Mahal v. Union of India*, (1984) 4 SCC 545. There can hardly be any doubt that the law and principles laid down by the Supreme Court have to be followed and adhered to. But unfortunately, learned counsel has been unable to demonstrate to us which principle was not adhered to by the Central Government. At best, it can be argued that the excess promotions made of AEs are irregular, but in the facts of the case, they cannot be said to be totally illegal [*V.B. Badami v. State of Mysore*, (1976) 2 SCC 901]. Even in this scenario, we have not been told how any prejudice has been caused to the Petitioners either in the pre-1996 situation or even post-1996. The submission, therefore, is really of an academic nature and so we are not inclined to spend time on it. To sum up, we are of the opinion that Rule 25 of the 1954 Rules permitted diversion of vacancies. Has the Central Government incorrectly understood *J.N. Goel*”

40. The final contention of learned counsel for the Petitioners was that the Central Government did not correctly appreciate the decision of the Supreme Court in *J.N. Goel* and, therefore, carried out an exercise not mandated by that decision. We have dealt with this issue above and do not feel the necessity of repeating ourselves. Suffice it to say that it is correct that *J.N. Goel* did not concern itself with any dispute involving AEEs “ it was concerned only with issues relating to graduate and diploma-holder AEs. It was for resolving that dispute that the Supreme Court said that the promotion of diploma-holder AEs to the post of Executive Engineer on an ad-hoc basis would have to be reviewed. This direction of the Supreme Court could not be carried out in isolation or by overlooking the rights, concerns and aspirations of graduate AEs. It is this compulsion that necessitated a wholesale review of the impact of ad-hoc promotions of AEs to the grade of Executive Engineer, leading up to the Office Memorandum dated 6th July, 1999. To conclude, the Central Government correctly appreciated *J.N. Goel* particularly the principles laid down in that decision and rightly acted on them. Additional submissions:

41. Learned counsel for Respondent Nos. 5 and 6 (in WP (C) No. 2562 of 2002) raised certain additional submissions, such as that the Petitioners were

setting up a new case, which was not permissible; the writ petition ought not to be entertained on the grounds of delay and laches; and, the Petitioners have failed to implead necessary parties in the writ petition. We are not taking any decision on any of these issues because on the merits of the controversy, we find that the Petitioners have made out no case for interference with the impugned order of the Tribunal.

42. The writ petitions are dismissed. No costs.

Sd/-
MADAN B. LOKUR, J

Sd/-
J.R. MIDHA, J

Certified that the corrected copy of the judgment has been transmitted in the main Server.

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