

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

(1) D.B. Civil Writ Petition No. 13772/2016

1. D.K. Garg S/o Shri Shivcharan Lal Garg, R/o 197, Shanti Nagar, Opp. Durgapura Rly Station Jaipur Raj.
2. Rajesh Sharma S/o Shri Harimohan Sharma, R/o 606, Rani Sati Nagar, Jaipur Raj.

----Petitioners

Versus

1. State Of Rajasthan Through Principal Secretary, Department Of Energy Government Secretariat, Jaipur
2. Chairman Cum Managing Director, Jaipur Vidyut Vitran Nigam Limited Viduyt Bhawan, Jyoti Nagar, Jaipur
3. Manmohan Singh Shekhawat S/o Shri Sugan Singh Shekhawat, R/o Plot No. 155, Gandhi Nagar, Near Indane Gas Godowns, Bikaner, Rajasthan
4. Mukesh Kumar S/o Sh. Babu Lal, R/o Near Mahaveer Circle, Juna Kerada Marg, Barmer, Rajasthan
5. Rajasthan Vidhyut Prasaran Nigam Limited through its Chairman & Managing Director Vidhyut Bhawan, Janpath, Jyoti Nagar, Jaipur (Raj.)

----Respondents

(2) D.B. Civil Writ Petition No. 13775/2016

RSEB Engineers Association, Having Registered Office At 275, Barodiya Basti, Bani Park, Jaipur, Thr, R/o Rajasthan, At Present Serving As Assistant Engineer At Rvpnl, Jaipur, Raj..

----Petitioner

Versus

1. State Government Of Rajasthan Through Chief Secretary, Govt. Secretariat, Jaipur Raj.
2. Principal Secretary Energy, Govt. Secretariat, Jaipur Raj.
3. Chairman Cum Managing Director, Raj. Vidyut Parasan Nigam, Vidhut Bhawan, Jyoti Nagar, Jaipur Raj.
4. Manmohan Singh Shekhawat S/o Shri Sugan Singh Shekhawat, R/o Plot No. 155, Gandhi Nagar Near Indane Gas Godowns, Bikaner
5. Rajendra Kumar S/o Shri Banwari Lal, R/o R-II, 15, Vidyut Colony, Near Doongar College, Jaipur Road, Bikaner
6. Chaman Lal Airi S/o Shri Prakash Airi, R/o A-6, Karni Nagar, Pawan Puri, Bikaner
7. Vishnu Nethi S/o Shri Mukesh Chand Gupta, R/o R-Iii/3,

- Vidyut Colony, Near Doongar College, Jaipur Road, Bikaner
8. Subhash Vrma S/o Shri D.c. Verma, R/o 9/14, Malviya Nagar, Jaipur
 9. Balwant Chouhan S/o Shri Mangal Chand Chouhan, R/o Vidyut Nagar, Udaipur Road, Banswara
 10. Narayan Singh Rathore S/o Shri Hindu Singh Rathore, R/o Village-Bamberi, Post-Khasiya, The. And Distt. Pratapgarh
 11. Satya Narayan America S/o Sohan Lal Khatik, R/o Khatik Mohalla City Chittorgarh
 12. Mahendra Kumar Meena, S/o Shri Ramesh Chand Meena, R/o Q.No. 2, Moti Babaji 33/11 Kv Power House, Sanganer Road, Bhilwara
 13. Arjun Singh Meena S/o Shri Lal Chand Meena, R/o Q.no. 4, Moti Babaji Power House Colony, Sanganer Road, Vsp Masar, Bhilwara
 14. Kamal Kishore Bairwa S/o Shri Puna Lal Bairwa, R/o A-509, Panchsheel Nagar, Ajmer
 15. Mohan Singh S/o Shri Suresh Singh, R/o Jaisi Ka Pura, Behind Hp Prop. Hindaun City, Distt. Karauli
 16. Ashok Sharma S/o Shri Bhanwar Lal Sharma, Plot No. 32, Hanuman Colony, Kayed Road, Ajmer
 17. Kamlesh Kumar Upadhyay S/o Shri K.A. Upadhyay, R/o Plot No. 69, Flat No. F.1, Modi Nagar, Ajmer Road, Jaipur
 18. Bharat Lal Gera S/o Shri Shyam Lal Gera, R/o R-314, Power House Colony, Sector 4, Jawahar Nagar, Jaipur
 19. Dilip Saini, S/o Shri Mal Chand Saini, R/o 3827, Gandhi Mori, Near Indra Bazar, Jaipur
 20. Pushpendra Goyal S/o Shri Laxmi Naryan Goyal, R/o R-/3, Rrvpl Heerapura Colony, Heerapura, Jaipur
 21. Nemi Chand Verma S/o Shri Nathi Ram, R-3/6, Bijli Colony, Sakhipara, Hanumangarh
 22. Anil Kumar Poonia S/o Shri Hanuman Singh, R/o Vpo Bhainsali, The. Rajgarh, Distt. Churu
 23. Vishram Lal Saini, S/o Shri Kanhaiya Lal Saini, R/o Near Saini Repairing Works, Opposite Madan Nursing Home, Sikandra Road, Bandikui
 24. Madan Gopal S/o Shri Om Prakash Visnoi, R/o 4/33, Near Rhb Colony, Suratgarh

25. Tariq S/o Shri Mohd. Azizuddin, R/o 8040, Division Railway Work, Jodhpur
26. Kamal Singh Meena S/o Shri Prabhu Dayal Meena, R/o Village-Amala, Post-Bahareo Kallan, Tehsil-Rajgarh, Alwar
27. Dharmendra Prajapati, S/o Shri Kukma Ram, R/o Talab Road, Village And Post-Luni, Distt. Jodhpur
28. Jitendra Arora S/o Shri Bhanwar Lal Arora, R/o 35, Mahaveer Nagar, Pali
29. Saurabh Singhal S/o Shri H.r. Saran, R/o 6-V-1136, Kuri Bhagtasni Housing Board, Jodhpur
30. Vijay Singh Meena S/o Shri L.R. Meena, R/o Q.no. E-4, 220Kv Gss Colony, Sirohi
31. Deepak Kumar Sharma S/o Shri Budhi Prakash Sharma, R/o2/190, Kuri Bhagtasni Housing Board, Jodhpur
32. Latish Kumar S/o Shri Ramswoop Meemrot, R/o Q.No. F-2/6, Rseb Colony, Shastri Nagar, Jodhpur
33. Digvijay Singh S/o Shri Rajendra Singh Sisodia, R/o Vishal Kunj, Near Asmani Pol, Umaid Chowk, Jodhpur
34. Manoj Kumar Deora S/o Shri Khiya Ram Deora, R/o B-F 3-G, Behind Pooja Novelty, Nehru Colony, Ratanada, Jodhpur
35. Mahesh Daiya, S/o Shri Achla Ram Daiya, R/o 25-C, Shakti Nagar, Road No. 4, Paota-C, Jodhpur
36. Mahesh Didwania S/o Shri Ram Gopal, R/o 17/329 Chopasni Housing Board, Jodhpur
37. Prabha Singh D/o Shri R.K. Singh, R/o Plot No. 11/442, Chopasani Housing Board, Jodhpur
38. Nimendra Raj Singh S/o Shri Hanwant Singh, R/o Ajit Place, Rajendra Colony, Bali
39. Amit Sihra, S/o Shri Manohar Lal Meena, R/o Q.No. F-5, 220 Kv Gss Colony, Sirohi
40. Ruchi Bhansali D/o Shri Girish Kumar Bansali, R/o 54-B, Laxmi Nagar, Paota-C Road, Jodhpur
41. Neha D/o Krishna Kumar, R/o 272, Laxmi Nagar, Jodhpur
42. Prahlad Ram, S/o Shri Manrupa Ram, R/o R4/2, 220 KV GSS Colony, Basni II Phase, Jodhpur
43. Kailash Kumar S/o Shri Mansukh Das, R/o Q.No. R/2 WPH Colony, Indra Nagar, Barmer

44. Mukesh Kumar S/o Shri Babu Lal, R/o Near Mahaveer Circle, Juna Kerada Marg, Barmer

----Respondents

For Petitioner(s) : Mr. Vikas Balia, Mr. B.S. Sandhu, Mr. Abhishek Mehta & Mr. Kunal Bishnoi

For Respondent(s) : Mr. Ravi Bhansali, Sr. Advocate assisted by Mr. Bhavit Sharma, Mr. Dhanesh Saraswat, Mr. Vipul Dharnia Mr. Rohin Bhansali
Mr. Rajesh Joshi, Sr. Advocate, Mr. Kuldeep Mathur, Mr. D.S. Sodha, Mr. Vineet Dave
Mr. S.K. Vyas, Mr. C.P. Soni
Mr. Pankaj Sharma, AAG assisted by Mr. Deepak Chandak

**HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE RAMESHWAR VYAS**

Judgment

Reserved on : 17/12/2021

Pronounced on : 06/01/2022

1. These writ petitions involve challenge to the decision of the respondent No.1 and 2 whereby the posts of Feeder Managers have been merged with the posts of Assistant Engineers of respondent Electricity Companies and a corresponding amendment has been introduced giving them seniority below the Assistant Engineers, appointed in 2010-11 and 2011-12, as the case may be.

2. The first writ petition (SBCWP No.13772/2016) has been filed by two petitioners; petitioner No.1 was appointed as Junior Engineer on 23.11.1991, whereas petitioner No.2 was appointed on 18.11.1997. They were promoted to the post of Assistant

Engineer (E&M) against the vacancies of the year 2011-12 and 2013-14 respectively.

3. The second writ petition being SBCWP No.13775/2016 (RSEB Engineers Association), was initially filed at Jaipur Bench, but later has been transferred to the Principal Seat by order dated 28.9.2016, passed by Hon'ble the Chief Justice. This writ petition also raises a somewhat similar grievance. As the basic grievance namely, merging the post with or converting the post of Feeder Manager to Assistant Engineer is common, both the writ petitions are being disposed of conjointly.

4. The petitioners of the first writ petition have challenged the decision of the Coordination Committee dated 30.10.2015; the subsequent decision dated 10.05.2017 taken by the Reconstituted Coordination Committee and the consequential orders dated 14.08.2017 and 28.08.2017 and identical orders said to have been issued by different Nigams. Whereas the second writ petition lays challenge to the resolution dated 30.10.2015 adopted by the Coordination Committee.

5. It may be noted that earlier, the terms and conditions of the services of the employees of the respondent - Nigam were governed by RSEB Service of Engineers (Recruitment, Promotion & Seniority) Regulation, 1969 (hereinafter referred to as "Regulations of 1969"), which has later been substituted by JVVNL Engineers Service Regulation, 2016 (hereinafter referred as "Regulations of 2016"). Recruitment in the service is governed by Regulation No.6 of the Regulations of 2016 and according to the Schedule-I appended with the Regulations of 2016, recruitment to the post of Assistant Engineer (E&M Civil) can be made by both

the processes i.e. direct recruitment as well as promotion from the post of Junior Engineers.

6. It may be noted that 50% posts of the Assistant Engineer (Electrical) are required to be filled in by direct recruitment (2/3rd from amongst open market and remaining 1/3rd from the existing Junior Engineers, working in the respondent - Nigam), while remaining 50% posts are meant to be filled in by promotion.

7. A new cadre of Feeder Manager came to be introduced in the service regulations in order to cater to the requirement of Feeder Renovation Programme taken by various Discoms. The minutes of the meeting dated 10.07.2007 of the Board of Directors of the respondent - Discom reveals that duties and responsibilities of Feeder Managers were to carry out energy audit of the feeders and to monitor, collect and compile the details of execution.

8. The posts of Feeder Manager were filled in through the process of direct recruitment, which took place in July, 2007 and September 2008, whereafter no recruitment to the post of Feeder Manager was made by the respondents and the post of Feeder Manager was kept as a dying cadre.

9. While admitting that the grade pay and pay-scale of Feeder Manager was equivalent to Assistant Engineer (Electric), the petitioners have pleaded that since inception, no promotional avenue was provided to the Feeder Managers. It has been asserted that all the Feeder Managers, who were recruited directly from open market and those who were already working as Junior Engineers in various companies of the respondents vied in the recruitment process, accepted the appointment as Feeder Managers, knowing it fully well that Feeder Managers would get

pay equal to the Assistant Engineers, but with no promotional avenue.

10. Mr. Balia, learned counsel for the petitioners contended that some of the in-service Junior Engineers opted to become Feeder Managers as they found the pay and emoluments to be lucrative regardless of the fact that there was no promotional avenue provided in the regulations.

11. He invited Court's attention towards the replies filed by the respondent-Nigam in DBCWP No.191/2014 filed by the Feeder Managers, (in which the Feeder Managers had prayed that they be promoted to the post of Executive Engineers) and pointed out that the respondents - Power Sector Companies have taken a categorical stand that the post of Feeder Manager was introduced in the Cadre for a very specific purpose of Feeder Renovation Programme and such cadre was entirely different from the cadre of Assistant Engineer and thus, they are not eligible for promotion.

12. The Court's attention was also invited towards the respondents' stand taken in SBCWP No.2391/2007 filed at Jaipur Bench (which has later been registered at Principal Seat as D.B. Civil Writ Petition No.13774/2014), in which the Junior Engineers working in the power sector companies had challenged the recruitment exercise of the Feeder Managers on the ground that such recruitment would hamper their promotional avenues on the post of Assistant Engineer and Executive Engineer. Learned counsel pointed out that in their writ petition also, the respondent - RRPVNL has taken a specific stand that the post of Feeder Manager was created for a specific purpose and it would not affect

promotional avenues available to the Junior Engineers to the post of Assistant Engineers.

13. While highlighting that benefit of Assured Career Progression (ACP) was being given to the Feeder Managers as there was no channel for promotion, it was contended that the respondents cannot merge the post of Feeder Manager with the Assistant Engineer and impede the promotional avenues of the petitioners, who are presently working as Assistant Engineers.

14. Raising a grievance against the decision of the respondent - Coordination committee in its 185th meeting held on 30.10.2015 and 4th meeting of the Reconstituted Coordination Committee convened on 10.05.2017, learned counsel for the petitioners raised a number of arguments.

15. While informing that in exercise of powers conferred by Section 14, 15, 16 and 58 of the Rajasthan Power Sector Reforms Act, 1999, the State Government has framed a Scheme known as Rajasthan Power Sector Reforms Transfer Scheme, 2000 (hereinafter referred to as "the Scheme of 2000"), learned counsel submitted that vide order dated 19.07.2000, the Coordination Committee was constituted by the State Government comprising of Managing Directors of all the five electricity companies and the Secretary (Energy).

16. Operative part of the order dated 19.07.2000 reads thus :-

"The committee is being constituted for the purpose of coordination, conflict resolution and for transfer of functions and activities of the respective companies during the transitional period the Committee would meet as often as may be required."

17. Having read the order of the constitution of the Committee, learned counsel argued that the said committee was constituted only for the transitional period and that too for the purpose of settling the disputes/issues regarding transfer, absorption etc. of the employees of erstwhile RSEB, which was divided in five different companies. According to him since the Coordination Committee was for a transitional period, the exercise done by the Committee in its meeting dated 30.10.2015 was without jurisdiction and beyond its scope. He added that on the same footing, the resolution adopted in the 4th meeting of the Reconstituted Coordination Committee dated 10.05.2017 is also a nullity.

18. Elaborating his arguments further, learned counsel argued that if the service regulations are to be amended, they can only be amended by the employer companies with due approval of the State Government and since there are five separate companies having separate rules and regulations, a separate resolution of the respective employer company is required to be adopted in accordance with law before introducing any amendment in the regulations.

19. In other words, it was argued that if at all any order of merger could be passed, the same could be passed only by the Board of Management of the respective electricity companies, albeit after due approval of the State Government, whereas in the present case, it has been done the other way round – the State Government has forced its decision upon the respondent companies.

20. Mr. Balia argued that the resolution of the Coordination Committee/ Reconstituted Coordination Committee has been firstly got approved by the State Government and the same has been kept subject to ratification by the respective electricity companies. He argued that such process hits at the very root of the autonomy of the companies.

21. The duties of Feeder Managers, as informed by learned counsel, are as under :

"136.10 Regarding Duties and Training to Feeder Managers:

The Board discussed the proposal as contained in the agenda note and approved that the duties of the newly recruited Feeder Managers and their scope of training shall be as follows :-

(A) Duties of Feeder Managers :

Feeder Managers be placed with the Circle SE of the Construction Circles and at the 400 KV GSS circles to carry out the following duties :

1. *To work as Nodal officer for the circle in implementation of integrated MIS and Computerization in RVPN.*
2. *To work as Nodal officer for project monitoring including the performance monitoring of the GSSs.*
3. *To carry out Energy Audit of the GSS, specifically the proper operation of the OLTC ad shunt capacitors for reactive energy management.*
4. *To co-ordinate with the Distribution Companies for Energy Audit of the 33/11 kv feeders emanating from the GSS under the circle.*
5. *Verification and record keeping of energy sent to Discoms.*

Any other work assigned from time to time by their respective circle officer."

22. Comparing the duties of Feeder Managers vis-a-vis the Assistant Engineers, learned counsel argued that the post of Feeder Manager could not have been merged with the post of Assistant Engineer, while emphasizing that it has consistently been the stand of the respondents that the cadre of Feeder Manager is separate and their duties and responsibilities are not akin to that of Assistant Engineers.

23. Carefully reading the minutes of the meeting dated 30.10.2015 of the Coordination committee, learned counsel argued that no deliberation took place and the members of the committee have simply approved the proposal of the State Government and the draft amendment to be brought in the Regulations of 1969.

24. It was further alleged that identical indifferent attitude was shown by the members of Reconstituted Coordination Committee in its 4th meeting held on 10.05.2017. He submitted that the Committee has cursorily adopted the resolution, without even discussing or considering the issue, as if the decision of the State Government was a dictate.

25. Learned counsel argued that mere inscription of the words 'after deliberation' does not show application of mind inasmuch as the Reconstituted Coordination Committee has simply reiterated the decision dated 30.10.2015, that was earlier taken by the Coordination Committee. He argued that the Reconstituted Coordination Committee has echoed the earlier decision hardly realising that the same was strongly opposed by the Finance Department and Department of Personnel. Learned counsel showed concern that consequent to the decision of the

Reconstituted Coordination Committee taken in its 4th meeting dated 10.05.2017, the Regulations of 2016 have been amended with the result that the post of Feeder Manager has been merged with the post of Assistant Engineer and their designation has been changed to Assistant Engineer (E&M).

26. Learned counsel submitted that even if it is held that the respondents do possess the power to equate and merge both the posts viz. Feeder Managers and Assistant Engineers, the same in any case cannot be done with retrospective effect from 2010-11 and 2011-12 and at the cost of future prospects of the petitioners.

27. Learned counsel argued that there is no reasonable and intelligible criteria, for which, the Feeder Managers appointed in 2007 have been treated as Assistant Engineer (E&M) from 2010-11 and those appointed in 2008 have been assigned seniority immediately below the Assistant Engineers promoted in 2011-12.

28. Elaborating his arguments, learned counsel submitted that it was the opinion, if not whim, of one of the members of the Coordination Committee, which has prevailed over all the members, who had expressed his views that while merging the posts of Feeder Managers with Assistant Engineers, their seniority be not entirely overlooked and they be given benefit of half of their services rendered as Feeder Managers.

29. Learned counsel vehemently argued that when the respondents were consistently of the view that nature of duties and work being discharged by the Feeder Managers was different, there can be no reason, for which, they have been assigned seniority of 2010-11 and 2011-12. According to him the respondents' decision in any case, to this extent was liable to be

quashed, particularly because all the stake holders were cognizant of the fact that there was no promotional avenue available to the Feeder Manager.

30. It was argued that the Feeder Managers cannot be assigned seniority from 2010-11 and 2011-12, when they were not even born in the cadre of the Assistant Engineer (E&M). Pointing out that the final decision to merge the cadre of Feeder Manager with Assistant Engineer came into force on issuance of order dated 14.08.2017, Mr. Balia argued that at the best, the Feeder Managers could be given seniority w.e.f. the date when the Regulations of 2016 stood amended and not from any date prior to the amendment brought in the regulations.

31. While taking the Court through the pleadings of the earlier writ petition (page 1069, 1071, 1092, 1094 and 1095 of the paper book), (being D.B. Civil Writ Petition No.7191/2014) learned counsel submitted that the respondents have taken a firm stand that the Feeder Managers cannot be equated with or treated equivalent to Assistant Engineers and hence, their post could not have been merged with the Assistant Engineer. He argued that all the Feeder Managers had opted for and accepted the appointment with their eyes wide open and being conscious of the fact that they did not have any promotional avenues.

32. Learned counsel invited Court's attention towards note-sheets (Ann.R/1 page 1133) that have been placed on record by the respondents along with the reply and highlighted that initially vide Note No.339, the Joint Director (Energy) sought approval of the Finance Department on the following proposal –

"4. to approve the proposal to redesignate Feeder Managers as A.Ens (E&M) and to convert the post of Feeder Managers to A.En (E&M)".

33. He submitted that in response whereof, though the Assistant Secretary (Finance) at Note No.343 had categorically noted that no justification has been given for the proposal and sought clarification in this regard, yet the impugned decision has been taken, without there being any justification.

34. In relation to assigning seniority to the Feeder Managers from 2010-11 and 2011-12, Court's attention was invited towards Note No.360 to assert that on 17.12.2015, the Joint Secretary (Finance) had opined that there is no justification for providing seniority from 2010-11 and 2011-12 to the Feeder Managers appointed in 2007 and 2008 respectively, yet the proposal has been accepted.

35. Court's attention was further invited towards Note No.368 dated 14.01.2016, which was duly approved by the Chief Secretary to flag that not only the Finance Secretary, even the Chief Secretary had also opined that assigning such seniority is contrary to law, because, unless Rules framed under Article 309 of the Constitution provide for such seniority, the same cannot be assigned.

36. Having taken the Court through the relevant note-sheets, learned counsel argued that Principal Secretary (Energy) was however firm, rather adamant, on his stand of not only merging cadre of Feeder Managers with Assistant Engineers (E&M) but also giving them seniority from back date and hence, when the matter was thereafter referred to the Reconstituted Coordination

Committee in its 4th meeting dated 10.05.2017, the members of the Committee were kept in dark and the agenda was surreptitiously got approved, as if, the issue before the Reconstituted Coordination Committee was only in relation to merger of the post of Feeder Manager with Assistant Engineer and the fact that they would be assigned seniority from back date was kept hidden or under the cover.

37. Learned counsel yet again read the minutes of the 4th meeting held on 10.05.2017 including the Agenda item and submitted that the manner in which the minutes have been placed and discussed, is clearly suggestive of the situation that the members of the Reconstituted Coordination Committee were given an impression that the re-designation of the cadre of Feeder Manager as Assistant Engineer (E&M) was necessitated in light of the order dated 02.05.2017, passed by this Court in DBCWP No.1377/2016, whereas there was no such direction given by this Court.

38. Learned counsel further contended that in the year 2017, all the posts of Assistant Engineers had been filled by direct recruitment and, therefore, no post was vacant in the quota of direct recruitment for Assistant Engineers and hence, the decision of considering the Feeder Managers as Assistant Engineers (E&M) against the post of direct recruits was nothing but a subterfuge or sham.

39. He argued that the respondents were conscious of the position that Feeder Managers cannot be adjusted against the promotional posts of Assistant Engineers and that is why they have evolved a device to consider the Feeder Managers having

been absorbed against the vacant posts of direct recruits, while simultaneously providing that equal number of posts (74) for direct recruitment would be increased.

40. It was vehemently argued that the State cannot singularly increase the posts of direct recruits of the Assistant Engineers and if the same is to be done, it is incumbent upon the State to increase the proportionate posts for promotees also, in such a way that the ratio of 75% : 25% (5/6 for promotion and 1/6 for accelerated promotion, as the case may be) is kept intact.

41. He argued that in any case as the respondents have decided to increase 74 posts for direct recruitment, at least five times such posts of Assistant Engineers was also required to be increased for adjusting the incumbents from promotional quota.

42. In support of his arguments, Mr. Balia relied upon the following judgments:

(i) D.B. Special Appeal Writ No.852/2018 : *Prakash Chand & Anr. Vs. Ganga Vishan Gujarati & Ors.*, decided on 06.08.2018.

This judgment was relied upon in order to substantiate his argument that seniority cannot be assigned from a date, when the person was not even born in the cadre.

(ii) AIR 1985 (SC) 1147 : *Ram and Shyam Company Vs. State of Haryana & Ors. (para-9)*

This judgment was relied upon to buttress his submission that the impugned decision of the Coordination Committee suffers from vice of dictatorship inasmuch as the same was passed pursuant to or in furtherance of the decision of the State Government.

(iii) (1995) 5 SCC 302 : Anirudh Sinhji Karan Sinhji Jadeja**Vs. State of Gujarat.**

The above judgment of Hon'ble the Supreme Court was cited in support of his arguments that the Board of Management of the respondent Company could not have abdicated its powers or the members of the Board ought not to have surrendered to the directions of the State Government and they should have rather taken their own independent decision, without feeling bound by the decision dated 10.05.2017 taken by the Reconstituted Coordination Committee and the State Government.

(iv) 2014 (4) WLN 1 (Raj.) : Roshan Lal Saini Vs. Rajasthan Housing Board, Jaipur & Ors.

Above judgment was cited in order to give strength to his argument that the respondents cannot take inconsistent pleadings in different writ petitions. He submitted that in earlier two writ petitions filed by the Feeder Managers, the respondents had taken a stand that nature and duties of the Feeder Managers were different from nature, duties and responsibilities of the Assistant Engineer (E&M) and also that no promotional avenue was required to be given to Feeder Managers, whereas in the present writ petition, the respondents' stand is, diametrically opposite, which is impermissible in the eye of law.

43. Mr. Ravi Bhansali, learned Senior counsel appearing on behalf of the respondents at the first instance tried to debunk petitioners' ground regarding continuation of the Coordination Committee and its jurisdiction by submitting that the Coordination Committee constituted vide order dated 19.07.2000 of the Secretary (Energy) was though initially for the transitional period,

but its mandate was extended from time to time – vide orders dated 16.10.2001; 01.11.2006; 02.02.2009; 14.09.2009; 26.04.2010; 07.04.2014 and 05.11.2014.

44. It was informed that vide order dated 05.11.2014, the said Coordination Committee was reconstituted with more powers, responsibilities and duties. While reading the order dated 05.11.2014, learned Senior counsel submitted that the scope of said reconstituted committee was expanded to discuss and decide common issues relating to all the five power sector companies and common issues of Discoms; to review the revenue position; power supply position and also to review the power sector activities. It was also stipulated that such committee would deliberate on policy issues and any other issue of general importance and welfare.

45. It was further submitted that vide order dated 13.11.2014, Special Secretary, Finance (Expenditure) was appointed as nominee of the Principal Secretary (Finance), whereafter vide order dated 22.03.2016, the coordination committee was dissolved and all its functions were ordered to be discharged by the Board of Directors of Rajasthan Urja Vikas Sansthan Limited w.e.f. 01.04.2016.

46. Taking the Court through the relevant documents/orders placed on record along with the additional reply filed by the respondent No.5, learned Senior counsel argued that the petitioners' contention that since the Coordination Committee was only for the transitional period, it had no jurisdiction to dwell upon the issue of merger and suggest amendment in the Regulations of 1969/2016, is factually incorrect and untenable.

47. Mr. Bhansali also invited Court's attention towards constitution of the Rajasthan Urja Vikas Sansthan Limited and pointed out that out of five lac shares, 499994 shares are held by the Governor of Rajasthan, while one share each has been held by all the six electricity companies, in order to satisfy the Court that 'Rajasthan Urja Vikas Sansthan Limited' is a Government of Rajasthan undertaking/company.

48. While maintaining that the said committee continued upto 21.03.2016, till it was dissolved on 22.03.2016, learned Senior counsel fervently contended that the decision taken by the Coordination Committee on 30.10.2015 cannot be said to be without jurisdiction.

49. He submitted that the decision under consideration was taken by the Coordination Committee in its 185th meeting held on 30.10.2015 vide agenda item No.185.18, and the same was later on reiterated by the Reconstituted Coordination Committee in its meeting held on 10.05.2017 and duly approved by the State Government vide order dated 18.07.2017. In furtherance thereof, the formal order of re-designation of the post of Feeder Manager as Assistant Engineer (E&M) came to be passed and Regulations of 2016 came to be amended, particularly in relation to column No.7 of item No.5 of the Schedule.

50. Learned Senior counsel navigated the Court through various note-sheets, particularly page No.1135 and pointed out that the Principal Secretary (Energy) had given strong reasons for such decision and submitted that when the noting of the Secretary (Finance) did not find favour with the Additional Secretary (Agenda Note No.360), the matter was again referred to the

Principal Secretary (Energy), who reiterated his views while giving reasons for the same (Agenda Note No.363) and requested the Finance Department to reconsider the proposal.

51. He submitted that the matter was thereafter placed for consideration of Reconstituted Coordination Committee and upon considering and going through the entire material, including the above referred notings of the Principal Secretary (Energy) and Finance Department, it resolved to approve the earlier decision dated 15.10.2015 taken by the Coordination Committee.

52. During the course of hearing, the Court showed its concern about the agenda that was placed before the Reconstituted Coordination Committee in its 4th meeting and the material placed and deliberations made. An additional affidavit was therefore, filed by the respondents on 17.12.2021.

53. On the basis of the affidavit aforesaid and enclosures therewith, Mr. Ravi Bhansali, learned Senior counsel submitted that detailed agenda note for item No.4.18 was prepared and though the heading of the agenda was "re-designation of the cadre of Feeder Managers", the agenda note nevertheless contained all relevant material information, including the decision taken in 185th meeting of the Coordination Committee held on 30.10.2015; opinion of the Finance Department and the order dated 02.05.2017 passed by Division Bench of this Court. He emphasised that Annexure-A to the agenda note contained the minutest of the details, including the work assigned to Feeder Managers and the justification for assignment of seniority to the Feeder Managers from 2010-11 and 2011-12.

54. Learned counsel invited Court's attention towards letter dated 18.02.2013 written by all the Feeder Managers to the Secretary (Admin), RRPVNL and submitted that the same was the basis for assigning seniority from 01.04.2011 and 01.04.2012. He urged that the Feeder Managers, who were appointed in the year 2007 and 2008 had agreed to be placed at bottom of the seniority of the Assistant Engineers in the year 2010-11 and 2011-12 so far as batch of July 2007 and September 2008 were concerned, it was deemed appropriate and in the larger interest of the organisation to accept their long pending demand of treating them or redesignating their post as Assistant Engineer. Since the Feeder Managers had agreed to forego their seniority from July 2007 and September 2008, it was thought fit to assign them seniority from year 2010-11 and 2011-12, submitted Mr. Bhansali.

55. Learned counsel also invited Court's attention towards resolutions dated 30.10.2015 and 10.05.2017 and submitted that by way of the decisions under challenge, long pending demands of the Feeder Managers have been appropriately addressed.

56. Notwithstanding above justification, it was argued that the merger of the posts so also assigning seniority from a particular date is a discretion of the employer. If a decision has been taken having regard to the services rendered by a set of employees vis-a-vis their job responsibilities and duties, no interference under Article 226 can be made because ultimately, it is a policy decision of the State.

57. He contended that since the Assistant Engineers and Feeder Managers were discharging the same duties, their claim was found/considered to be acceptable. In this regard, learned Senior

counsel took the Court through page No.200, 201 and 205 of the paper-book and upon reading the order dated 06.10.2009, learned Senior counsel submitted that all the Feeder Managers have been performing the duties of Zonal Vigilance Officers and visiting at least 30 sub-stations, which responsibilities were being discharged by the Assistant Engineers. He argued that since their Educational qualification, duties and responsibilities so also pay-scale were identical to Assistant Engineers (E&M), the decision of the respondents cannot be faulted with.

58. He submitted that the decision of the Reconstituted Coordination Committee has been duly approved by the Board of all the Electricity Companies and in this process he took the Court through the resolutions adopted by the various companies placed at page No.198, 544 of the paper-book. He argued that the consequential order dated 28.08.2017 impugned in the present writ petition, re-designating the Feeder Managers as Assistant Engineers and amending the Regulations of 2016 has been rightly and validly passed.

59. Learned senior counsel further submitted that at the time of taking the decision of merger of the post of Feeder Manager and Assistant Engineer, it was decided to create 74 new posts of Assistant Engineers, equal to the number of Feeder Managers, who were to be brought in the cadre of the Assistant Engineers. Inviting Court's attention towards para No.247.08 (page No.1346), he submitted that since an in-principle decision was already taken by the Coordination Committee on 15.10.2016, the Board of Directors had decided that the requisite number of posts of Assistant Engineers (E&M) of direct recruitment quota be kept

vacant so as to facilitate absorption of the Feeder Managers against the direct recruitment quota of Assistant Engineers (E&M).

60. It was asserted by Mr. Bhansali that in wake of the decision of the Board, 74 posts, despite being vacant, were not offered for direct recruitment in the advertisement that was issued in October, 2016 and after final selection took place in December 2016, these many posts remained unfilled. He submitted that similar decision was taken by all the electricity companies and equal number of seats were kept vacant as were the number of Feeder Managers working in each company.

61. The Court's attention was also invited towards the status of various posts as on 01.04.2011 and 01.04.2018 in all the electricity companies in a bid to state that number of Feeder Managers working in the respondent companies was very less, if compared with the number of Assistant Engineers. The same was done in order to support their stand that since the cadre of Feeder Manager was a dying cadre, providing them promotional avenues or creating separate posts for them would not be conducive.

62. He submitted that there were only 74 Feeder Managers who have been working since 2007 and 2008 and if they have been merged in the cadre of Assistant Engineer with assigned seniority of year 2010-11 and 2011-12, the petitioners who are already working as Assistant Engineers after being promoted from the post of Junior Engineers cannot have any grudge or grievance because their right of being considered for promotion is in no manner affected.

63. It was also argued that none of the petitioners' fundamental rights have been infringed as promotion is not a condition of

service. It was also urged that merger and assigning of seniority is a composite package and the same cannot be bifurcated.

64. With a view to meet Mr. Balia's argument, that even if the merger is upheld, impugned decision to the extent of giving them status of Assistant Engineers w.e.f. 2010-11 and 2011-12 be quashed, learned Senior counsel argued that so long as the procedure prescribed for the amendment has been followed and the transparency has been maintained, the Court should not interfere. He argued that reasonableness or correctness of a decision is not open to judicial review.

65. Mr. Rajesh Joshi, learned senior counsel appearing for the respondents - Feeder Managers submitted that the Feeder Managers were comparatively meritorious and their entry on the post of Feeder Manager was from open market and many of the serving Junior Engineers had cleared the exam and were appointed as Feeder Managers. He argued that if the respondents had not provided them any promotional avenues, it would have been violative of their fundamental rights, as at least two promotional avenues are required to be provided qua each service.

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66. While maintaining that the duties and pay-scales of Feeder Manager and Assistant Engineers (E&M) have always been the same, it was argued that by way of the decision under consideration, long pending demands of the Feeder Managers have been accepted, which was in the overall interest of the organization, hence, this Court should refrain from interfering in this matter.

67. It was also argued that the petitioners who are working as Junior Engineers/Assistant Engineers do not have any locus to question the decision, as the Feeder Managers have been accommodated against the quota fixed for direct recruits.

68. He submitted that entire past services of an employee cannot be wiped out, while merging the cadres, while relying upon the judgment reported in (1982) 2 SCC 116 : *Wing Commander J. Kumar Vs. Union of India* and (1987) 4 SCC 566 : *K. Madhvan Vs. Union of India*.

69. It was also argued that reduction in chances of promotion cannot be challenged as the promotion is neither a fundamental right nor a condition of service.

70. In rejoinder, Mr. Balia, learned counsel for the petitioners argued that the respondents have failed to establish on record that 74 posts were kept vacant, when the direct recruitments to the post of Assistant Engineers were made in October, 2016. He argued that the merger cannot be done in violation of the statutory provisions and the respondents were required to maintain quota given in the Schedule.

71. A grievance was raised that the respondents have been extra generous towards the Feeder Managers and indifferent towards the rights of Junior Engineers and Assistant Engineers, inasmuch as, before considering their representation dated 18.02.2013, petitioners - Assistant Engineers, who were likely rather sure to be affected, were not even heard.

72. It was also pointed out that though the Finance Department had raised a valid objection regarding tenability of the merger of the post (Feeder Manager with the Assistant Engineer) and also

objected to conferment of seniority from 2010-11 and 2011-12, yet the same was not even taken note of much less being dilated upon by the Reconstituted Coordination Committee in its meeting held on 10.05.2017. He argued that one Officer, who was holding the position of Principal Secretary (Energy) has prevailed over all other members of the Board, including the nominee of the finance Department.

73. It was finally argued by learned counsel for the petitioners that neither the exercise of merger can be arbitrary nor can the same be done at the cost of interest of other cadres.

74. Mr. Sandhu, learned counsel appearing for the association of Engineers (petitioners) submitted that the entire exercise has been done to give undue advantage to the Feeder Managers, who were firstly given back-door entry in the year 2008, whereafter in the guise of merger have been brought in the cadre of Assistant Engineers and that too by conferring seniority from back date. Had the option of appearing and becoming Feeder Manager not been given to the in-service Junior Engineers, they would definitely get promotion at their own turn, based on the seniority inasmuch as Junior Engineers who were appointed as far back as in 1996, came to be promoted on the post of Assistant Engineer in the year 2013-14, whereas the Feeder Managers, who were appointed in 2007-08 have been made Assistant Engineers with seniority of 2010-11 and 2011-12.

75. Learned counsel further argued that the respondents have simply changed the Schedule without bringing in corresponding change in the regulations and, therefore, if the Regulations of 2016 as they exist, are read or applied, the Feeder Managers

cannot be considered to be Assistant Engineers with seniority of 2010-11 and 2011-12.

76. Heard and perused the record.

77. At the outset we wish to deal with the first point raised by the petitioners that the impugned decision taken by the Coordination Committee on 30.10.2015 and Reconstituted Coordination Committee dated 10.05.2017 are without jurisdiction, as the Coordination Committee was constituted only for a transitory period, when all five electricity companies were in the process of formation.

78. It may be recapitulated that the Coordination Committee was constituted vide order dated 19.07.2000 (maybe for transitional period) for the following purposes:-

"The Committee is being constituted for the purpose of coordination, conflict resolution and for transfer of functions and activities to the respective companies during the transition period. The Committee would meet as often as may be required."

79. Thereafter vide order dated 16.10.2001, the scope of the Coordination Committee was widened as follows :-

"Co-ordination, conflict resolution, transfer of functions and activities to the respective companies during the transitional period, review of revenue recovery, power supply, policy issues relating to rules and regulations common to all Companies and other issues of common interest."

80. By way of order dated 01.11.2006, the scope of the Coordination Committee was further expanded by the following stipulation :-

"The Coordination Committee is also reviewing progress of the Loss Reduction Programmes of the Distribution Companies including the Feeder Renovation Programme and vigilance activities. The Coordination Committee also provides a forum to monitor/review the progress of other programmes and activities and for discussions on important financial, personnel, technical issues etc of all the utilities."

81. Then, came the order dated 02.02.2009, by which the constitution of Coordination Committee was changed and Principal Secretary to Government, Energy Department; Chairman & Managing Director of the Rajasthan Rajya Vidyut Prasaran Nigam Ltd.; Special Secretary to the Government, Energy Department; Chairman & Managing Directors of JVVNL; AVVNL; Jodhpur Vidyut Vitran Nigam Ltd.; Chairman & Managing Director of Rajasthan Rajya Vidyut Utpadan Nigam Ltd. and Director (Finance), RRVPNL were nominated as members and its scope was defined as thus :-

"The scope of the Co-ordination Committee would be to discuss and decide the common issues related to all the five power companies, inter-company related issues, common issues of Discoms, the review of revenue position, power supply position and also the review of the power sector activities (Generation, Transmission and Distribution). The Committee would also deliberate on the issues of policy matters, tariff related issues and any other issue of general important and welfare, for taking a final view."

82. Vide order dated 14.09.2009, the Chairman and Managing Director of the Rajasthan Renewable Energy Corporation was also made a member of the Coordination Committee.

83. Thereafter, by order dated 26.04.2010, the constitution of the Coordination Committee was further changed, while defining the role of Coordination Committee as under:-

“... to discuss and decide the common issues related to all the five power companies, inter-company related issues, common issues of Discoms, the review of revenue position, power supply position and also to review of the power sector activities (Generation, Transmission and Distribution). The committee would also deliberate on the issues of policy matter and related issues and any other issue of general importance and welfare for taking a final view.”

84. By virtue of order dated 07.04.2014, the Coordination Committee was reconstituted whereafter vide order dated 13.11.2014 issued by the State Government, Finance Department, Special Secretary Finance (Expenditure) was appointed as nominee of the Principal Secretary Finance.

85. Whereafter vide order dated 22.03.2016, that was issued pursuant to the Cabinet decision dated 26.08.2015, the Coordination Committee (constituted vide order dated 19.07.2000 with change in its constitution from time to time) was dissolved w.e.f. 01.04.2016 and it was provided that from 01.04.2016 its functions would be discharged by the Board of Directors of Rajasthan Urja Vikas Nigam Limited (RUVN Ltd.).

86. It is the order dated 22.03.2016, issued by the State Government in the Energy Department, by which Reconstituted Coordination Committee has come into being. The scope of Board of Director of RUVN Ltd. or the Reconstituted Coordination Committee was as follows:

"In pursuance to Cabinet Order No.158/2015 dated 26.08.2015, Coordination Committee constituted vide order No.F.15(1)Energy/2000 dated 19.07.2000 and amended from time to time, is hereby dissolved w.e.f. 01.04.2016 and its functions listed hereunder will be discharged by the Board of Directors of Rajasthan Urja Vikas Nigam Limited (RUVNL) w.e.f. 01.04.2016.

The scope of Board of Directors of RUVNL in respect of coordination among seven public power companies of Rajasthan will be to discuss and decide the common issues related to seven public sector power companies, inter-company related issues, common issues of Discoms including loss reduction programs, the review of revenue position, power supply position development of renewable energy in the State and also to review of the power sector activities (Generation, Transmission/Distribution and Trading). The committee would also deliberate on policy issues and any other issue of general importance and welfare."

87. It may be noted that with some modifications regarding members of the Reconstituted Committee, the Committee so constituted vide order dated 21.09.2016 of the State Government (or the Board of Directors of RUVNL) continued as 'Reconstituted Coordination Committee' for the following purposes:

"The Coordination Committee shall discuss and decide the common issues related to the power sector companies, inter company and common issues of Discoms. It will also review revenue position, power supply position and other power sector activities (Generation, Transmission and Distribution). The Coordination Committee would also be deliberate upon policy issues and other major issues of general importance and welfare relating to power sector."

88. After wading through the above referred orders, this Court is of the firm view that the Coordination Committee, which was initially constituted for transitional period vide order dated 19.07.2000 for the purpose of coordination, conflict resolution and for transfer of functions and activities of five newly formed companies continued to hold field by the order of the State Government and with enlarged scope, at the relevant time, had the jurisdiction to dwell upon and decide the issue of redesignation of the post of Feeder Managers as Assistant Engineers and to suggest amendment in the Regulations. The petitioners' argument about jurisdiction, which is essentially based upon the first order of the State Government dated 19.07.2000 has no substance. The same is liable to be and is hereby rejected.

89. The second contention of the petitioners that the decision to amend the Regulations was required to be taken by the Board of Directors/Management of the respective companies followed by the due approval of the State Government, is equally untenable, inasmuch as the Coordination Committee and Reconstituted Coordination Committee always had Managing Directors of

each/respective companies as their members. Both the recommendations of the Coordination Committee made on 30.10.2015 and 10.05.2017 impugned in the present writ petitions were tabled before the State Government for its approval and were, as a matter of fact, approved.

90. It is pertinent that the resolution dated 30.10.2015 adopted in 185th meeting of the Coordination Committee was forwarded to the State Government and the Department of Personnel and Finance Department both objected to the same, whereafter the matter was again considered by the Reconstituted Coordination Committee in its 4th meeting held on 10.05.2017, in which the members, which included Additional Chief Secretary (Infra); Principal Secretary (Energy); Finance Secretary (Expenditure) being nominee of the Principal Secretary Finance; Chairman of Discom; Managing Director of RERC and JVVNL and Chairman and Managing Director of RUVNL and Managing Directors of Jodhpur Discom; Ajmer Discom and RUVNL had discussed and approved the earlier decision dated 30.10.2015. The matter was then, referred to the State Government and though being approved by the State Government, it was kept subject to/contingent upon ratification by the concerned Discoms.

91. Technically, what Mr. Balia had argued, appears to be attractive as per the principles of corporate governance, but having regard to the overall factual situation and considering that in order to maintain the harmony and synergy between various employees working in different Discoms, if a well thought decision has been taken by a body, comprising of Managing Directors of all the companies, Energy Department and the representatives of the

Finance Department, this Court does not find any illegality or irregularity in such process. Such decision at apex level has, as a matter of fact, helped various Discoms to come to a common platform and reach to a decision concerning Feeder Managers working in all the Discoms.

92. Be that as it may. Since all the Discoms have individually ratified the decision dated 10.05.2017 of the Reconstituted Coordination Committee, as affirmed by the State Government and have adopted the same in its entirety, without any reservation or objection, we are of the view that the argument advanced by the petitioners in the present factual backdrop cannot be accepted.

93. In relation to the issue of merger of the posts – Feeder Manager with the post of Assistant Engineer, it was the contention of the petitioners that the post of Feeder Manager was firstly introduced in the meeting dated 10.07.2007 of the Board of Directors, according to which, duties and responsibilities of Feeder Managers were to carry out energy audit of the feeders and to monitor, collect and compile the details of the execution. Petitioners' plea is that as their duties were different than the duties of the Assistant Engineers, these two posts being dissimilar to each other could not have been equated or merged.

94. Before dealing with this question, it would be appropriate to consider the duties of Feeder Manager as has been reproduced hereinabove (para No.21). Indisputably, initially the Feeder Managers were appointed for a different and limited purpose, namely to carry out energy audit of various feeders and to monitor, collect and compile the details of execution, but later on

vide order dated 06.10.2009, the Feeder Managers were asked to perform duties of zonal vigilance officers and to visit at least 30 sub-stations, as was being done by the Assistant Engineers. Thus, their responsibilities became akin to that of Assistant Engineers.

95. The pay-scale of the Feeder Manager right from very beginning has been equal to that of Assistant Engineers and after 06.10.2009, they have started discharging duties that were more or less being discharged by Assistant Engineers and their educational qualification is also identical.

96. The petitioners' case that the Feeder Managers cannot be equated with Assistant Engineers is mainly based upon the reply/affidavit filed by the respondents in two writ petitions (being DBCWP No.7191/2014 and No.13774/2016).

97. Upon perusal of the prayer clause of the writ petitions, this Court finds that the writ petition No.2391/2007 at Jaipur Bench of this Court (which has now been registered as DBCWP No.13774/2016) was filed by the Power Engineers Association being Junior Engineers working in the respondent – Discom, who had prayed that the Junior Engineers be promoted to the post of Feeder Manager and a prayer was made therein that no more appointment be given to the post of Feeder Manager. The prayer clause of said writ petition reads thus :-

"It is, therefore, prayed that this writ petition may kindly be allowed and this Hon'ble Court would be pleased to issue writ, order or direction to the following effect :-

(a) respondents may be directed to prescribe promotion quata in the recruitment to the posts of Feeder Manager to the same extent as it is there

for the post of Asstt. Engineers as per the Regulations of 1969 or in the alternate, provide at least one promotional opportunity to the serving Jr. Engineers to the post of Feeder Manager.

(b) pleased to direct the respondents not to fill up the post of Feeder Manager till sufficient promotion quota for serving degree and diploma Jr. Engineers is provided.

(c) further be pleased to quash and set aside the advertisement dated 14.2.2007 and the Resolution passed by the Coordination Committee for recruitment of the post of Feeder Manager only by direct recruitment.

(d) Any other appropriate order, which is just and proper in the facts and circumstances of the present case may also be passed in favour of the humble petitioner and its member serving Jr. Engineers."

98. In response to such prayer being made by the Junior Engineers, State had taken a stand that as the Feeder Manager is a separate post, the Junior Engineers cannot claim promotion to such post as they already have a promotional avenue to be promoted to the post of Assistant Engineer. In our opinion, for the purpose of opposing Junior Engineers' prayer for promotion to the post of Feeder Manager, if the State had taken a stand that the post of Assistant Engineer and Feeder Manager are not equivalent, that too in a reply that was filed in May, 2007, the respondents hands cannot be tied for all times to come, more particularly because at the relevant time – date of filing the reply, factually the Feeder Managers were supposed to discharge different duties than those being discharged by the Assistant Engineers. It is

noteworthy that as a matter of fact, by then, no Feeder Manager had been appointed. It was only at the stage of issuance of advertisement dated 14.02.2007, issued for recruitment of Feeder Managers, that the petitioners therein had rushed to this Court.

99. Similar is the situation of the stand taken by the respondent – Nigam in relation to DBCWP No.7191/2014 filed by Mammoan Singh Shekhawat – a Feeder Manager. It is to be noted that the said writ petition came to be filed in October, 2014 by the Feeder Manager claiming promotion on the post of Executive Engineer. A reply to the writ petition came to be filed by the respondents on 19.05.2015, inter-alia, with a stance that post of Feeder Manager is a dying cadre and that the Feeder Managers were appointed for a specific purpose and since the Regulations do not provide for any promotion to the post of Executive Engineer, their claim of promotion to the post of Executive Engineer deserved rejection.

100. It was only for this limited purpose that the reply had been filed, which the petitioners have heavily relied upon to say that according to the State, post of Feeder Manager has never been equivalent to the Assistant Engineer.

101. While observing that the reply filed in the Writ Petition No.7191/2014 was in a different factual background and context, we are of the view that when the reply was filed (on 19.05.2015), the issue of merger/equating the post was pending consideration of the State and respondent-Companies and no final decision had been taken.

102. It is to be noted that the Coordination Committee in its 184th meeting held on 30.10.2015, for the first time, decided to redesignate the post of Feeder Manager as Assistant Engineer

(E&M) and in such meeting, it was informed by the companies that the Feeder Managers were also discharging almost identical work as that of Assistant Engineer from year 2009. This being the position, in our opinion, the petitioners' argument that since the respondents were of the view that the work of Feeder Manager is not akin to that of Assistant Engineer they cannot change their stand, is misconceived.

103. In the first writ petition (being 2391/2007) while the Junior Engineers wanted to block the entry of Feeder Managers, the State had filed a reply in May 2007, whereas in other writ petition, the State filed the reply on 19.05.2015, when the Feeder Managers had staked a claim for promotion to the post of Executive Engineer. In our considered view, the reply filed by the respondent – State is required to be considered in light of the controversy involved and the point at which such reply was filed.

104. In the facts of the present case, we hardly find any substance in petitioners' contention that the respondents cannot take contrary stand in different writ petitions. As has already been indicated by us, even if for a moment it is presumed that the impugned decision and the stand taken by the respondents in the present writ petition is contrary to the stand that was taken in the earlier writ petitions, we are of the view that the replies were filed in May 2007 and May 2014, whereafter the respondents more particularly, the Coordination Committee and Reconstituted Coordination Committee, have examined the grievance and demands raised by the Feeder Managers, whereafter a well considered decision has been taken. The same, in our opinion, cannot be set at naught simply because it is allegedly contrary to

the stand that was taken by the respondents in the replies filed in earlier writ petitions.

105. Petitioners have asserted that the respondents have filled all the vacant posts by direct recruitment held in the year 2017. A categorical reply has been filed by the respondents indicating that total 74 posts of Assistant Engineers (equal to number of Feeder Managers working in different Discoms) were kept vacant out of the seats to be filled in by direct recruitment in wake of the decision dated 30.10.2015 taken in 185th meeting of the Coordination Committee. The respondents have aptly satisfied us that such number of posts were not advertised by the respondents, when the exercise for direct recruitment to the post of Assistant Engineers was undertaken vide advertisement issued in October, 2017. This Court deems it appropriate to reproduce the relevant abstract of the minutes of 248th meeting of the Board of Directors of Jaipur Vidyut Vitran Nigam Limited held on 29.03.2016, which runs as under:-

"The Board also noted that Feeder Managers are to be counted against the Direct Recruitment quota of Assistant Engineers (E&M). The Board decided that required number of posts of Assistant Engineers (E&M) of Direct Recruitment quota be kept vacant for absorbing the Feeder Managers against the Direct Recruitment quota of AEN (E&M), after decision of the Hon'ble Court and approval of the State Government for implementing earlier decision of the Coordination Committee.

Further, the Board also approved to convene review DPC for the post of AENs for the year 2015-16 as per above provisions."

106. The vacancies in the cadre of AENs (E&M) for different quotas for the year 2010-11 and 2011-12 was as under:-

"2010-11

Promotion Quota			LDR Quota			DR Quota (Open Market)		
Sanctioned	Working	Vacancy	Sanctioned	Working	Vacancy	Sanctioned	Working	Vacancy
220	184	36	23	23	0	31	09	22

"2011-12

Promotion Quota			LDR Quota			DR Quota (Open Market)		
Sanctioned	Working	Vacancy	Sanctioned	Working	Vacancy	Sanctioned	Working	Vacancy
258	200	58	28	23	05	39	08	31

The above position is based on record available in DPC file of 2010-11 & 2011-12.

In 2010-11 & 2011-12, DR quota was not filled through open market."

107. According to us, the above figures reflected in the communication dated 17.08.2020 addressed to learned senior counsel do not depict a true picture. In the aforesaid figures, the JVVNL has showed that 22 vacancies (for the year 2010-11) and 31 vacancies (for the year 2011-12) were kept in direct recruitment in order to accommodate the Feeder Managers.

108. These figures reflect the position as of year 2020, when 74 posts equal to the number of Feeder Managers who have been adjusted had already been created. These figures, therefore, are indicative of the vacant positions, including the newly created posts.

109. The record shows otherwise. In total, 14 Feeder Managers were working in Jaipur Vidyut Vitran Nigam Limited and the recruitment advertisement was issued in October, 2017. As such,

a maximum of 14 posts could have been kept unfilled so as to accommodate 14 Feeder Managers against the posts available to the direct recruits.

110. Be that as it may. Since the respondents have filed a categorical affidavit and taken a stand, which is duly supported by the above-referred minutes of the meeting dated 29.03.2016 of the Board of Directors of JVVNL, we have no reason to disbelieve the respondents' version that 74 posts were kept vacant, particularly when no contrary material or assertion has been made by the petitioners.

111. It was also argued by Mr. Balia that the respondents have erred in increasing only 74 posts of AENs, because they were required to maintain ratio of direct recruits vis-a-vis the promotee (AENs). His argument was that if the State has decided to increase 74 posts of direct recruits, it was required to increase five times (360) posts to maintain the ratio of direct recruits to the promotees.

112. Concededly, the respondents have decided to redesignate or merge the post of Feeder Manager with Assistant Engineer (E&M) and the Feeder Managers have been accommodated/adjusted against the vacant posts of Assistant Engineers that were to be filled by direct recruitment. As a matter of fact, on account of treating the Feeder Managers equivalent to Assistant Engineer and merging their posts out of the posts lying vacant from direct recruitment, if at all somebody's rights have been affected, it is the rights of the candidates vying for direct recruitment. The aspirants of direct recruitment have been suitably compensated as

the respondents have increased equal number of posts – 74 posts, for direct recruitment.

113. Once the Feeder Managers have been brought in the cadre of Assistant Engineer, their seniority is required to be counted in accordance with law. The petitioners, who are working as Assistant Engineers after being promoted from the post of Junior Engineers cannot raise a grievance in relation to such enhancement of the posts and claim that the posts of Assistant Engineers from promotion quota were also required to be proportionately increased.

114. Having regard to the peculiar facts of the present case, particularly because no direct recruitment to the post of Assistant Engineer has taken place since 2017, none of the rights of the petitioners have been affected. If any fresh recruitment to the post of Assistant Engineer takes place, those candidates will be naturally assigned seniority in accordance with law and they cannot march ahead of the petitioners.

115. Now we move on to the question of assigning seniority to the Feeder Managers appointed in 2007 from 01.04.2010 (2010-11) and 01.04.2011 (2011-12), who were appointed in the year 2008 respectively.

116. The petitioners have relied upon the judgment of Hon'ble the Supreme Court in the case of **Vodafone International Holdings B.V. Vs. Union of India & Ors., reported in (2012)6SCC613 (para 101 and 105)** and in case of **Heavy Engineering Mazdoor Union Vs. State of Bihar & Ors., reported in AIR1970SC82 (para 4 and 6)** in support of their contention that the respondents – Power Sector Companies being body corporate

and the State Government being its share holder, cannot dictate the Power Sector Companies to amend the Regulations in a particular manner.

117. It was additionally argued that the Power Sector Companies - the employers of petitioners have abdicated their powers to the State Government and the Coordination Committee, which is contrary to law. The judgment rendered in *Anirudh Sinhji Karan Sinhji Jadeja* (supra) (para 14 and 15) was cited in support of such contention.

118. The petitioners' aforesaid argument and the reliance upon the judgments noted in the preceding paragraphs are misplaced. As it has already been held that the Coordination Committee or the Reconstituted Committee was formed with a view to bring out synergy in various employees of the Power Sector Companies and in a bid to frame overall policy, we are of the view that the role of the Coordination Committee was nothing more than that of a recommendatory body.

119. True it is, that the recommendations made by the Coordination Committee or Reconstituted Coordination Committee were approved by the State Government, but the same were kept subject to ratification by the different Power Sector Companies. In our opinion, such approach of the Power Sector Companies cannot be faulted with, because, if the decisions were to be taken by the different Power Sector Companies at their level, there was a possibility of different decisions requiring different amendments for the same cause. Such a situation would have affected the uniformity of the Regulations of the electricity companies and it would have led to complications.

120. In our view, neither the decision of the Power Sector Companies suffers from doctrine of dictatorship nor can it be held that they have abdicated their powers to the State Government.

121. It was also argued on behalf of the petitioners that as per the Regulations of 1969 and 2016, the respondents were obliged to maintain ratio between the posts of Assistant Engineers to be filled in by direct recruitment to the posts to be filled by promotion. According to the petitioners 82.5% of the posts out of the 74 newly created posts were required to be filled in by promotion from amongst Junior Engineers (Electrical). In other words, out of 74 newly created posts (equal to the number of Feeder Managers), 60 posts were required to be filled in by promotion from Junior Engineers. Or else, the respondents were required to increase the posts of AENs in such a manner that the ratio of posts available for promotion vis-a-vis the ratio of posts for direct recruitment was maintained.

122. Having given our thoughtful consideration, we are of the view that the respondents have simply re-designated the post of Feeder Manager as Assistant Engineers or the same has been equated/merged with the Assistant Engineers. For accommodating these 74 Feeder Managers, equal number of posts (74) for direct recruitment have been increased. Consequently, there is no effect on the posts that were earmarked for direct recruitment. Since, it was a one time exercise, in order to redress the Feeder Managers' grievance or address their long pending demands, we are of the view that the number of posts, as claimed by the petitioners was not required to be enhanced.

123. The Feeder Managers have been accommodated against the vacant posts earmarked for direct recruits. As such, the petitioners, who were in-service candidates cannot raise any grievance inasmuch as their rights of promotion or chance of promotion have not been affected at all. If at all any grievance can be raised, the same can be raised by the persons or candidates who were desirous of entry into the respondent Company by way of direct recruitment to the post of A.Es. The petitioners cannot have any grudge or grievance merely because they feel that their chance of promotion has been spoilt or reduced.

124. Before moving on to remaining contentions/arguments, we deem it appropriate to deal with the judgments cited on behalf of the petitioners so also by the respondents.

125. The petitioners have firstly relied upon judgement dated 06.08.2018 of the Division Bench of this Court (in which one of us – Dinesh Mehta, J was a member) rendered in the case of *Prakash Chand & Anr. Vs. Ganga Vishan Gujarati & Ors.* (DB Special Appeal No.852/2018) and judgment dated 21.08.2019 of Hon'ble the Supreme Court whereby the above judgment of Division Bench was affirmed. These judgments were cited by the petitioners in support of their argument that seniority cannot be given from retrospective effect, when the candidate was not even born in the cadre.

126. So far as facts of above referred case of Prakash Chand (supra) (affirmed by Supreme Court in Civil Appeal No.6007/2019: *Ganga Vishan Gujarati & Ors. Vs. State of Raj. & Ors.*), are concerned, suffice it to mention that it was a case of selection of in-service candidates on the post of Inspector Land Records by

way of examination or accelerated promotion. The learned single Judge, while interpreting the rules has held that the Inspector Land Records, who have got accelerated promotion after clearing the examination were required to be assigned seniority from the date, when the vacancy arose. The Division Bench so also the Supreme Court has over-turned the view of the learned Single Judge and held that the seniority cannot be given from a date anterior to the selection on the post of Inspector Land Records.

127. Unlike the case of *Prakash Chand* (supra), the present one is a case, where the post of Feeder Manager has been redesignated as Assistant Engineers or merged with A.En. The seniority to the Feeder Managers, who have been treated A.Ens. has been given from a mutually agreed date prior to such merger. A careful reading of para No.41 of the Division Bench judgment reveals that there was no provision to accord seniority from a past date, whereas in the present case the Regulations have been amended by following due process and accordingly seniority has been given to the Feeder Managers from 2010-11 or 2011-12 based on their year of appointment (2007 or 2008, as the case may be).

128. Mr. Balia, learned counsel for the petitioners, then, read the para-9 of the judgment of Hon'ble the Supreme Court rendered in the case of ***Ram and Shyam Company Vs. State of Haryana & Ors.***, reported in **AIR 1985 SC 1147** and submitted that the impugned decision taken by the State Government is illegal, as the same ought to have been taken by the Board of the respective Companies and not by the State.

129. On appraisal of the facts involved in the above case, this Court finds that the Chief Minister in said case had accepted the

bid offered by the private respondent and dealing with the High Court's conclusion that the writ petitioner was required to avail statutory remedy, Hon'ble the Supreme Court held that in such case remedy of appeal in the State administration would be a futile exercise by observing that to whom do you appeal in the State against the decision of the Chief Minister? The cliché of appeal from Caesar to Caesar's wife can only be bettered by appeal from one's own order to oneself.

130. The judgment in the case of *Ram and Shyam* (supra) is an authority on the doctrine of dictatorship, but after considering the extant facts we have already held that the impugned decision does not suffer from the vice of dictatorship. Hence, this judgment is of little help to the petitioners. Similar is the position of the judgment reported in **(1995) 5 SCC 302 : Anirudhsinhji Jadeja & Ors. Vs. State of Gujarat**, which deals with the case of abdication of powers.

131. During the course of arguments, Mr. Ravi Bhansali, learned senior counsel had placed for our consideration, a copious compilation, comprising of about 30 judgments. We therefore asked him to cite one or two judgments in support of each proposition of law. Consequently, on 20.12.2012, after judgment was reserved, he has submitted a list of judgments along with certain loose papers, on which some paragraphs have been copied.

132. At the cost of usage of papers, we would like to replicate the index of judgments he had handed over to us:-

INDEX

Sr. No.	Particulars
(A) <u>Function of Cadre/Restructuring is the domain of Employer</u>	
1.	1981 SC 1990/1981 (4) SCC 130: State of Maharashtra Vs. Chandrakant Anant
2.	AIR 1982 SC 101 – 1982 (1) SCC 379 R.S. Makashi & Ors. Vs. I.M. Menon & Os.
3.	1991 SC 363/ (1991 1 SCC 505 : UOI. & Ors. Vs. S.L. Dutta & Ors.
4.	1998 SC 1882 / (1998) 4 SCC 598 : S.P. Shiv prasad Pipal Vs UOI. & Ors
5.	AIR 1999 SC 2229/ (1999) 5 SCC 743 : UOI VS Anil Kumar & Others
6.	2007 SC 2749/(2007) 10 SCC 684 Indian Air Lines Officers VS. Indian Airlines Ltd. & Ors.
7.	(2015) 6 SCC 727 : Chole Govind Sahebrao & Ors. Vs. UOI. & Ors.
8.	2003 (2) SCC 632 P.U. Joshi & Ors. Vs. Account Gen. Ahmemdabad & Ors.
(B) <u>Avenue of Promotion:</u>	
1.	1988 SC 1033/1988 Supp SCC 519 : Raghunath Prasad Singh Vs. Secretary Home, State Bihar
2.	1989(4) SCC 635 – Council Of Scientific & Industrial Research Vs K.G. Sisatti & Others
3.	2004 (9) SCC 65 – State of Tripura Vs. K.K. Roy
(C) <u>Merger/ Demerger -all are Policy decision & not subject to Judicial Review:</u>	
1.	1987 SCC (Suppl.) 257 : Inder Singh & Others Vs State of U.P.
2.	1996 SC 2228 / (1996) 9 SCC 266 State of Maharashtra v. Purshottam
(D) <u>No Stay on Seniority:</u>	
1.	1997(8) SCC 522/ (1997) 8 SCC 522 : S.S. Bola v. B.D. Sardana
2.	1990 (2) SCC 228 / (1990) 2 SCC 228 : K.Jagadeesan v. Union of India
3.	1991 (1) SCC 505 / (1991) 1 SCC 505 Union of India v. S.L. Dutta
4.	1997 SCC OnLine P&H 1723 ; Gurnam Singh v. State of Punjab

(E) Quota-Rota Rules Vis a Vis Merger:		
1.	1976 (4) SCC 838 Reserve Bank of India v. N.C. Paliwal	
2.	1980 (3) SCC 97 : T.N. Education Deptt. Ministerial & General Subordinate Services Assn. v. State of T.N	
3.	1996 (8) SCC 407 New Bank of India Employees' Union v. Union of India	
(F) ENTIRE SERVICE CANT BE WIPED OFF:		
1.	(1987) 4 SCC 566 : K.Madhavan v. Union of India	
2.	(1982) 2 SCC 116 : Wing Commander J. Kumar v. Union of India	
3.	(2014) 12 SCC 507 : State of Sikkim v. Adup Tshering Bhutia	

133. We cannot but refrain from observing that the learned senior counsel assisted by a battery of instructing counsel has cited a slew of judgments, including seven case laws even on the issues of "No Stay on Seniority" and "Quota-Rota Rules Vis a Vis Merger".

134. It is rather surprising that though the matter was listed for final hearing and it was heard with a clear understanding that the matter would be finally decided, yet four judgments have been casually cited, to convey that there should be "No stay on seniority". We are unable to comprehend, why these four judgments were cited and their purported relevant portions copied and placed before us.

135. So is the position in relation to three judgments, which were catalogued under the caption (E) "Quota-Rota Rules Vis a Vis Merger". In this regard, we wish to clarify that no argument was advanced on quota-rota rules nor does the case in hand has any pleading in this regard.

136. Now we wish to deal with the judgments cited by him under each of the categories.

(A) "Function of Cadre/Restructuring is the domain of Employer":- The judgment rendered in the case of ***State of Maharashtra Vs. Chandrakant Anant Kulkarni & Ors.***,

reported in **AIR 1981 SC 1990**, more particularly para No.10, 11, 16 and 21 was relied upon, which deals with the principles governing integration of government servants allotted to the service. We would be dealing with this judgment later, as this case has necessary bearing on the issue.

137. The second judgment in this series was ***R.S. Makashi & Ors. Vs. I.M. Menon & Ors.***, reported in **(1982) 1 SCC 379 : AIR 1982 SC 101 (Para 31 and 34)** in relation to equation of post. Para 31 and 34 of the said judgment are relevant, which we wish to consider later.

138. The third judgment was ***Union of India (UOI) & Ors. Vs. S.L. Dutta & Ors.*** reported in **AIR 1991 SC 363 (Para 16, 17 and 18)**. From a perusal of para 16, 17 and 18 of the judgment, we find that they contain narration of the facts involved in the case and it hardly throws any light on questions, principles or issues involved in the present case.

139. The fourth judgment in this series is reported in **AIR 1998 SC 1882 (S.P. Shivprasad Pipal Vs. Union of India & Ors.)**. A perusal of this judgment shows that it is iteration of law already propounded by Hon'ble the Supreme Court in the case of *State of Maharashtra Vs. Chandrakant Anant* (supra) and, hence, it does not call for any further deliberation.

140. So is the position in the fifth judgment relied upon by the respondents reported in **AIR 1999 SC 2229 (Union of India Vs. Anil Kumar & Ors.)**.

141. Sixth judgment in the row was **AIR 2007 SC 2747 (Indian Airlines Officers' Association Vs. Indian Airlines Ltd. & Ors.)**. The said judgment is an authority on the point that the policy decision of the Government should not be lightly interfered with. In the judgment aforesaid, various decision on this issue have been discussed, more importantly, the celebrated judgment authored by Krishna Ayer, J (**In Tamil Nadu Education Department Ministerial and General Subordinate Services Association & Ors. Vs. State of Tamil Nadu & Ors.; AIR 1980 SC 379**). Para- 7 and 8 thereof are reproduced hereunder :-

"7. In service jurisprudence integration is a complicated administrative problem where, in doing broad justice to many, some bruise to a few cannot be rules out. Some play in the joints, even some wobbling, must be left to Government without fussy forensic monitoring, since the administration has been entrusted by the Constitution to the executive, not to the court. All life, including administrative life, involves experiment, trial and error, but within the leading strings of fundamental rights, and, absent unconstitutional 'excesses', judicial correction is not right. Under Article 32, this Court is the constitutional sentinel, not the national ombudsman. We need an ombudsman but the court cannot make-do.

8. The feeble criticism that the promotional proportion between the two wings, in the process of interlacing and integration, is unsupported by any rational guideline is pointless. The State's case is that when two sources merge it is not uncommon to resort to the quota rule for promotion, although after getting into the common pool further 'apartheid' shall be interdicted save in a limited class with which we

are not concerned here. Of course, even if the quota rule is an administrative device to inject justice into the integrating process, the ratio cannot be arbitrary nor based on extraneous factors. None such is averred nor established. The onus is on the challenger and, here, the ratio is moderately related to the numbers on both sides and we see nothing going 'berserk', nothing bizarre, nothing which makes you rub your eyes to query what strange thing is this Government doing? Counsel for the respondents explain that when equated groups from different sources are brought together quota-rota expedients are practical devices familiar in the field. Bearing in mind the strength of the District Board staff to be inducted, the ratio is rational. Maybe, a better formula could be evolved ..."

142. The seventh judgment was **(2015) 6 SCC 727 (Dhole Govind Sahebrao & Ors. Vs. Union of India & Ors.)**. In this case, while dealing with the facts peculiar to that case, Hon'ble the Apex Court held that it was not possible for it to accept that there was any serious difference between two merged cadres either on the issue of nature and duties or on the subject of powers exercised by the officers holding the post, or the extent of territorial or other charge held, or responsibilities discharged by them, or for that matter, the qualification prescribed for the post. Considering that there was by and large similarity, the Supreme Court recorded its satisfaction about the mergers of the cadres and determination of inter-se seniority.

143. Eighth judgment was **(2003) 2 SCC 632 (P.U. Joshi & Ors. Vs. Accountant General, Ahmedabad & Ors.) (para-10)**. Upon perusal of para-10, which was extracted in the compilation,

this Court finds that it is a judgment on general principle holding that there is no right in any employee of the State to claim that the rules governing conditions of his service should be forever the same, as the ones when he entered the service. We are unable to see its relevance in an otherwise large bunch of cases cited.

144. Under the category **(B) "Avenue of Promotion"**, three judgments have been catalogued by the respondents' counsel.

First being **AIR 1988 SC 1033 (Raghunath Prasad Singh Vs. Secretary, Home (Police) Department, Government of Bihar & Ors.)** – para-4. This judgment is an authority on the subject

that the employee must be provided reasonable promotional opportunities. It would be apt to reproduce para-4 of the said judgment, which we hereby do :

"4. Before we part with the appeal, we would like to take notice of another aspect. In course of hearing of the appeal, to a query made by us, learned counsel for the Appellant indicated the reason as to why the Appellant was anxious to switch over to the general cadre. He relied upon two or three communications which are a part of the record where it has been indicated that there is no promotional opportunity available in the wireless organisation. Reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly. We would, therefore, direct the State of Bihar to provide at least two promotional opportunities to the officers of the State Police in the wireless organisation within six

months from today by appropriate amendments of Rules. In case the State of Bihar fails to comply with this direction, it should, within two months thereafter, give a fresh opportunity to personnel in the Police wireless organisation to exercise option to revert to the general cadre and that benefit should be extended to everyone in the wireless organisation."

145. The second judgment in the line was **AIR 1989 (SC) 1972 : (1989) 4 SCC 635 (Council of Scientific & Industrial Research & Anr. Vs. K.G.S. Bhatt & Anr.)** - para-9, which also more or less holds that fair opportunity of promotion should be made available to all employees. We wish to reproduce para-9 of this judgment.

"9. That then is the scope of Bye-law 71(b)(ii). But that does not mean that we should interfere with the relief granted to Respondent 1. By pointing out the error that crept into the decision of the Tribunal, we need not take to its logical end which will defeat justice. Respondent 1 is not a layman. He is a highly qualified engineer. Although he joined service with a diploma in engineering, he later-passed Bachelor of Engineering (BE) and also acquired M. Tech. degree and one more diploma (DPM). He was however, left without opportunity for promotion for about twenty years. This is indeed a sad commentary on the appellant's management. It is often said and indeed, adroitly, an organisation public or private does not "hire a hand" but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be

given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. Every management must provide realistic opportunities for promising employees to move upward. "The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors." There cannot be any modern management much less any career planning, manpower development, management development etc. which is not related to a system of promotions. The appellant appears to have overlooked this basic requirement of management so far as Respondent 1 was concerned till NR & AS was introduced."

146. Third judgment under this category was **(2004) 9 SCC 65 (State of Tripura & Ors. Vs. K.K. Roy) – para 6 & 7**). This judgment is on grant of Assured Career Progression and not on promotion per-se. The same in our considered opinion is not at all relevant for the present purposes.

147. Under the category **(C) "Merger/Demerger – all are policy decision & not subject to judicial review"**, first judgment was **1987 SCC (suppl) 257 (Inder Singh & Ors. Vs. Vyas Muni Mishra & Ors.)**. A perusal of the facts of the said case reveals that the High Court had directed merger of two posts

namely the post of Ganna Gram Sewaks and Cane Supervisors; reversing the said judgment Hon'ble the Supreme Court observed that the High Court was not justified in issuing direction to merge these posts as according to the Supreme Court, merger or bifurcation of a cadre is an executive act and normally the Courts do not deal with it. However, in the present case, when the decision of the merger has been taken by none other than the respondents-employer Companies or the State, this judgment is of little significance.

148. The second judgment in the series is, **AIR 1996 SC 2228 (State of Maharashtra Vs. Purshottam & Ors.)**. The respondents seem to have relied upon para No.6, as this para has been reproduced in the compilation. Upon perusal of said para, we find that the facts in this case related to work charged establishment and while dealing with the principles of seniority, the Supreme Court held that in absence of any specific provision, it would be reasonable to construe that the State-wise seniority list has to be prepared on the basis of the seniority list already prepared in the circle. On a meticulous reading of the facts of the case, including para No.6 of the judgment, we fail to find even a semblance of relevance with the controversy before us.

149. As has already been observed, in earlier paras (134 to 136) that seven judgments cited under the category **(D)** and **(E)** are not relevant.

150. We now move on to the judgment cited under the caption **(F) "Entire Service can't be wiped off"**. First judgment in the series was **(1987) 4 SCC 566 (K.Madhavan & Anr. Vs. Union of India & Ors.)**. So far as this judgment is concerned, it is not

of much relevance, because in that case, two posts of different departments were merged. However, the part, which seemingly the respondents have wished to rely upon is, based upon the judgment of Hon'ble the Supreme Court in the case of **R.S. Makashi & Ors. Vs. I.M. Menon & Ors.**, reported in **(1982) 1 SCC 379**, which we have already dealt with in para 138.

151. The second judgment was, **(1982) 2 SCC 116 (J. Kumar Vs. Union of India & Ors.)** – para 34. This judgment also hinges upon the adjudication made by Hon'ble the Supreme Court in the case of *R.S. Makashi* (supra).

152. We wonder as to why the respondents have relied upon the above referred two judgments, which are essentially based upon the celebrated judgment of Hon'ble the Supreme Court rendered in the case of *R.S. Makashi* (supra), instead of making a direct reference of the said case even under this category.

153. We would take guidance from the law laid down by Hon'ble the Supreme Court in case of *R.S. Makashi* (supra) in the subsequent part of the judgment.

154. Third judgment in the line was **(2014) 12 SCC 507 (State of Sikkim Vs. Adup Tshering Bhutia & Ors.)**. The facts of the said case were that at the relevant time, promotion to the post of Dy. Superintendent of Police was available only to the members of the Sikkim Police Force and so far as other two services namely Sikkim Vigilance Police and Sikkim Armed Police were concerned, they had to be satisfied with the same cadre and to the same post and no further promotion was available to them. Dealing with such a situation, Hon'ble the Supreme Court culled out the principles, which are of immense importance in the case relating

to merger or integration of service. Reproduction of para 1, 2, 16 and 30 of the aforesaid judgment would be of great help, hence we do :

"1. *Leave granted. Integration of services means the creation of a homogeneous service by the amalgamation or merger of service personnel belonging to separate services. Integration is a policy matter as far as the State is concerned. In evolving a proper coalescence of the services, there are various steps:*

- (i) *Decide the principles on the basis of which integration of services has to be effected;*
- (ii) *Examine the facts relating to each category and class of post with reference to the principle of equivalence;*
- (iii) *Fix the equitable basis for the preparation of common seniority list of personnel holding posts which are merged into one category.*

2. *The State is bound to ensure a fair and equitable treatment to officers in various categories/cadres of services while preparing the common seniority list. Being a complicated process, integration is likely to result in individual bruises which are required to be minimised and if not possible, to be ignored. These first principles on integration are to be borne in mind whenever a dispute on integration is addressed.*

16. *Integration of three services was necessitated for balancing the inequality to the extent that the members of two of the services were denied promotion to the post of Deputy Superintendent of Police. Such promotion was available only to the members of the erstwhile Sikkim Police Force and was denied to Sikkim Vigilance Police and Sikkim Armed Police. In this*

context, it would be useful to refer to the terms of reference to Justice N.G. Das Commission:

"(1) To comprehensively review the existing Recruitment Rules of all the different wings of Sikkim Police so as to arrive at an appropriate solution, which would meet promotional aspirations of the entire Police Force.

(2) To examine the necessity for integration of the different Recruitment Rules particularly (a) Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 1988, (b) Sikkim Armed Force (Recruitment, Promotion and Other Conditions of Service) Rules, 1989 and (c) the Sikkim Vigilance Police (Recruitment, Seniority and Promotion) Rules, 1981, so as to bring about long term solution to meet the promotional aspirations of the entire Police Force. The Commission shall submit its report on or before 31.12.1999."

30. The High Court patently erred in holding that the acquired or accrued rights of the writ petitioner had been affected by the fixation of seniority at the level of sub-inspector of Police. It has to be noted that, but for merger, neither the writ petitioner nor the members of the other two police forces, viz., Sikkim Vigilance Police and Sikkim Armed Force, could have got any promotion at all to the post of Deputy Superintendent of Police. The very purpose of integration was to remove the inequality and provide them with the opportunity for promotion to the post of Deputy Superintendent of Police. If length of continuous service in the highest cadre of some similar services is taken as the basis of fixing the seniority and for further promotion to higher posts that would certainly result in deeper injustice to the members of the

other services. It was hence the State, after due deliberations and based also on report of an expert Committee consisting of the top level officers in the State, took an equitable decision to make the post of sub-inspector of Police, where there is direct level entry in one of the services, as the determining factor for fixation of seniority. The writ petitioner did not suffer any demotion in the process. He continued in the post of Inspector. The only thing is that his compeers in Sikkim Police Force who could not get accelerated promotion to the post of inspector, but who are admittedly senior to him if the date of appointment to the post of sub-inspector is taken, were given the deemed date of promotion to the post of Inspector based on the seniority at the level of sub-inspector. The amended rule certainly has thus a nexus to the injustice sought to be removed so as to balance the equity. It is neither irrational nor arbitrary."

155. While many of the judgments cited by the respondents were irrelevant or repetitive, a few of them are germane for the controversy or questions involved in the instant case.

156. Having gone through all the judgments cited except those on "Quota-Rota" and "No-Stay on Seniority", we feel that the following judgments and more particularly the following paragraphs can be gainfully reproduced to keep the law on the subject handy :-

(i) (1998) 4 SCC 598 : S.P. Shiv Prasad Pipal Vs. Union of India & Ors. (para-19) :

"However, it is possible that by reason of such a merger, the chance of promotion of some of the

employees may be adversely affected, or some others may benefit in consequence. But this cannot be a ground for setting aside the merger which is essentially a policy decision. This court in Union of India v. S.L. Dutta examined this contention. In S.L. Dutta case a change in the promotional policy was challenged on the ground that as a result, service conditions of the respondent were adversely affected since his chances of promotion were reduced. Relying upon the decision in the State of Maharashtra v. Chandrakant Anant Kulkarni this Court held that a mere chance of promotion was not a condition of service and the fact that there was a reduction in the chance of promotion would not amount to a change in the conditions of service."

(ii) 1981 (4) SCC 130 : *State of Maharashtra Vs. Chandrakant Anant Kulkarni & Ors.* (para-10, 11, 16 and 21) :

"10. The following principles had been formulated for being observed as far as may be, in the integration of government servants allotted to the services of the new States:

"In the matter of equation of posts:

(i) Where there were regularly constituted similar cadres in the different integrating units the cadres will ordinarily be integrated on that basis; but

(ii) Where, however, there were no such similar cadres the following factors will be taken into consideration in determining the equation of posts:-

(a) nature and duties of a post;

(b) powers exercised by the officers holding a post, the extent of territorial or other charge held or responsibilities discharged;

(c) the minimum qualifications, if any, prescribed for recruitment to the post, and
(d) the salary of the post."

It is well settled that these principles have a statutory force.

11. *There is a long line of decisions of this Court starting from the Union of India v. P.K. Roy laying down that the Central Government has been constituted to be the final authority in the matter of integration of services under sub-section (5) of Section 115 of the Act. The matter of equation of posts is purely an administrative function. It has been left entirely to the Central Government as to how it has to deal with these questions. The Central Government had established an Advisory Committee for the purpose of assisting in the proper consideration of the representations made to it. There is nothing in Sections 115 to 117 of the Act prohibiting the Central Government in any way from taking the aid and assistance of the State Government, in the matter of effecting the integration of services.*

As observed by this Court in Roy case the usual procedure followed by the Central Government in the matter of integration of services generally, is in order. It is not open to the court to consider whether the equation of posts made by the Central Government is right or wrong. This was a matter exclusively within the province of the Central Government. Perhaps, the only question the court can enquire into is whether the four principles agreed upon at the Chief Secretaries Conference had been properly taken into account. This is the narrow and limited field within which the supervisory jurisdiction of the Court can operate. But where, as here, in the matter of equation of posts, the Central Government had properly taken into account all the

four principles decided upon at the Chief Secretaries Conference, the decision cannot be assailed at all. In the present case, not only the Central Government had laid down the principles for integration, but also considered the representations and passed the final orders and the provisional gradation lists were prepared and published by the State Government under the direction and with the sanction of the Central Government.

16. *Mere chances of promotion are not conditions of service and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service. A right to be considered for promotion is a term of service, but mere chances of promotion are not. Under the Departmental Examination Rules for STOs, 1954, framed by the former State Government of Madhya Pradesh, as amended on January 20, 1960, mere passing of the departmental examination conferred no right on the STIs of Bombay, to promotion. By passing the examination, they merely became eligible for promotion. They had to be brought on to a select list not merely on the length of service, but on the basis of merit-cum-seniority principle. It was, therefore, nothing but a mere chance of promotion. In consequence of the impugned orders of reversion, all that happened is that some of the STIs who had wrongly been promoted as STOs Grade III had to be reverted and thereby lost a few places. In contrast, the conditions of service of ASTOs from Madhya Pradesh and Hyderabad, at least so far as one stage of promotion above the one held by them before the reorganisation of States, could not be altered without the previous sanction of the Central Government as laid down in the Proviso to sub-section (7) of Section 115 of the Act.*

21. In the end, reverting back to the main question. On an overall view of things, we are satisfied that the State Government acted with the best of intentions. It endeavoured to strike a balance between the competing claims to relative seniority. When sub-section (5) of Section 115 of the Act speaks of "fair and equitable treatment", obviously it envisages a decision which is fair and equitable to all."

(iii) AIR 1982 SC 101 : R.S. Makashi & Ors. Vs. I.M. Menon & Ors. (para-31 and 34) :

"31. On the merits also, we do not find any substance in the attack levelled by the petitioners against the legality and validity of the seniority principles laid down in the impugned Government Resolution of March 22, 1968. We shall briefly indicate our reasons for reaching this conclusion. The BRO was a totally new Department which was constituted on March 1, 1966 pursuant to the Government Resolution dated February 11, 1966. Under the said Resolution, it was directed that the staff for manning the new Organisation should consist of:

- (a) the skeleton staff already sanctioned under an earlier Government Resolution dated October 21, 1965 for carrying out the preliminary work in connection with the establishment of the new Organisation (BRO);
- (b) the existing staff under the Controller of Foodgarins Distribution, Bombay, consisting of 384 posts which were to be merged with a new Bombay Rationing Office (BRO) with effect from March 1, 1956;
- (c) personnel drawn on deputation from other departments of the State Governments; and
- (d) persons directly recruited to the BRO."

Here is, therefore, a case where the staff for manning a new department has been drawn from four different sources. In such a situation, it was inevitable that some reasonable principles had to be formulated for the determination of the inter se seniority of the personnel appointed to work in the different categories of posts in the new Organisation. The entire argument of the petitioners is based on an erroneous assumption that from the very inception they belonged to the BRO and had some vested rights with respect to seniority and rank in the said Organisation. The petitioners who were members of the staff of the CFD were taken into the BRO along with the skeleton staff appointed under the Government Resolution dated October 21, 1965 and the "released Government servants" etc., as part of the single scheme formulated by the Government for the constitution of a new department (BRO). There is therefore, no substance in the contention advanced by the writ petitioners that they stood on a separate and superior footing for the purpose of seniority etc., in the new Organisation. In this connection, it is relevant to note that the writ petitioners were holding the posts of Supply Inspectors in the CFD only on the basis of appointments which were purely temporary. They had not been recruited through the Public Service Commission but were given temporary appointments on the basis of recommendations made by the Employment Exchange and their services were terminable at any time without notice. Thus the position that existed at the time of the formation of the BRO was that the writ petitioners were not holding any substantive or regular appointments in the CFD which itself was only a temporary Department. In contrast, the deputationists who came over to the BRO as

"released Government servants" were persons who had been holding for many years Ministerial posts in other Government departments on regular basis pursuant to their recruitment by the Public Service Commission. Under the impugned seniority rules laid down by the Government Resolution dated March 22, 1968, a deputationist (released Government servant) 'with two years' regular service as Clerk in other Government departments has been equated with a Supply Inspector of the CFD and it is on this basis that the inter se seniority as between the erstwhile CFD personnel and the "released Government servants" appointed to a post of Rationing Inspectors/Senior Clerks/Deputy Accountants in the BRO is to be reckoned. In our opinion, the said equation cannot be regarded as arbitrary or unreasonable, especially when it is viewed in the context of the factual background that the Supply Inspectors in the CFD were merely temporary hands whose appointments were of a precarious nature and the functions and duties performed by them are not shown to have been substantially different from those discharged by the clerks in other Government departments. The principle laid down in rule 4 (a) that the seniority of "released Government servants" and merged Government servants in the cadres of Senior Clerks, Rationing Inspectors and Deputy Accountants shall be determined with reference to dates which shall be fixed after deducting two years from the date of continuous service whether officiating or permanent rendered by him in the cadre of clerks, typists etc., appears to our minds to be perfectly just and unexceptionable in the circumstances of the case. The reasons stated by the learned Single Judge of the High Court for declaring the aforesaid rule to be arbitrary and

*violative of Article 16 of the Constitution do not appeal to us as correct or sound. Almost the entire reasoning of the learned Single Judge is based on an assumption that there is an invariable "normal rule" that seniority should be determined only on the basis of the respective dates of appointment to the post and that any departure from the said rule will be *prima facie* unreasonable and illegal. The said assumption is devoid of any legal sanction. We are unable to recognize the existence of any such rigid or inflexible rule. It is open to the rule-making authority to take a note of the relevant circumstances obtaining in relation to each department and determine with objectivity and fairness what rules should govern the inter se seniority and ranking of the personnel working in the concerned departments and the courts will only insist that the rules so formulated should be reasonable, just and equitable. Judged by the said test of reasonableness and fairness, the action taken by the Government in equating the clerical personnel which had rendered two years regular service in other departments with the temporary Supply Inspectors of the CFD and in directing as per impugned Rule 4 (a) that their inter se seniority shall be determined with reference to the length of service calculated on the basis of the said equation cannot be said to be in any way discriminatory or illegal. We are unable to accept as correct the view expressed by the learned Single Judge of the High Court that "while fixing the Seniority in the higher post, it is not open to take into consideration any service rendered in the lower post and that by itself spells out discrimination " Firstly, it is not correct to regard the post of a regular clerk in the other departments as lower in grade in relation to that of a Supply Inspector in the CFD. Further, in S.G*

Jaisinghani v. Union of India and Ors., this Court has pointed out that in the case of recruitment to a service from two different sources and the adjustment of seniority between them a preferential treatment of one source in relation to the other can legitimately be sustained on the basis of a valid classification, if the differences between the two sources has a reasonable relation to the nature of posts to which the recruitment is made. In that case, this Court upheld the provision contained in the seniority rules of the Income-tax Service, whereby a weightage was given to the promotees by providing that three years of outstanding work in Class II will be treated as equivalent to two years of probation in Class I (Grade II) Service.

34. When personnel drawn from different sources are being absorbed and integrated in a new department, it is primarily for the Government or the executive authority concerned to decide as a matter of policy how the equation of posts should be effected. The courts will not interfere with such a decision unless it is shown to be arbitrary, unreasonable or unfair, and if no manifest unfairness or unreasonableness is made out, the court will not sit in appeal and examine the propriety or wisdom of the principle of equation of posts adopted by the Government. In the instant case, we have already indicated our opinion that in equating the post of Supply Inspector in the CFD with that of Clerk with two years regular service in the other Government departments, no arbitrary or unreasonable treatment was involved.”

(iv) (1989) 4 SCC 635 : Council of Scientific & Industrial Research & Anr. Vs. K.G. Sisatti & Anmr. (para-9) :

9. That then is the scope of bye-law 71(b)(ii). But that does not mean that we should interfere with the relief granted to respondent-1. By pointing out the error that crept into the decision of the Tribunal, we need not take to its logical end which will defeat justice. Respondent-1 is not a lay-man. He is a highly qualified engineer. Although joined service with a diploma in Engineering, he later passed Bachelor of Engineering (B.E.) and also acquired M. Tech. degree and one more diploma (D.P.M.). He was however, left without opportunity for promotion for about twenty years. This is indeed a sad commentary on the appellant's management. It is often said and indeed, adroitly, an organisation public or private does not 'hire a hand' but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. Every management must provide realistic opportunities for promising employees to move upward. "The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both no managerial employees and their supervisors". There cannot be any modern management much less any career planning, man-power development, management development etc. which is not related to a system of promotions. The appellant appears to have overlooked this basic requirement of management so far as respondent 1 was concerned till NR & AS was introduced."

Conclusion :-

157. Having taken guidance from the above judgments, we are of the considered view that the exercise of merger undertaken by the respondents was a bonafide exercise in order to address long pending demands of Feeder Managers, who were equally qualified and who were otherwise drawing the pay equivalent to Assistant Engineer and discharging more or less identical duties as that of Assistant Engineers at least after 2009.

158. The post of Feeder Managers, working from 2007 and 2008 have been redesignated as Assistant Engineers (E&M) and they (74 in number) have been brought in the cadre of Assistant Engineers against 74 posts that were kept vacant, when the direct recruitment of Assistant Engineers took place in the year 2017.

159. It is also beyond doubt that equal number of posts i.e. 74 posts for direct recruitment have been increased. In light of various judgments of the Supreme Court, it is settled position of law that equating the posts or merging the posts or grant of seniority lies within the exclusive domain of the employer or the State Government. The scope of interference or judicial review is very limited.

160. The Court's interference in policy matters is permissible only when there is a lacuna or procedural lapse in the decision making process. The Court cannot go into the correctness of such policy decision.

161. We are satisfied that the decision of re-designation of the Feeder Managers as Assistant Engineers or the merger of these posts has been taken bona fide and in the interest of overall

management of the Corporation, being mindful of the position that Feeder Managers were otherwise having no channel of promotion.

162. Hon'ble the Supreme Court has unequivocally held that while merging the post, entire service rendered by an employee cannot be wiped out. When the respondents have taken a conscious and considered decision on the basis of collective prudence and after due negotiation with the Feeder Managers and they have been assigned seniority from 2011 and 2012, taking into account half of their service, we are of the view that substantial justice has been done without adversely affecting anybody's rights, much less the rights of the petitioners.

163. So far as petitioners' grievance regarding conferring the seniority from 2010-11 and 2011-12 is concerned, in our opinion, even if they were assigned seniority from the date of amendment, it would have become a cause of bruise or heart burn to the Assistant Engineers, who were promoted after 2017. It is the duty of the employer to ensure that there is no stagnancy in any cadre. If redressal of genuine grievance of some of the employees leads to loss of opportunity or reduction of chance to another set of employees, such decision cannot be held illegal or arbitrary.

164. That apart, the Feeder Managers have been accommodated against 74 posts kept vacant out of the quota of direct recruitment, the present petitioners, who are in service Junior Engineers/Assistant Engineers cannot raise any grievance merely because of the misplaced apprehension that their probability of promotion or chance of promotion has been curtailed.

165. So far as grant of seniority with retrospective effect is concerned, as per the judgment of Hon'ble the Supreme Court,

without any statutory provision or conscious administrative decision, seniority cannot be assigned from a back date or a date anterior to a date when an employee was born in the cadre. But in the present case, the Regulations of 2016 and more particularly, its Schedule has been amended, permitting conferment of the seniority from the year 2011 and 2012 to the Feeder Managers, who were appointed in 2007 and 2008 respectively.

166. The amendment brought in the Regulations of 2016 in relation to merger of the post of Feeder Manager with Assistant Engineer and grant of seniority with retrospective effect, in our considered opinion, was brought in accordance with law, while following due procedure. We do not see any infirmity or irregularity in the process. The amendment does not smack of bias or reeks favouritism, falling foul to Article 14 of the Constitution of India.

167. Both the writ petitions are, therefore, dismissed.

168. Stay applications also stand dismissed.

(RAMESHWAR VYAS),J

(DINESH MEHTA),J

res/1-ArunV/-

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