

IN THE SUPREME COURT OF INDIA

CIVIL WRIT JURISDICTION

TRANSFERRED CASE (CIVIL) NO(S).80/2015

UNION OF INDIA

PETITIONER(S)

VERSUS

SADANAND SINGH AND OTHERS

RESPONDENT(S)

ORDER

This transferred case arises out of transfer of Writ Petition CWJC No.10419/2009 filed by Union of India and Others in the High Court of Judicature at Patna challenging the decision of the Central Administrative Tribunal in OA No.36/2003. The basic facts leading to the filing of proceedings before the Tribunal, as stated in pars 2 & 3 of the order passed by the Tribunal are as under:

“2. By means of this OA the applicants claim relief for quashing the orders dated 23.09.2002, 11.10.2002 and 31.10.2002 (Annexure A/4 series) whereby the benefits of reservation policy has been extended to Scheduled Castes and Scheduled Tribes in case of restructuring and up- gradation of posts of Inspector to the grade of Superintendent Group B. They further pray for directions upon the respondents to consider the case of the applicants for promotion in the grade of Superintendent Group B with effect from the date on which their juniors were promoted.

3. The facts, in brief, are that all the applicants are working as Inspector in Central Excise and Customs, Bihar and Jharkhand. The applicants have given the

details of the posts which were upgraded under the restructuring cadre. In para 4 of the supplementary petition they have stated that 134 posts of Inspector were upgraded to the grade of Superintendent Group B and accordingly 134 posts of Inspectors were abolished. 26 new posts were created besides 10 existing vacancies in the cadre of Superintendent Group B. Therefore, the total posts of the Superintendent Group B to be filled up at the time of restructuring were 134 (upgraded posts) plus 26 (on account of creation of posts) plus 10 on account of existing vacancies). Out of 170 posts 36 were promoted on the basis of reservation policy although only against the new created 26 posts plus 10 existing vacancies (total 36 posts), 22% posts were to be filled up by way of reservation and accordingly only 8 posts of Superintendent Group B were available for applying the reservation roster. The persons whose names appears from 120 to 149 in the order dated 23.09.2002 (Annexure A/4 series) are junior to the applicant Nos. 6 & 7 and the persons appearing at Sl. Nos. 142 to 149 are junior to all the applicants. They further allege in the OA that applying reservation in restructuring scheme is against the decision of the Hon'ble Supreme Court as well as different Benches of the Tribunal in the Country. According to them, the question is no longer *res integra*. They allege that the law has been settled by the catena of decisions.”

The application having been allowed by the Tribunal, the aforesaid Writ Petition was filed by Union of India challenging the view taken by the Tribunal and during the pendency of said writ petition, at the request of Union of India, the matter was transferred to this Court as similar issues were pending consideration before this Court in Civil Appeal Nos.7913-7914/2011.

It must be noted here that aforesaid civil appeals were thereafter dismissed for default of appearance on part of Union of India and as the record stands, no attempts were made to have those Civil Appeals restored to the file.

We may also state that in so far as the principal issues involved in this matter are concerned, the decision of this Court in Union of India vs. Pushpa Rani & Ors. [(2008) 9 SCC 242] had laid down as under:

“30. From what we have noted above, it is clear that the policies contained in Letters dated 25-6-1985 and 9-10-2003 are substantially dissimilar. The exercise of restructuring envisaged in the first policy was in the nature of upgradation of substantial number of posts in different cadres and the upgraded posts were to be filled simply by scrutinising the service records of the employees without holding any written and/or viva voce test and there was no merit-based selection. In contrast, the restructuring exercise envisaged in Letter dated 9-10-2003 resulted in creation of additional posts in some cadres with duties and responsibilities of greater importance and which could be filled by promotion from amongst the persons fulfilling the conditions of eligibility and satisfying the criteria of suitability and/or merit. Para 13 of Letter dated 9-10-2003 is, in itself, demonstrative of the difference between simple upgradation of posts in the cadre of Supervisors which are required to be filled without subjecting the incumbents of the posts to normal selection procedure whereas the additional posts becoming available in other cadres are required to be filled by promotion.

... ..

33. Once it is recognised that the additional posts becoming available as a result of restructuring of different cadres are required to be filled by promotion from amongst the employees who satisfy the conditions of eligibility and are adjudged suitable, there can be no rational justification to exclude the applicability of the policy of reservation while effecting promotions, more so because it has not been shown that the procedure for making appointment by promotion against such additional posts is different than the one prescribed for normal promotion. In *Fateh Chand Soni case [1996 (1) SCC 562]*. this Court interpreted the provisions contained in the Rajasthan Police Service Rules, 1954, which regulate appointment to the selection scale in the service and held that such appointment constitutes promotion. The Court then considered two earlier judgments in *Lalit Mohan Deb v. Union of India [1973 (3) SCC 862]* and *Union of India v. S.S. Ranade [1995 (4) SCC 462]* and declared that the High Court was in error in holding that appointment to the selection scale does not constitute promotion.”

Ms. Madhvi Divan, learned ASG appearing for Union of India submits that the order passed by the Tribunal was complied with by the Department on the pain of contempt and the benefits under the order passed by the Tribunal were conferred

upon the respondents.

Since the order of the Tribunal has been complied with, we do not deem it appropriate to entertain this transferred case any longer. The transferred case as well as CWJC No.10419/2009 filed by Union of India are dismissed leaving all questions of law open. No costs.

.....J.
[Uday Umesh Lalit]

.....J.
[Vineet Saran]

.....J.
[S. Ravindra Bhat]

New Delhi;
26th November, 2020.

ITEM NO.1 Court 3 (Video Conferencing) SECTION XVI-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Transfer Case (Civil) No(s). 80/2015

UNION OF INDIA

Petitioner(s)

VERSUS

SADANAND SINGH

Respondent(s)

(IA No. 89884/2020 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 89885/2020 - CLARIFICATION/DIRECTION)

Date : 26-11-2020 These matters were called on for hearing today.
CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE VINEET SARAN
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

For Petitioner(s) Ms. Madhavi Diwan, ASG
Ms. Seema Bengani, Adv.
Mr. Ayush Puri, Adv.
Mr. B. Krishna Prasad, AOR

For Respondent(s) Mr. Keshav Mohan, Adv
Mr. R.K. Awasthi, Adv.
Mr. Prashant Kumar, Adv.
Mr. Piyush Vatas, Adv.
Ms. Ritu Arora, Adv.
Mr. Santosh Kumar - I, AOR

UPON hearing the counsel the Court made the following
O R D E R

The Transferred case is dismissed in terms of the signed
order.

Pending interlocutory application(s), if any, is/are
disposed of.

(INDU MARWAH)
COURT MASTER (SH)

(PRADEEP KUMAR)
BRANCH OFFICER

(Signed order is placed on the file)