

M. Venkateswar Reddy and Others Vs. Apsrtc and Others

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Court : Andhra Pradesh

Decided On : Aug-24-1998

Reported in : 1998(6)ALD39; 1998(5)ALT686

Judge : B.S. Raikote, J.

Acts : [Constitution of India](#) - Articles 14, 16 and 226; Andhra Pradesh State Road Transport Corporation Employees (Service) Regulations, 1964 - Sections B - Regulations 4; Andhra Pradesh State Road Transport Corporation (Recruitment) Regulations, 1966 - Regulations 30 and 34; Railway Manual - Rules 219 and 320

Appeal No. : WP No. 25875 of 1995

Appellant : M. Venkateswar Reddy and Others

Respondent : Apsrtc and Others

Advocate for Def. : Mr. K. Harinath, SC for APSRTC

Advocate for Pet/Ap. : Mrs. C.V. Vinitha Reddy, Adv.

Judgement :

ORDER

1. This writ petition is filed challenging item No.3 of the resolution No.92 of 1991 dated 31-5-1991, prescribing marks for the selection of Class-I Senior Scale as contrary to Regulation 4(b) of APSRTC Employees (Service) Regulations, 1964,

read with item No.3 of Class-I Senior Scale Service of Section B of Annexure - A to APSRTC Employees (Recruitment) Regulations, 1966 and consequently praying for setting aside the selection list drawn up on 11-4-1995 and the appointments of respondent Nos.3 to 6 as Divisional Managers.

2. According to the affidavit filed in support of the writ petition, the petitioners are the direct recruits in the post of Assistant Mechanical Engineers and in the seniority list of Assistant Mechanical Engineers dated 10-11-1994, their names find place at Sr. Nos. 17,22, 27,28, 30 to 37 and 39 respectively. The)' stated that respondent Nos.3 and 4 are the Assistant Traffic Managers and their names in the said seniority list dated 10-11-1994 are found at Sr, Nos.3 and 7 and the names of respondent Nos.5 and 6 are found at Sr. No.40 and 41 of the Seniority list of the Assistant Mechanical Engineers. They stated that the seniority list dated 10-11-1994 has been prepared as per the direction issued by this Court in a Division Bench judgment reported in K.P. Komaraian v. A. Yegneswarudu and others, : 1995(1)ALT338 (DB) and the said judgment is confirmed by the Supreme Court. They further stated that for the post of Assistant Traffic Manager and Assistant Mechanical Engineer, a common promotional post is that of Divisional Manager of Class-I, Senior Scale and according to Regulation 4(b)(i) of the Andhra Pradesh State Road Transport Corporation Employees (Service) Regulations, 1964 (in short 'ServiceRegulations'), the promotion shall be made to the next cadre on the basis of merit, and seniority being considered only where merit is approximately equal. They further stated that under Regulation 4(b)(ii) of Service Regulations, in case of Scheduled Caste/ Scheduled Tribe candidates, they would be entitled to be promoted to the next cadre, only on the basis of seniority and suitability and the principle of merit does not apply to their case and such candidate does not have to compete with others on the basis of comparative merit. But the case of the petitioners that next promotion is rejected as against the respondent Nos.3 to 6, only because of the method adopted by the respondent - Corporation, on the basis of item No.3 of the resolution No.92 of 1991 dated 31-5-1991 and this item No.3 of the said resolution is discriminatory and violative of Articles 14 and 16 of the [Constitution of India](#). In this view of the matter, the item No.3 in the said resolution dated 31-5-1991 is liable to be set aside and consequently the selection based on such resolution also is liable to be quashed. They further contended that

respondent-Corporation has taken into account the seniority as the basis for selection, when Regulation 4(b) of Service Regulations provide that the seniority requires to be considered only when the merit is approximately equal and not otherwise.

3. The learned Counsel appearing for the petitioners, basing his arguments on the basis of the affidavit filed in support of the writ petition assailed item No.3 of the resolution .No.92 of 1991 dated 31-5-1991. He contended that according to this item No.3 of the resolution, out of 100 marks, 70 marks are allotted for merit rating and managerial ability, as reflected in the MRR (Merit Rating Report), 20 marks are assigned for length of service in the Feeder Post and 10 marks are assigned for the appreciation/re wards given for exemplary/meritorious work. He submitted that the allotment of 20 marks for length of service in substance is based on the principle of seniority of the person, which the Regulation 4(b)(i) of Service Regulations prohibits. In fact in the instant case, the respondents length of service (Seniority) weighed with the selection authority to allot 20 marks. Even the other 10 marks have been awarded on the basis of a merit certificate issued by the Chairman of the Corporation, who is not competent to issue such certificate under Circular No.PD-35 of 1991 dated 24-4-1991. He further submitted that under clause (iv) of point No.2 in item No.3 of the resolution 92 of 1991 dated 31-5-1991, it is further provided that for inclusion in the panel, the minimum marks would be 60 out of 100 and the relative seniority of the selected candidates would be ignored only when a candidate is adjudged as outstanding by virtue of scoring 80 marks and above and those who secure between 60 and 79, their names would be included in the panel in order of seniority of the candidates in the Feeder Posts. Even this clause (iv) of point No.2 in the said resolution, also has taken into account the seniority as the basis to determine the merit of a person. In addition to that, the selecting authority has considered the length of service of respondents and other officials in the Feeder post, when they were temporarily promoted under Regulation 30 read with Regulation 34 of the Andhra Pradesh State Road Transport Corporation (Recruitment) Regulations, 1966 (in short 'Recruitment Regulations') and the Division Bench of this Court in the decision cited : 1995(1)ALT338 (DB) supra), has already ruled that the services of such persons promoted or appointed under Regulation 30 read with Regulation 34 of

Recruitment Regulations, cannot be counted for the purpose of seniority. This criteria adopted, based on seniority, is just the one that is prohibited by Regulation 4(b) of Service Regulations. Therefore, the impugned resolution is liable to be declared as illegal and consequently, even the selection list based on such criteria is also liable to be quashed. He also further contended that out of 45 candidates selected, Mr. R.V. Jain, Mr. V. Vijay Gopal and Mr. R Sasidhar have not put in three years of service as Depot Manager, as provided at item No.3 of Annexure-A, appended to Recruitment Regulations and as such their selection is bad. Taking up the case of the petitioners 3 and 4, who are the persons belonging to the Scheduled Caste and Scheduled Tribes, he contended that in respect of such candidates, the principle of comparative merit is excluded as per Regulation 4(b)(ii) of Service Regulations and what is to be seen is, their suitability. In order to hold that they were not suitable, no adverse remarks were communicated to these petitioners and in these circumstances, their non-selection is also illegal. His further contention is that for the purpose of selection to the post of Divisional Manager, Class-I Senior Scale, the post of Assistant Mechanical Engineer and Assistant Traffic Manager are the Feeder posts. But no combined seniority list is prepared and as per the seniority list dated 10-11-1994, it is clear that separate lists are maintained regarding these two posts and selection made to the next promotional post without preparing a consolidated or combined seniority list is illegal, since at any rate, seniority has to necessarily be considered in a case where the merit is equal.

4. A detailed counter is filed by the respondent-Corporation, denying the allegations made by the petitioners in the writ petition, by further contending that keeping in view Regulation 4(b)(i) and (ii) of Service Regulations and on the lines of Departmental Promotion Committees existing in the State Government, the Board had framed certain guidelines vide resolution 92 of 1991 dated 31-5-1991 and these guidelines are not inconsistent with Regulation 4 of Service Regulations. It is further alleged in the counter that out of 14 Scheduled Caste and Scheduled Tribe candidates, it was found that petitioners 3 and 4 were not fit for promotion and as such their cases are not recommended for promotion and these petitioners 3 and 4 were not superseded by their juniors on the ground of merit, but the Selection Committee found that they are not fit for promotion and as such

the selection proceedings of the Selection Committee cannot be challenged by the petitioners. It is further alleged in the counter that on the basis of the method adopted by the Departmental Promotion Committee existed in the State Government, the Board apportioned the marks amongst different items and 60 marks out of 100 marks are fixed as minimum marks for inclusion in the panel and out of that 100 marks, 80 marks are earmarked for merit. The learned Counsel for the respondent-Corporation relying on item No.2(iii) of the resolution No.92 of 1991, elaborated his point by contending that 70 marks are allotted for merit rating and managerial ability reflected in the MRR, 20 marks are allotted for length of service in the Feeder post and 10 marks are allotted for appreciation or rewards given for exemplar)' or meritorious work. Thus, out of 100 marks, 80 marks are assigned on the merit and suitability and 20 marks for the length of service in the Feeder post and Board has the power to frame necessary guidelines and procedure for selection of the candidates for the promotion to the next cadre. He further contended that such length of service rendered under Regulation 30 of Recruitment Regulations, could be considered for the purpose of that 20 marks, since the Recruitment Regulations do not prohibit for such a method for promotion. Regarding the other 10 marks, the Chairman has issued a merit certificate for some of the selected candidates and he being a superior officer to the Executive Director, who is authorised under the circular to issue such certificates, can issue such certificate and the same also could be considered. As the petitioners were not found suitable, and since they could not secure minimum marks for inclusion of their names in the panel, they were not selected and in these circumstances, absolutely there are no merits in the writ petition and it is liable to be dismissed,

5. Both the Counsels relied upon certain judgments in respect of their respective contentions and those judgments, I will be considering while I take up the points one after the other.

6. On the basis of the pleadings and also on the basis of the arguments addressed on both the sides, the following points arise for my consideration:

(1) Whether the item No.2(iii) of the resolution No.92 of 1991, dated 31-5-1991, is illegal, being contrary to Regulation 4(b) of Service Regulations and consequently

whether the selection to the post of Divisional Manager Class-I Senior Scale dated 11-4-1995 is liable to be set aside?

(2) Whether the length of service of persons who were temporarily promoted to the Feeder post under Regulations 30 and 34 of the Recruitment Regulations, could be considered for the purpose of allotting 20 marks as per the impugned resolution?

(3) Whether awarding of 10 marks as per the impugned resolution on the basis of the certificate issued by the Chairman of the Board is proper and valid and if not whether selection list is liable to be set aside on that count also?

(4) Whether the action of the respondent -Corporation in relying upon the adverse remarks found in the service records, without communicating to the petitioners 3 and 4 is valid?

(5) Whether the selection to the post of Divisional Manager Class-I Senior Scab is illegal because of not preparing the combined seniority list of Assistant Mechanical Engineers and Assistant Traffic Managers - Feeder posts?

(6) What is the effect of selection of certain candidates who do not have the experience of 3 years out of five years prescribed as Depot Manager in terms of item No.3 of Annexure-A, pertaining to the post of Divisional Managers?

7. Point Nos.1 and 2 go together. These two points are raised in view of the specific contention of the petitioners, that 20 marks allotted for length of service is illegal because, under the guise of the phrase 'length of service', the seniority is taken into consideration for promotion by selection to the cadre of Divisional Manager Class-I Senior Scale and the same is opposed to the spirit of Regulation 4(b) of Service Regulations. The case of the Board is that under the phrase 'length of service', a weightage is given to the experience for manning higher post. Therefore, there is nothing wrong in allotting 20 marks for length of service. It is further contended that 'seniority' is different from 'length of service' and under the phrase 'length of service', the respondent - Corporation is not considering the inter se seniority of the candidates. In order to appreciate such rival contentions, I think

it appropriate, first to extract relevant portion of the impugned resolution dated 31-5-1991 as under:

'2(iii) That the following criteria in apportionment of marks for selection of senior Supervisors/Managers, other than the candidates belonging to SC/ST communities, for promotion to the posts in Class-I Junior Scale and above be adopted for the purpose of uniformity: (a) Merit Rating and Managerial ability reflected in the MRR 70 (Seventy)(b) Length of service in the Feeder post 20 (Twenty)(c) Appreciation/Rewards given for exemplary/Meritorious work 10 (Ten) Total 100 (Hundred).'

So far as the allotment of 70 marks under item (iii)(a) of the resolution for merit rating and managerial ability reflected in the MRR is concerned, the same is not questioned by the petitioners. The serious contention of the petitioners is regarding item (iii)(b), allotting 20 marks for length of service in the Feeder Post. In other words, a person having longer service than others in the Feeder Post would be entitled to 20 marks. In my opinion this 'longer service' or 'length of service' should necessarily relate to the seniority of the person in the Feeder post and a person who is senior necessarily has more length of service than the other. But the post in question is a selectional post and seniority has no relevance at all in view of Regulation 4(b)(i) of Service Regulations, which reads as under:

'4. Promotion:

(b)(i) Promotion in a service or class to a Selection Category or to a Selection Grade shall be made on grounds of merit, seniority being considered only where merit is approximately equal."

From reading of Regulation 4(b)(i) of Service Regulations, as extracted above, it is clear that seniority requires to be considered only when the merit is approximately equal. In other words, the selection process shall be made on the basis of merit only and not on the basis of seniority at all and in such an event, 'length of service' has no relevance at all. As I have already stated above, this 'length of service' shall necessarily mean that a person who is more senior, automatically gets 20 marks as against the junior. Thus, under the guise of 'length of service', the rule of

seniority could not have been prescribed for. selection to the post of Divisional Manager, Class-I Senior Scale, by the impugned resolution. Moreover, I find from item (iii)(b) of the impugned resolution, that 20 marks are allotted to length of service in the Feeder post. It does not provide any split marks for the length of service for earning 20 marks under that category, i.e., the clause does not say that in order to compute the length of service, one marks is given for one year etc., or it does not say that 20 marks would be allotted to a person who has completed 20 years or more. Thus, allotment of 20 marks would result in an arbitrary exercise of power. However, the Board justified prescribing the 20 marks for length of service on the ground that 'length of service' would simply mean, the experience of a person and not the seniority. It is very difficult to distinguish between 'length of service' and 'seniority' and the senior cannot be said to have 'length of service' shorter than a junior. Thus, this length of service is necessarily relatable to seniority only. This conclusion stands fortified by Clause 2(iv) of the resolution, which reads as under:

'that the minimum marks for inclusion in the panel should be 60 out of 100, relative seniority of the selected candidates be ignored only when a candidate is adjudged as outstanding by virtue of scoring 80 marks and above and those who score marks between 60 and 79, the panel should be in order of seniority of the candidates in the Feeder Posts.'

Under this clause, a person is entitled to be included in the panel, provided he has scored a minimum of 60 out of 100. There cannot be a serious attack to this part of the clause, since it is still permissible for the appointing authority to prescribe cut-off marks. But the other part of clause 2(iv) of the impugned resolution farther provides that in case of a person who has scored less than 80 marks, relative seniority becomes the basis for inclusion of his name in the panel. That point is further made clear by the said clause stating that those who secure marks between 60 and 79, the panel should be in order of seniority of the candidates in the Feeder Posts. Thus from this clause 2(iv) of the impugned resolution it is clear that 'length of service' used in clause 2(iii)(b) is necessarily relatable to seniority only, but not any other kind of experience and it is an experience based seniority. But that is the one prohibited by Regulation 4(b)(i) of the Service Regulations. In

this view of the matter, clause 2(iii)(b) of the impugned resolution is contrary to Regulation 4(b)(i) of the Service Regulations and the Corporation is not entitled to prescribe a criteria for selection, which is contrary to the Service Regulations. Hence, providing 20 marks for the length of service by the impugned resolution is wholly without jurisdiction. In this view of the matter, the contention of the respondent - Corporation that length of service is taken only for ascertaining the experience of a person, cannot be accepted. In the decision reported in *N.D. Mitra v. Union of India*, : AIR 1994 SC2163 , the Hon'ble Supreme Court also took the length of service for seniority, when it observed that:

'The normal rule for fixing seniority in a cadre is the length of service. In the absence of any statutory rules or executive instructions to the contrary, infer se seniority amongst the Deputy Director General has to be fixed on the basis of continuous length in the said post.'

From this it follows that under the guise of the phrase 'length of service', the rule of seniority cannot be introduced, for purely a selectional post, and more so, under the teeth of Regulations 4(b)(ii) of the Service Regulations. In similar circumstances, the Hon'ble Supreme Court in the decision reported in *M. Ramjayaram v. General Manager (SC)*, 1996 (2) SLR 655, held that the Railway Selection Board could not have laid down certain factors as a guidelines for selection, that is required to be done on the basis of the criteria laid down under Rule 219(g) of the Railway Manual. The Hon'ble Supreme Court pointed out that under Rule 219(g) of the Railway Manual, Selection is required to be made on the basis of the overall merit. But in order to ascertain that overall merit, the Board cannot allot 15 marks on the seniority, which Rule 219(g) of the Railway Manual does not contemplate, and accordingly held that weightage of 15 marks given on the basis of guidelines of the Board was contrary to Rule 219(g) of the Railway Manual. The Hon'ble Supreme Court further pointed out that the relative seniority on the basis of length of service contemplated under Rule 320 of Railway Manual, stands specifically excluded for selectional post under Rule 219(g). Thus, my above conclusions are fortified by the judgment of the Supreme Court in this case. If that is so, the length of service of a person in the Feeder Post even under Regulation 30 read with Regulation 34 of Recruitment Regulations also stands

excluded for the purpose of consideration of 'merit' in terms of Regulation 4(b)(i) of the Service Regulation. Therefore, the Board also was in error in giving 20 marks for those persons who are temporarily promoted under Regulations 30 and 34 of Recruitment Regulations. Moreover this Court specifically held that such service of the persons temporarily promoted under Regulation 30 read with Regulation 34 of Recruitment Regulations cannot be counted for the purpose of seniority in the judgment cited : 1995(1)ALT338 (DB) supra). Thus, the 'length of service' of a person either temporarily or permanently in the Feeder Post could not have been a basis for the purpose of the impugned selection in terms of item 3 of the resolution and consequently, I have to hold that such selection based on such a criteria or principle is illegal. Thus, I answered point Nos. 1 and 2.

8. Now taking up point No.3, I have to find out whether awarding 10 marks on the basis of certificate issued by the Chairman of the Board in terms of clause 2(iii)(c) of the impugned resolution is proper or not. Under this clause, as I have already noticed above, for appreciation or rewards given for exemplary or meritorious work, 10 marks are assigned. So far as assigning of the marks for such meritorious or exemplary work is concerned, it cannot be said to be arbitrary, since merit includes even such exemplary or meritorious work of an employee, in addition to all his service records. Now the complaint of the petitioners is that the certificate issued by the Chairman of the Board cannot be a basis for awarding 10 marks, in view of Circular of the Corporation vide No.35 of 1991f dated 24-2-1991. This circular dated 24-4-1991 prescribes certain authorities for issuing appreciation letters as under:

'II. Authorities to give appreciation letters:

2.1 In the circulated cited 3rd, 5 marks were allotted for records of commendations/ rewards and other distinctions earned or conferred but the authority competent to issue such rewards/awards/commendationsetc., was not mentioned. Vice-Chairman and Managing Director has nominated the authorities to issue commendation/ appreciation letters etc., has indicated below. The Selection Committee should allot marks for appreciation/commendation etc., only for the letters issued by the authorities notified.

1.All Sr. Scale Officers and above.Vice-Chairman & Managing Director.2.All Depots Managers.The Concerned ED under whom the region is functioning.

3.All other Jr. Scale OfficersThe concerned functional Executive Director.

4.All Supervisors from the rank of DC and above and equivalent ranks in all other Departments (Staff working in regions).

Regional Managers concerned.5. -do- (staff working in Head Office units).

Concerned Head of the Department.6.Rest of the staff working in Divisions.Divisional Manager7.In production units. (Works).Senior Engineer

These instructions will come into force with immediate effect.'

In the instant case, we are concerned with the officers of the junior scale, belonging to the Feeder category to the promotional post of Divisional Manager Class-I Senior Scale. For such officers found at item No.3 of the above extract, the competent authority to issue such letters of appreciation, for the services in question, is the concerned Functional Executive Director, under whose supervision, the junior scale officers would be working. If that is so, he shall be in a better position to issue such appreciation letters for individual meritorious work. When the statute provides that a particular authority has the power, the same cannot be exercised by any other authority. In the instant case, the Chairman, is no doubt superior authority, but not a competent authority under the circular. Therefore, on such a certificate, awarding 10 marks was improper on the part of the Selection Committee. Accordingly, point No.3 is answered.

9. Point No.4: The learned Counsel appearing for the petitioners, on behalf of petitioners 3 and 4 contended that they belong to Scheduled Caste and Scheduled Tribe candidates and they are very much seniors to the selected candidates, but they have not been selected and such non-selection is discriminatory. He further contended that in terms of Regulation 4(b)(ii) of the Service Regulations, the Scheduled Caste and Scheduled Tribe candidate do not have to compete with other candidates on the basis of comparative merit, and the selection of such candidates has to be only on the basis of suitability and in order to assess the

suitability, the authorities have to look into the service records. But in the instant case, certain adverse entries said to have been made in the service records, have been relied upon, without communicating such adverse entries to the petitioners 3 and 4 and without giving any opportunity to these petitioners. This specific allegations made in the writ petition that such adverse entries were not communicated to the petitioners 3 and 4 is not specifically denied in the counter. In the counter of the Corporation it is not stated that such adverse entries were not taken into account in the case of the petitioners 3 and 4 and if that is so, when admittedly they were seniors to the other selected persons, their non-selection would necessarily be on the adverse entries found in the service records, in order to assess their suitability for the promotion to the next cadre. In paragraph No. 3 of the counter it is merely stated that the Selection Committee on perusal of records held that the petitioners are not fit for promotion and their cases were not recommended for promotion. It is further averred that the petitioners 3 and 4 were not superseded by their juniors on the ground of merit, but the Selection Committee found that they were not fit for promotion. From reading of the entire counter affidavit, it is nowhere stated that the adverse entries made in the service records were not relied upon, and it is also not stated that such adverse entries were communicated to them at any point of time. In these circumstances, denying the selection to a person on the basis of the uncommunicated adverse remarks is illegal as per the law declared by the Supreme Court from time to time. Accordingly, point No.4 is answered.

10. Point No.5 is framed on the specific contention of the petitioners that without preparing a combined seniority list of Assistant Mechanical Engineers and Assistant Traffic Managers, the Board could not have initiated the impugned selection process for promotion to the next cadre of Divisional Manager Class-1, Senior Scale. It is not in dispute that for the post of Divisional Manager Class-I, Senior Scale, both the posts of Assistant Mechanical Engineers and Assistant Traffic Managers, are the Feeder Posts. It is also not in dispute that vide notification dated 10-11-1994, separate seniority lists are prepared for the posts of Assistant Mechanical Engineers and Assistant Traffic Managers. The promotional post in question is a selectional post from amongst the persons belonging to both these cadres. As I have already held above, no doubt their inter se seniority would

not be relevant. But Regulation 4(b)(i) of the Service Regulations further provides that in case of two candidates being approximately equal on the basis of merit seniority is required to be considered. In other words seniority would be relevant for consideration where the merit is approximately equal. If that is so, the inter se seniority in the Feeder cadre of the persons belonging to both these cadres would be relevant for that limited purpose only. In fact, the Hon'ble Supreme Court in the decision reported in *Saratkumar Dash v. Biswajit Patnaik*, 1995 Supp. (1) SCC 434, held that while considering the merit-cum-suitability, the seniority absolutely has no role to play. But the same would be important factor in face where merit of two persons are equal. I think it would be useful to extract relevant portion of the judgment of the Supreme Court as under:

'8. In case of merit-cum-suitability, the seniority should have no role to play when the candidates were found to be meritorious and suitable for higher posts. Even a junior most may steal a march over his seniors and jump the queue for accelerated promotion. This principle inculcates dedicated service, and accelerates ability and encourages merit to improve excellence. The seniority would have its due place only where the merit and ability are approximately equal or where it is not possible to assess inter se merit and the suitability of two equally eligible competing candidates who come very close in the order of merit and ability. Under those circumstances, the seniority will play its due role and calls it in aid for consideration. But in case where the relative merit and suitability or ability have been considered and evaluated, and found to be superior, then the seniority has no role to play....'

In these circumstances, it was necessary for the Board at least for that limited purpose, a combined seniority list was required to be prepared by the Board before the Selection process started. At any rate, it was necessary for the Board to prepare such consolidated seniority list for ascertaining the "length of service" for awarding 20 marks to the persons belonging to different categories, though I have found fault with such awarding 20 marks, in earlier paragraphs of this judgment. Even otherwise, such combined seniority list would be necessary in order to ascertain the relative seniority of two persons, who are equal in merit and in all respects. Therefore, point No.5 is answered stating that the selection proceedings

are also illegal for not preparing a combined seniority list of Assistant Mechanical Engineers and Assistant Traffic Managers for the promotion to the Divisional Manager Class-1 Senior Scale.

11. Point No.6: The learned Counsel for the petitioners alleged in the reply affidavit that out of 45 candidates, some candidates by names R.V. Jain, V. Vijay Gopal and R. Sashidar have not put in three years of service as Depot Managers and as such they could not have been selected. Obviously, this matter being stated in the reply affidavit, there would not be any occasion for the respondent-Corporation to file a counter, since in the original writ petition, this has not been raised. It is enough if I observe at this stage that while making promotions by selection, to the post of Divisional Manager Class-1 Senior Scale, what is prescribed in item No.3 of Annexure-A, appended to the Recruitment Regulations, one has to comply with. In item No.3 of Annexure-A, under the column qualifications, it is stated that for transfer, the Class-I Senior Scale Officer must have worked as Depot Manager for a minimum period of three years and for promotion the Class-I Junior Scale Officer must have put in not less than five years of service in the grade, out of which he must have spent a minimum period of three years as Depot Manager. From both these conditions found under column pertaining to qualification for appointment to the post of Divisional Manager, either by way of transfer or by way of promotion, a person must have served at least three years as a Depot Manager. In other words, the experience of three years as a Depot Manager is made as one of the criterion for promotion to the post of Divisional Manager and this three years of experience also goes into the criteria of 'merit', as contemplated by Regulation 4(b)(i) of Service Regulations. The object of the Regulations appears to be that, when a person is to be promoted to the post of Divisional Manager, he should have at least a minimum experience of three years as a Depot Manager, so that he can handle the affairs as a Divisional Manager more effectively and efficiently, with that experience. I think it is enough if I answer point No. 6, without expressing any opinion as to the applicability or otherwise of that rule in the present case. Accordingly, point No.6 is answered.

12. The last contention that I have to necessarily advert to, is the point urged by the learned Counsel appearing for the respondent-Corporation that the writ petition

is not maintainable in view of the fact that all the selected candidates are not made parties to this writ petition. I find from the cause title that the Selection Committee is made party. The writ petitioners have also made some of the selected candidates as respondent Nos.3 to 6 and they have not filed any counter, impliedly they are relying on the counter filed on behalf of the respondent No. 1 - Corporation and also on behalf of the respondent No.2 - Selection Committee. Both respondent Nos.1 and 2 justified the criteria adopted by them in the impugned selections. I have found fault with the criteria of the Corporation in awarding 20 marks for 'length of service' and 10 marks for 'appreciation or reward given for exemplary /meritorious work', based on the certificate issued by the Chairman. These 30 marks as against 70 marks will have tilting effect on the results of the candidates. But this criteria adopted by the Corporation, I have found fault with and it is clear such criteria is illegal and without jurisdiction and contrary to Regulation 4(b)(i) of the Service Regulations. If that is so, now I have to see whether the present writ petition is maintainable or not, for not impleading the selected candidates as parties to this writ petition. In similar circumstances, in the decision reported in K. Eswar Dutt v. Chairman FCI, : 1998(3)ALD767 , I had an occasion to consider the same contentions. I think it appropriate to extract the relevant part of the said judgment as under:

'12. The learned Counsel for the respondents secondly contended that all the persons affected are not made parties to the writ petition. Therefore, the writ petition fails on this count alone. But, the learned Counsel for the petitioner contended that the petitioner in the instant case has filed this writ petition questioning the action of the respondents in applying 1978 Regulations as against 1971 regulations which would be applicable to the petitioner. In these circumstances the Apex Court has ruled in the case of V.P. Shrivastava v. State of M.P., 1996 (1) ALR 819, mat, whenever a principle is challenged, though the affected parties may be proper parties but they would not be the necessary parties and as such the writ petition would not fail on that count alone. From the reading of the said judgment, I find that the Administrative Tribunal, in that case, dismissed the application on the ground that even though some of the affected parties were made parties to the application, but other parties were not made parties. The Hon'ble Supreme Court found fault with the approach of the Tribunal and held as

under:

'The conclusion of the Tribunal that non-inclusion of the affected parties is fatal to the appellants case is also unsustainable in law. It is to be stated that the appellants do not challenge the so-called ad hoc appointments of the promotee respondents but they do challenge the position of the said ad hoc promotee respondents over the appellant in the seniority list. In other words the very principle of determination of seniority made by the State Government under challenge and for such a case State is the necessary part who has been impleaded. It has been held by this Court in the case of General Manager, South Central Railway Secitnderabad and another, etc- v. A. V.R. Sidhanti and others etc., : (1974)ILLJ312SC

'As regards the second objection, it is to noted that the decision of the Railway Board impugned in the writ petitioncontain administrative rules of general application, regulating absorption in permanent department, fixation of seniority pay etc. of the employees of the erstwhile Grain Shop Departments. The respondents-petitioners are impeaching the validity of those policy decisions, on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of Government servants is assailed. In such proceedings the necessary parties to be impleaded are those against whom the relief is sought and in whose absence no effective decision can be rendered by the Court. In the present case the relief is claimed only against the Railway which has been impleaded through its representatives. No list or order fixing seniority of the petitioners vis-a-vis particular individuals pursuant to the impugned decisions is being challenged. The employees who were likely to be affected as a result of the readjustment of the petitioner's seniority in accordance with the principles laid down in the Board's decision of October 16, 1952 were at the most proper parties and not necessary parties and their non-joinder could not be fatal to the writ petition.'

In the case of A. Janardhan v. Union of India and others, : (1983)IILLJ175SC a similar contention was also repelled by this Court in the following words:

'In this case appellant does not claim seniority over particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing-up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as respondents'.

13. From the above judgment it is clear that whenever a criteria adopted by the authorities is challenged without claiming any relief against any person or persons such other persons who would be affected would be proper parties but they would not be necessary parties and for not making such persons as parties to the writ petition the same cannot be dismissed as not maintainable. In the instant case, the official respondents are made parties to the writ petition. Those official respondents filed a counter contending that the determination of the seniority of the persons under 1978 Regulations was in accordance with the law and whatever action they have taken under Regulation 1978 in respect of the petitioner and others was in accordance with law. In other words, the official respondents in substance are supporting the criteria they adopted and as such they are protecting the interest of the other respondents who would be otherwise affected in view of the principle of law to be laid down, regarding the criteria so adopted for determining the seniority of the persons.

14. However, the learned Counsel for the respondents relied upon the other judgment of the Supreme Court in *Arun Tiwari v. Zilla Manasavi Shikshak Sangh*, AIR 1998 SC 331. In this case the Administrative Tribunal passed an order impugned without making the selected appointed candidates as parties. The applicant therein was a person who was not selected. The learned Counsel for the petitioner contended that, this judgment does not apply to the facts of this case in view of the fact that in the latter case the selection of candidates was in issue, whereas in the instant case the illegality of the criteria on the basis of which the seniority of the petitioners and other similarly situated persons was determined

requires to be considered and therefore that case is distinguishable. From the reading of the judgment in Arun Tiwari's case, AIR 1998 SC 331, I find that the judgment relied upon by the learned Counsel for the petitioner in V.P. Shrivastava's case, 1996(1) SLR 819 was not referred. The Hon'ble Supreme Court in Arun Tiwari's case, AIR 1998 SC 331, following the other judgment held that the entire exercise was distorted because of this omission. The Hon'ble Supreme Court also found fault with the judgment of the Tribunal even on merits of the case.

15. I read both the judgments carefully. As I have noted above the Hon'ble Supreme Court in V.P. Shrivastava's case, 1996 (1) SLR 819 laid down two rules i.e., (1) whenever a list fixing the seniority of the petitioners vis-a-vis particular individuals is challenged then such affected parties should be made parties to the writ petition and (2) where the petitioner challenged the principle adopted by the authorities for determining the seniority, it would be enough, if such authority is made a party to the writ petition. Though the persons affected would be proper parties but they would not be necessary parties and for non-impleading such parties the writ petition cannot fail. In Arun Tiwari's case AIR 1998 SC 331, the Hon'ble Supreme Court was dealing with a case where selection of the candidates was being challenged by an unsuccessful candidate. In such circumstances the Hon'ble Supreme Court rules that selected persons would be necessary parties to the writ petition. From this it follows that Arun Tiwari's case AIR 1998 SC 331, is one in which a person sought this selection vis-a-vis particular individuals who are selected. Thus Arun Tiwari's case AIR 1998 SC 331 is one falling within the rule No. 1 enunciated in V.P. Shrivastava's case 1996 (1) SLR 819. But the instant case, is one, which falls within the rule No.2 enunciated by V.P. Shrivastava's case 1996 (1) SLR 819. In the instant case, the entire approach of the respondents 1 and 2 in considering the case of the petitioners under the amended Rules of 1978 is one without jurisdiction and without any authority of law, since the petitioner was recruited as per 1971 Regulations and his case ought to have been considered only under 1971 Regulations, but not under 1978 Regulations. Hence, the issue goes to the root of the matter and what the petitioner is challenging in this case is only the criteria basis adopted for not considering the case of the petitioner and other persons similarly situated under 1971 Regulations. Having regard to the

issue involved in this case, in my humble opinion, I feel that the judgment of the Supreme Court in V.P. Shrivastava's case, 1996 (1) SLR 819 applies to the facts of this case....'

From the above judgment it is clear that this Court found two rules, as enunciated by the Supreme Court regarding the maintainability or otherwise of the writ petition. They are (1) wherever a person sought his selection vis-avis particular individuals who are selected, such selected candidates shall be both necessary and proper parties and in such cases, the judgment of the Supreme Court reported in A run Tiwari v. Zilla Mansavi Shikshak Sangh, AIR 1998 SC 331 applies, and (2) wherever the criteria or the basis of the selection is challenged, and if the selection authority is made party, the persons who would be ultimately affected by declaring such policy or criteria as illegal, would be only proper parties, but not necessary parties, and accordingly the decision of the Supreme Court reported in V.P. Shrivastava v. State of M.P., 1996 (1) SLR 819, applies. The instant case is one, in which rule No.2 applies and consequently it is the law of the Supreme Court reported in the decision V.P. Shrivastava's case (supra) applies. Since I have declared the selection as illegal by finding fault with the criteria of awarding 20 marks for 'length of service' and 10 marks on the merit certificate issued by the Chairman, the other selected candidates, on the basis of the said principle would be only proper parties, but not necessary parties, as per the law declared by the Supreme Court in the decision reported in V.P. Shrivastava 's case (supra). Therefore, the writ petition is maintainable and not impleading the selected candidates would not be fatal to the case.

13. For all the above reasons, this writ petition is allowed and consequently, clause 2(iii) and (iv) of the impugned resolution No.92 of 1991 dated 31-5-1991 is declared as illegal and contrary to Regulation 4(b)(i) of Service Regulations. Impugned selections dated 11-4-1995 to the post of Divisional Manager Class-I Senior Scale, is hereby set aside and consequently, on the basis of the impugned selection, if any person is promoted, such persons are liable to be reverted. The respondent-Corporation is further directed to reprocess the whole selection to the post of Divisional Manager Class-I Senior Scale, within a period of four months from the date of receipt of a copy of this order. No costs.

14. Before parting with the case, I should make it clear that if on the basis of Clause 2(iii) and (iv) of the impugned resolution No.92 of 1991 dated 31-5-1991, if any selections were made earlier prior to the impugned selection, the ratio of this judgment shall not be applicable, so as to see that the finality already reached is not disturbed at this point of time, in other words, this judgment shall be applicable only to the impugned selections and to all future selections to be made.

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