

Nagesh Singh and anr. Vs. Union of India (Uoi) and ors.

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Jan-07-1999

Judge : A A S.R., A Vedavalli

Appellant : Nagesh Singh and anr.

Respondent : Union of India (Uoi) and ors.

Judgement :

1. As these two OAs involve similar questions of law and fact they are being disposed of by this common judgment.

2. In this O.A. filed on 26.5.93 applicants S/Shri Nagesh Singh and B.Bhandari have impugned Finance Ministry's O.M. dated 25.5.88 and 7.7.88 promoting R-2 to7 from Grade IV to Gr. III (Asst. Director to Dy.

Director) in Indian Economic Service, allegedly in violation of Rule 8(1) (b)(1) and Rule 13 (unamended) I.E.S. Rules 1961. A prayer has been made to quash the impugned Notification dated 22.9.89 amending Rule 13 IES Rules, and for promotion to Gr. III in IES from the date their juniors were promoted.

3. Their case is that they joined IES Grade IV on 1.9.82. The process of recruitment from Gr. IV (Asst. Director to Gr. III Dy. Director) in IES is laid down in Rule 8 (1)(b)(1) IES Rules which reads thus : (1) all the vacancies in this grade shall be filled by promotion from amongst Gr. IV officers who have completed not less than four years service on a regular/ basis in that grade.

Promotion shall be made in the order of seniority subject to rejection of the unfit by the controlling authority on the advice of the Board.

Provided that if any junior officer in Gr. IV is eligible and considered for promotion, all officers senior to him in that grade shall also be considered for promotion, notwithstanding that they may not have completed four years of service on a regular basis in that grade.

4. So far as reservation for SC/ST is concerned, Rule 13 (unamended) IES Rules, 1961 runs as follows : "Reservation for SCs & STs etc. :--Appointments to the service made otherwise than by promotion will be subject to orders regarding special representation in the service for SCs & STs issued by the Govt. from time to time.

5. Applicants thus emphasize that Gr. III being a promotional post, no reservation was provided for SC/ST candidates. They state that having been appointed to Gr. IV in Sept. 1982, they qualified for promotion to Gr. III on 1.9.86, while Pvt. R-2 to 6 were appointed to Gr. IV on 29.8.83, and Pvt. R-7 on 1.12.82, and hence they were junior to the applicants.

6. Applicants, however, contend that by impugned orders dated 25.5.88 and 7.7.88, R-2 to 7 were promoted to Gr. III before them, for the reason that they belonged to SC/ST category, although unamended Rule 13 IES Rules did not provide for reservation for SC/ST category. These promotions were therefore contrary to Rules. Applicants further contend that once their juniors were promoted, they ought to have been promoted, from that date, as per Rule 8(1)(b)(1) IES Rules, as there were no adverse entries in their ACRs, and state that they represented to respondents in January/July, 1986, but when no reply was received, applicants along with one Mrs. Kirti Saxena filed O.A. No. 760/89 on 4.4.89, on which notices were issued, upon receipt of which Respondent No. 1 amended Rule 13 IES Rules vide Notification dated 22.9.89 (Annexure C), making it applicable retrospectively w.e.f. 27.11.72 and which reads as follows : 13. Reservation for SCs & STs, etc. :--Appointment to the Service shall be made subject to the orders relating to reservation for SCs & STs issued by the Central Govt. from time to time.

7. Applicants state that when O.A. No. 760/89 came up for final hearing on 27.4.93 along with O.A. No. 1288/93, the Court noticed that amended Rule 13 IES Rules had not been challenged, which was essential in the facts and circumstances of the case, and therefore the Tribunal by its order of aforesaid date (Ann. D) disposed of the O.A., permitting applicants to challenge the amendment by filing a fresh application within a period of one month, and also observed that as petitioners had been bonafide pursuing their remedies before the Tribunal the period spent during the pendency of these proceedings was to be recorded as explaining the delay. Applicants accordingly filed the present O.A. on 26.5.93 assailing the impugned amendment Notification dated 22.9.89 as bad in law, on various grounds.

8. In this O.A. filed on 25.5.93 applicant Dr. A.K. Belwal similarly impugns respondents' Notification dated 22.9.89, retrospectively amending Rule 13 IES Rules, 1961 w.e.f. 27.11.72 and claims seniority above his immediate junior Shri P.P.P. Babu in IES Grade III with consequential benefits, including promotions in higher grader.

9. The basic facts relating to applicant Dr. Belwal's case are available in OA-857/87 filed earlier by him and one another. In that O.A. he had stated that he was appointed substantively to IES Gr. IV w.e.f. 1.1.77 and was subsequently promoted to IES Gr. III on regular basis in July, 1979. Pursuant to the Hon'ble Supreme Court's judgment in Narender Chadha's case the Dept. of Econ. Affairs, which is the cadre controlling authority, circulated a seniority list of Gr. IV officers on 8.5.86 in which his name stood at Sl. No. 336-A. On 11.6.86, the DEA issued a list of 250 IES officers promoting them from Gr. IV to Grade III retrospectively, showing out of turn seniority to some officers belonging to SC/ST. This list did not contain the applicant's name, although some of the promoted officers in the list were junior to him at the time of recruitment/substantive appointment, as also in the earlier list circulated by DEA on 8.5.86. Thereafter DEA issued seniority list on 2.12.86 in which his name was omitted, while the names of some SC/ST officers who were junior to him at the time of recruitment/ substantive appointment, as also in the list issued by DEA on 8.5.86, were shown senior to him. Applicant stated that in this seniority list of 2.12.86, some officers recruited as late as 1979 were

shown senior to him, although he was recruited in 1971, and on the basis of seniority list issued by DEA on 11.6.86 and 2.12.86, several officers who were junior to him were promoted from Gr. III to Gr. II of IES from 9.3.87 to 19.3.87. Applicant had stated that he had submitted, several representations to the respondents and led a delegation of IES officers, but to no avail compelling him to file O.A. No. 857/87.

10. O.A. No. 857/87 was heard along with O.A. No. 760/89 and both O.As were disposed of by order dated 27.4.93, referred to in Para 7 above, wherein upon noticing that the amended Rule 13 IES Rules had not been challenged which was essential in the facts and circumstances of the case, applicants in both O.As were permitted to challenge the amendment by filing a fresh application after treating the period during the pendency of the proceedings as explaining the delay, if a fresh application challenging the amendment was made within one month from that date. Accordingly applicant Shri Belwal filed this present O.A. on 25.5.93 challenging the Notification dated 22.9.89 retrospectively amending Rule 13 IES Rules w.e.f. 27.11.72.

11. On 8.4.96 both the present O.As were heard at length on certain preliminary objections raised in regard to (i) delay and laches and (ii) Non-impleadment, of necessary parties, in which one of us [Dr. A.Vedavalli, Member (J)] was a party. By detailed order dated 30.4.96 objections on both counts were rejected. While doing so the statement of Mr. S.B. Upadhyay Counsel for Dr. Belwal made at the bar which also endorsed by Mr. K.K. Rai, Counsel for Shri Nagesh Singh & Anr. was recorded, that they were not pressing any reliefs except quashing of the retrospective amendment to Rules and both cases were ordered to be listed on a subsequent date for further hearing.

12. Thereafter applicants in OA-1206/93 filed RA No. 96/96 while applicant in OA-1288/93 filed RA-212/96 seeking review of the aforesaid order dated 30.3.96 limiting their relief to quashing of the amendment to Rule 13 IES Rules. An MA for condonation of delay RA-212/96 was also filed which was allowed. Both OAs were heard at length by us, and by detailed order dated 28.1.97 we directed that both OAs be heard on each of the reliefs prayed for by applicants in each of the OAs,

subject to all the proper and necessary parties being impleaded in each of the O.As and further subject to the just defenses that the respondents may take in each O.A. Both cases were listed for further hearing.

13. During the course of further hearing, it was again contended by respondents both official as well as private, that all the persons likely to be affected had not been impleaded, as a result of which the O.A. suffered from non-joinder of proper and necessary parties. In this connection lists of persons likely to be affected in the event the prayer contained in the two OAs was allowed, was furnished by respondents. After hearing both sides on these contentions, by order dated 2.10.97 it was directed that persons mentioned in the lists should also be impleaded as proper and necessary parties before the OAs were finally disposed of, and accordingly applicants in both OAs were given time to implead the persons mentioned in the lists as respondents. Upon M.A. No. 2795/97 and M.A. No. 2743/97 being filed by applicants for impleadment of those persons likely to be affected, the same were allowed, and notices were ordered to be issued to the newly impleaded persons to file replies if any, after keeping adequate sets of OAs complete in all respects including attendant MAs and RAs available in the Registry, for inspection by parties to enable them to file their replies. After giving sufficient time to the newly impleaded respondents to file reply, both OAs were taken up for final hearing.

14. Various grounds have been taken by applicants in O.A. No.1206/93 including (i) the impugned amendment dated 27.9.89 (Ann. C) is void, as being arbitrary and opposed to Articles 14 & 16 of the Constitution, not having been done in accordance with law.

(ii) the impugned amendment could be sustained under Article 16(4) of the Constitution, only if an opinion had been formed regarding inadequacy of representation of the backward class which was sought to be represented, but no such opinion had been formed.

(iii) the impugned amendment could not take away applicant's rights which arose the moment R-2 to 7 were promoted.

(iv) The promotion of R-2 to 7 being void ab initio in contravention of unamended Rule 13, could not be set right by the impugned amendment.

(v) Only Indian Economic Service/India Statistical Service had been chosen for this discriminatory treatment. In no other comparable service was there such provision for reservation.

(vi) Promotion of R-2 to 7 was in clear violation of unamended Rule 13 as there was no reservation for SC/ST candidates from Gr. IV to Gr. III, the same being a promotion post.

(vii) Once R-2 to 7 had been promoted, applicants being senior to them, should have been promoted under Rule 8(1)(b)(1). The promotion of R. 2-7 being arbitrary, was violative of Articles 14 & 16.

15. In O.A. No. 1288/93 applicant Shri Belwal took the ground that the impugned amendment violated his Fundamental Rights under Articles 14, 15 & 16, as well as Rule 8(1)(b) and Rule 13 IES Rules which provided that if a junior was considered for promotion all his seniors would also be considered, and furthermore there was no reservation for promotion in the I.E.S.16. In both OAs the reply of the official respondents was broadly the same, namely that while it was true that Rule 13 IES Rules had not been amended at the time of the promotion of the Pvt. respondents, these promotions had been made as per general guidelines of Govt. of India which were applicable to other services and which provided for reservations in promotion, and Rule 13 IES Rules had been amended retrospectively w.e.f. 27.11.72 vide Notification dated 22.9.89, which was perfectly legal and constitutional.

17. Pvt. Respondents 2 to 7 in their reply to O.A. No. 1206/93 challenged the grounds taken by applicants thus : (i) The impugned amendment dated 22.9.89 was in accordance with Articles 16(a), 336 and 46 of the Constitution.

(ii) The satisfaction of the State with regard to the adequacy or inadequacy of representation of backward classes was taken care of by O.M. dated 27.11.72 of DP&T as well as the Explanation, Memorandum attached to amended Rule 13 IES

Rules.

(iii) Applicants were not promoted earlier than Pvt. respondents prior to the retrospective amendment. Hence no rights accrued to them.

(vii) Rule 8(i)(b)(1) had an entirely different purpose and meaning, and was inserted in the IES Rules only to protect the interests of those serving in remote areas.

Besides the aforesaid grounds, Pvt, respondents also challenged the O.A. No. 1206/93 on grounds of limitation and concealment by one of the applicants that he had separately been impleaded in C.A. No. 3844/89 UOI and Ors. v. T.R. Mohanty and Anr.

18. After impleadment of 24 additional private respondents pursuant to the order dated 2.10.97 they also filed their reply (except R-17, 21 & 22) to O.A. No. 1206/93. In this reply it was contended that 16 of them belonging to SC/ST were promoted from Group IV to Group III in IES on 1.6.90 on the basis of reservation in promotion for which they were eligible as per O.M. dated 27.11.72 issued by DOPT which was the nodal Ministry competent to issue reservation orders in favour of SC/ST as per Constitutional mandate of Article 16(a). It was contended that in order to provide for reservation in promotion from Gr. IV to Gr. III in IES for SC/ST, Rule 8(1)(b)(1) which prescribed merit with due regard to seniority, was amended on 7.7.73 to be seniority subject to fitness, and this amendment was made to carry out the objectives contained in the O.M. dated 27.11.72. The O.A. has also been opposed on grounds of limitation in which it has been contended that promotion of the private respondents made in 1990 cannot be challenged in 1998. Heavy reliance has been placed on the Hon'ble Supreme Court's judgment on Jagdish Lal and Ors. v. State of Haryana and Ors. dated 7.5.97 which itself relies on several other rulings. It is also contended that applicants' Counsel having earlier pressed only for quashing of the retrospective amendment to Rule 13 IES Rules which fact was recorded by the Tribunal in its order dated 30.4.96, applicants cannot now claim any other relief.

Furthermore it has been contended that in the case of UOI and Ors. v.T.R. Mohanty and Ors. (1997) 27 ATC 892, the Hon'ble Supreme Court has quashed only the retrospective operation of the amendment to Rule 13, but as these Pvt. respondents were promoted on 1.11.90 after the amendment dated 22.9.89 it would not affect their promotions.

19. Applicants have also filed their rejoinder to the reply of private respondents 3 to 7.

20. Similarly in their reply in O.A. No. 1288/93 Pvt, respondents 4 to 6 state that applicant was senior to them in Gr. IV IES but consequent to reservation given to SC/ST in promotion from Gr. III they were promoted in November, 1978 while applicant was promoted on 13.7.79, but he neither represented to Govt. nor challenged these promotions in any Court of law. He made his first representation only on 9.9.86 and filed O.A. No. 857/87 only on 9.9.86. He cannot challenge the reservation in promotion provided to SC/ST after more than 7 years by filing this O.A.No. 1288 in 1993, which is therefore barred by limitation. Secondly it has been argued that applicant is seeking a judgment on the lines of the Hon'ble Supreme Court's judgment dated 14.7.94 in UOI and Anr. v.T.R. Mohanty and Anr. (supra) but in that case the Hon'ble Supreme Court did not consider the written statements filed by SC/ST officers, nor indeed in C.A. No. 3845/89 Moolchandra and Ors. v. T.R. Mohanty and Ors. On each of the points raised by applicant Shri Belwal, the reply of private respondents 4 to 6 is as follows : (i) They are protected even without the amendment to Rule 13 IES Rules because their right accrued from 7.7.73 the date Rule 8(1)(b)(1) was amended to provide for promotion from Gr. IV to Gr. III on the basis of seniority which was in a consonance with DOPT's O.M. dated 27.11.72. They superseded applicant and were promoted in Nov. 78, but applicant represented against his suprecession only on 9.9.86 and filed O.A. No. 857/87 only on 27.5.87. Hence even if he had any right he had foregone the same.

(ii) Respondents were promoted after they fulfilled the efficiency criterion on specified by the statutory rules and no special consideration or relaxation in standards was given to respondents when they were promoted to Gr. III as well as to subsequently higher grades.

(iii) Applicant had not cared to amend his O.A. No. 857/87 after getting permission from the Tribunal nor cared to file a fresh application challenging the retrospective amendment to Rule 13 IES Rules though he had filed a number of MAs with his O.A. No. 857/87.

(iv) Applicant had been superseded by the reserved category officers who were his juniors by 10 years as admitted by him in Para 8(iii) of his O.A. (v) Respondent No. 6 had become senior to applicant as per his accrued right of promotion to seniority subject to fitness which gave the cadre controlling authority to provide for reservation in promotion as per O.M. dated 27.11.79.

21. We have heard Mr. K.K. Rai for applicants in O.A. No. 1206/93 and Mr. Ramchandani for the official respondents and Mrs. S. Pappu was heard on behalf of some of the private respondents, while some other private respondents made submissions in person. Similarly, in O.A. No.1288/93 we have heard applicant Dr. Belwal in person as well as his Counsel Mr. Gyan Prakash, while Mr. Ramachandani was heard on behalf of the official respondents. We have given the matter our careful consideration.

22. Official respondents in their letter dated 8.2.98, a copy of which is taken on record admit that the Indian Economic Service and the Indian Statistical Service have identical Rules. One Shri T.R. Mohanty an officer belonging to the Indian Statistical Service had filed O.A.No. 310/88 in CAT, Calcutta Bench with an identical grievance namely that respondents 3 to 10 in that O.A. had been promoted from Gr. IV to Gr. III by order dated 24.11.87 by superceding him, as he was senior to them. That O.A. was heard on merits and disposed of by judgment 28.11.88. During hearing, on behalf of applicant attention was drawn to Rule 8 ISS Rules, 1961 which required that promotion from Gr. IV to Gr.

III was to be made from officers with not less than 4 years regular service in the grade, and was to be made on the basis of seniority, subject to rejection of the unfit. Attention was also drawn to Rule 13 which provided that appointments to the service otherwise than by promotion would be subject to orders regarding special representation in the service for SC and ST as made by Govt. of India from time to time. Relying on this rule it was contended on behalf of applicant that it clearly

excluded any reservation of vacancies for SC & ST in cases of promotion and since all vacancies in Gr. III had to be filled by promotion from Gr. IV no reservation could be made in Gr. III vacancies for SC & ST. Respondents admitted that the aforesaid rule remained unamended till that point of time, although it was averred by them that Govt. was considering amending the Rule. However, as the rule as it stood at that point of time, excluded reservations in promotion, the Tribunal held that the promotion of these respondents by superceding applicant Shri Mohanty was legally not maintainable. However, they further observed that they would not like to disturb the promotions already made, and in the interests of justice ordered that applicant Shri Mohanty be deemed to have been promoted to ISS Gr. III w.e.f.

24.11.87 and would be placed above R-3 to 10 in the seniority list of GR. III, with salary in Gr. III w.e.f. 24.11.87 together with arrears.

23. Against that judgment dated 28.11.88 the respondents filed Civil Appeal No. 3844/ 89 in the Hon'ble Supreme Court which was dismissed by judgment dated 14.7.94, reported in (1994) 27 ATC 892. By that date Rule 13, ISS Rules, 1961 had been amended by notification dated 20.2.89 retrospectively w.e.f. 27.11.72 to provide for reservation for SC & ST even in appointments through promotion. In its aforesaid judgment the Hon'ble Supreme Court declared that amended Rule 13 to the extent that it had been made operative retrospectively, took away the vested rights of applicant Shri Mohanty and other general category candidates senior to R-2 to 9 and was unreasonable, arbitrary, and as such violative of Articles 14 & 16 of the Constitution, The retrospective operation of the Rule was therefore struck down.

24. Thereupon the UOI filed LA. No. 9/95 in a Contempt Petition arising out of Hon'ble Supreme Court's judgment dated 14.7.94 in C.A. No.3844/89. Certain clarifications were prayed for by UOI in the I.A., in which it was contended on their behalf that since large number of candidates were involved, it would not be in the interest of the administration to protect all the persons similarly situated like Shri Mohanty to the higher cadre to which R- 2 to 9 had already been promoted, and it was highlighted that if the judgment were implemented by protecting the

promotions of R-2 to 9, as many as 423 additional posts would have to be created to accommodate the general category candidates and similarly 300 posts in the Junior Administrative Grade cadre and 123 posts in the cadre of non-functional selection would have to be created. The UOI submitted that creation of such a large number of posts would create imbalance in the cadre and would also cause severe operational problems in the functioning of the department. After hearing both sides, the Apex Court by its order dated 27.3.95 had held that their judgment dated 14.7.94 would have to be implemented.

Appreciating the difficulties highlighted by the UOI they were of the view that UOI should make all efforts to protect the promotions of SC candidates if possible, but if in the implementation of the directions given by them, it became necessary to revert the SC candidates from the higher posts to which they had been promoted under the existing unamended or amended rules, that may be done and the Tribunal's judgment was modified to the extent. The Apex Court made it clear that any financial benefits given to the SC candidates while working in the higher posts should not be withdrawn and be protected as personal to them. They further made it clear that Shri Mohanty would be entitled to the relief keeping in view his position his seniority so far as general category candidates were concerned, and if in the process he was reverted to the lower post no recovery would be effected from him in respect of money already paid to him.

25. As the retrospective operation of amended Rule 13, ISS Rules, 1961 has been struck down by the Hon'ble Supreme Court as being unreasonable, arbitrary and violative of Articles 14 & 16 of the Constitution in Mohanty's case (supra) manifestly the applicants in the two OAs before us have a legally enforceable right to claim that the ratio of that judgment be extended to them also, and the retrospective amendment to Rule 13, IES Rules, 1961 be also similarly struck down, as the IES Rules are identical with the ISS Rules. In fact not to do so would be to treat persons similarly placed dissimilarly, and subject applicants in the two OAs before us to hostile discrimination which itself would be violative of Articles 14 & 16 of the Constitution.

26. In this view of the matter, the stand of the official respondents that the impugned promotions had been made as per general guidelines of Govt. of India which were applicable to other services and the retrospective amendment of Rule 13 IES Rules vide Notification dated 22.9.89 w.e.f. 27.11.72 is valid and constitutional, has no merit.

27. Coming to the stand taken by the private respondents 2-7 referred to in Para 7 above, manifestly their contention that the impugned amendment dated 22.9.89 was in accordance with the Articles 16 (a), 336 and 46 of the Constitution, is without merit in view of the judgment in Shri Mohanty's case referred to above. Similarly their stand that the satisfaction of the State with regard to the adequacy or inadequacy of representation of backward classes was taken care of by O.M. dated 27.11.72 as well as the Explanatory Memorandum attached to amended Rule 13 is no defence, when the retrospective application of the memorandum itself has been struck down in Shri Mohanty's case (supra), has been violative of Articles 14 & 16 of the Constitution, similarly the contention that no rights accrued to applicant is equally misconceived in view of the clear ruling in Shri Mohanty's case referred to above, that his vested rights as well as of those other general category candidates could not be taken away. Similarly private respondents' contention that such provisions were in existence in other services is no defence in the present case, and we are not inclined to accept their contention that there was reservation for SC & ST in promotions under the ISS Rules even without amended Rule 13. The purpose behind Rule 8(1)(b)(1) is not relevant in the facts and circumstances of the present case, as we have to proceed strictly in accordance with law.

28. As regards the grounds taken by the additional private respondents as discussed in Para 18 above, even if Rule 8(1)(b)(1) was amended on 7.7.73. neither the amended Rule 8(1)(b)(1) nor the Rule 13 (unamended) permitted for reservation in matters of promotions and in fact Rule 13 (unamended) IES Rules, 1961 clearly stated that only appointments to the service made otherwise than by promotion would be subject to orders regarding special representation of SCs & STs issued by Govt. from time to time.

29. As regards the grounds of limitation the Tribunal in its order dated 27.4.93, while permitting applicants in both O.As to challenge the amendment to Rule 13 IES Rules, 1961 by filing a fresh application within a period one month, had also observed that as petitioners had been bonafide pursuing their remedies before the Tribunal the period spent during the pendency of these proceedings was to be recorded as explaining the delay, and applicants did file these two O.As before the Tribunal within the prescribed period of one month. We as a Co-ordinate Bench are therefore bound by the Tribunal's order dated 27.4.93. Even otherwise the Hon'ble Supreme Court in K.C. Sharma v. UOI SLJ 1998 (1) SC 54 has held that applications filed by similarly placed persons should not be rejected on the ground of limitation, and furthermore of the violation of a statute is a continuing offence which operates on a continuing basis, limitation is renewed with every passing day as has been held in G.K. Sharma v. UOI, 1989 (1) SLJ (CAT) 1. Applicant's Counsel has invited our attention to several other judgments which emphasise that in a case such as this, the plea of limitation cannot be taken to defeat the just claims of the citizens. These ruling include A. Sagayanathan and Anr. v. DPO, SBC Div., Southern Railway AIR 1991 SC 424; Madras Port Trust v. Himanshu International 1979 (1) SLR 757 (SC); Tota Ram Sharma v. UOI, 1991 (18) ATC 367; Collector Land Acquisition, Anantnag v. Ms. Karitje & Ors., AIR 1987 SC 1353 and R.N. Chaddha v.UOI, 1988 (2) SLJ (CAT) 273.

31. In so far as the applicants' Counsel having earlier pressed only for quashing of the retrospective amendment to Rule 13 IES Rules is concerned, it is true that at an intermediary stage of the case, applicants had pressed only for quashing of the retrospective amendment to Rule 13 but as pointed out above, after hearing all the parties at length, by our detailed order dated 28.1.97, we had directed that in the interest of justice, both O.As be heard on each of the reliefs prayed for by the applicants in each of the two O.As, subject to all the proper and necessary parties be impleaded in each of the two O.As, and further subject to the just defences that the respondents may take in each O.A. We see no reason to depart from what we have held vide order dated 28.1.97 and hence this ground taken by the respondents is also rejected.

32. In so far as the argument that the private respondents were promoted on 1.11.90, and hence would not be affected by the amendment dated 22.9.89 is concerned, it was the retrospective operation of the amendment to the Rule 13 which was struck down in Shri Mohanty's case referred to above, which ratio would also apply in the present case. In other words the promotions made effective from a date after the date of issue of the Notification amending Rule 13 would not be effected.

33. In so far as the objections taken by the private respondents 4 to 6 in O.A. No. 1288/93 as discussed in Para 20 above are concerned, the plea of limitation has already been considered and rejected, as the violation of a statutory rule is a continuing cause of action.

Furthermore the argument that the private respondents were promoted after they fulfilled their efficiency criteria is no defence when the promotions were made in violation of applicants' vested rights, it is also not correct to say that the applicants have not filed their applications challenging the retrospective amendment to Rule 13 IES Rules, and any promotions made in violation of unamended Rule 13 which sought to regularise such promotions by amending Rule 13 retrospectively takes away the vested rights of the applicants and hence is violative of Articles 14 & 16 of the Constitution.

34. Private Respondents' Counsel Mrs. Pappu has relied upon certain rulings including R.K. Sabharwal v. State of Punjab, AIR 1995 SC 1371; JT 1996 (2) SC 374; and S.N. Yadav v. BSEB, 1985 (3) SCC 38 but in the facts and circumstances of this particular case, we are clear of the view that we are bound absolutely by the Hon'ble Supreme Court's ruling in UOI v. T.R. Mohanty (supra) which has been reiterated by the Hon'ble Supreme Court in their order dated 27.3.95 in LA. No. 9/95. Official Respondents themselves admit that the Indian Economic Service and Indian Statistical Service have identical rules and what has been held to be unreasonable, arbitrary and violative of Articles 14 & 16 of the Constitution in regard to the Indian Statistical Service Rules, cannot be allowed to stand in respect of Indian Economic Service Rules.

35. In the result these two O. As succeed and are allowed to the extent that following the Hon'ble Supreme Court's judgment in Shri Mohanty's case (supra), the promotions made of those SC/ST candidates under Rule 13 (unamended), IES Rules, 1961 without considering the case of the applicants in the two O.As before us, is held by us to be legally unsustainable. Furthermore, the retrospective operation of the amendment to Rule 13, IES Rules to the extent that the same takes away the vested rights of the applicants and other general category candidates is also unreasonable, arbitrary and as such violative of Articles 14 & 16 of the Constitution and is, therefore, struck down.

36. In the light of the above, respondents are directed to review the impugned promotions and consider the cases of the applicants for promotions from the date the impugned promotions were made, with all consequential benefits. While doing so the Respondents should make all efforts to protect the promotions of reserved category candidates to the extent possible, but if it becomes absolutely necessary to revert them from the higher posts to which they have been promoted under the unamended or amended Rules that may be done. While doing so, however, any financial benefits given to them while working in the higher posts should not be withdrawn and should be protected as personal to them.

37. These directions should be implemented within four months from the date of receipt of a copy of this order. No costs.

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