

Arpan Kumar and Others Vs. Union of India and Another

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Mar-07-2012

Judge : V.K. Bali, Chairman & the Honourable Dr. Ramesh Chandra Panda, Member (a)

Appeal No. : Original Application No.1051 of 2010 & Misc. Application No.791 of 2010

Appellant : Arpan Kumar and Others

Respondent : Union of India and Another

Advocate for Pet/Ap. : For the Applicants: Ms. Jyoti Singh, Sr. Advocate with Yogesh Sharma, Amandeep Joshi, Advocates. For the Respondents: V.S.R. Krishna, Advocate.

Judgement :

V.K. BALI, CHAIRMAN:

1. As usual in all service disputes, so also in this Original Application, pleadings are too voluminous, but the points involved for our adjudication appear to be in a very narrow compass. That being so, we would give only such facts which are relatable to the controversy in issue, and would avoid unnecessary verbiage.

2. Anupam Kumar and twelve others, the applicants herein, were appointed as Senior Supervisors in Electrical Department. Thereafter they came to be appointed

as Assistant Electrical Officers in Group 'B' on different dates. Next promotion is through induction in Group 'A' as Junior Scale Officers, in terms of para 209 (B) 1 of the Establishment Code 1985 of the Indian Railways, which reads as follows:

"Para 209 (B) 1

Promotion from Group 'B' to Group 'A' Junior Scale-Appointments to the posts in the junior scale shall be made by selection on merit from amongst group 'B' officers of the departments concerned with not less than 3 years of non-function service in the Grade."

Recruitment in Group 'A' of the Electrical Engineering Department is done in terms of rule 4 of the Indian Railway Service of Electrical Engineers Recruitment Rules, 1962 (amended in 1979), relevant provision whereof reads as follows:

"Method of Recruitment

Recruitments to the services shall be by the following methods:

By competitive examination held in accordance with part II of these rules.

By promotion of specifically qualified class II officers, including officiating class II officers of the Electrical Engineering Deptt.

Not more than 40 percent of the vacancies shall be filled by departmental promotion. This percentage is likely to be varied from time to time, if found necessary.

Note: If the quota of 40 percent reserved for class II officers for promotion to class I is not fully utilized, the remaining vacancies shall be filled by direct recruitment under clause (a)."

It is the case of the applicants that the quota for recruitment as mentioned above was initially fixed as 40% for Class II (now Group 'B') with effect from February, 1978, but the said quota for Group 'B' was further increased to 50% w.e.f. 01.01.1997, vide Railway Board's notification dated 31.01.1997. Despite increase in the quota, as mentioned above, the posts were, however, not filled due to

variety of reasons, which has been mentioned in the OA, but which need not be detailed. Non filling-up of the posts by Group 'B' officers, it is the case of the applicants, resulted in large scale stagnation in the cadre of Group 'B' officers, which attracted the attention of the respondents, who studied the situation and brought out certain facts, leading ultimately to increase in the posts to be filled up by way of promotion. The facts brought out in the study have also been mentioned in the OA, but would need no reiteration. The factors operating cumulatively for such imbalances have also been given in para 4.7, and once again, need not be mentioned. It is further the case of the applicants that in view of the large scale stagnation in the cadre of Group 'B' officers, the Railway Board vide orders dated 15.06.1992 in consultation with UPSC decided to allot additional posts for induction to Group 'A' for five departments only (out of eight departments) as under:

Civil Engg.	238
SandT Deptt.	76
Electrical Engg.	52
Personnel Deptt.	49
Traffic Deptt.	48
Total	463

The decision aforesaid was arrived at after thorough probe made by UPSC. The additional vacancies were thus allotted and approved after through scrutiny by UPSC, vide letter dated 05.03.1991. A decision was taken that the additional vacancies would be included in the DPCs being conducted for the years 1989 and 1990 in full, for four departments, i.e., Personnel, Traffic, Electrical and SandT and Civil Engineering, in the DPC for the vacancies of 1989, 1990 and 1991. Promotion from Group 'B' to Group 'A' Junior Scale is done through selection conducted by a DPC chaired by Member of UPSC, and three representatives of the Ministry of Railways forming part as its members. Consequently, DPCs were conducted in the year 1992 (for 1989-90) for all the five departments as mentioned above. In 1992, DPC headed by Member, UPSC as its chairman, was conducted for induction of cadre of Group 'B' services in Group 'A' for the years 1989-90, 1990-91, and for additional 52 vacancies for the Electrical Department. The DPC

for the total number of vacancies, i.e., 26 for 1989, 21 for 1990 and 52 additional vacancies on account of stagnation, i.e., total 99 vacancies, were conducted in the month of February 1992, and notifications in that regard came to be issued appointing 81 Group 'B' officers in Group 'A' w.e.f. 03.03.1992. In addition to this, DPC for selection for the quota vacancies of 1992 was conducted and the result notified in the years 1993, 1994 and 1995 to be effective from 18.11.1992. Notification dated 10.02.1994 was then issued fixing the inter se seniority of the 81 officers referred to above, indicating their seniority vis--vis direct recruits. A spate of Original Applications thereafter came to be filed in different Benches of this Tribunal against the grant of additional vacancies to Group 'B' officers for induction in group 'A' by the direct recruitment persons. Details of the cases so filed have been given by the applicants in tabular form, which reads as under:

Year	OA No.	Titled	CAT	For Deptt
1993	574 of 1993	Anil K. Sanghi and others Vs UOI and ors	Principal Bench, New Delhi	Signal and Telecommunication case decided on 4.8.1995
1993	865 of 1993	Ranjan Yadav Vs UOI and others	Jabalpur Bench	Civil Engg 5.8.1994
1994	283 of 1993(MP 6641/93)	P. Vishwanathan Vs. UOI	Madras Bench	Traffic and Comml decided on 14.2.1994
1994	1133 of 1994	Manoj Mahajan and ors. Vs UOI and others	Bombay Bench	Elect. Engg decided on 13.11.2000

All the OAs involved common question of law, which was as regards whether the increased seats would en bloc go to promotional quota or would have to be filled up by the quota as fixed under the rules. Various Benches of the Tribunal decided the matter as follows:

MadrasBench

“Govt. has power to enhance the quota, hence writ petition of direct recruits dismissed.”

JabalpurBench

“Govt. has no power to enhance the quota rule regarding carry forward.”

Principal Bench

“Govt. has no power to enhance the quota. Modified carry forward rule directed.”

BombayBench

“Govt. has no power to enhance the quota. Modified carry forward rule given.”

It is admitted position that the Principal Bench of the Tribunal dealing with OA No.574 of 1993 in the matter of Anil K. Sanghi and others v Union of India and others, decided on 04.08.1995, which pertained to the Signal and Telecommunication Department, held that the Government had no power to enhance the quota to be allocated to promotees only. Insofar as, the Department of Electrical Engineering, to which the applicants belong, is concerned, the matter was dealt with by the Bombay Bench in OA No.1133 of 1994 in the matter of Manoj Mahajan and others v Union of India and others, decided on 13.11.2000. It is not in dispute that the Bombay Bench simply followed the judgment of the Principal Bench in OA No.574/1993. It is also not in dispute that insofar as the applicants are concerned, they were not arrayed as party respondents in the OA before the Bombay Bench. The judgment of the Principal Bench, on which exclusively the judgment of the Bombay Bench was based, came to be challenged before the Hon'ble Supreme Court in Civil Appeal No.92 of 1997 in the matter of Indian Railway Promotee Officers Federation and Union of India v Anil Kumar Sanghi and others, in which on 23.09.2002 the Hon'ble Supreme Court set aside the order dated 04.08.1995 passed by the Principal Bench, and held that there was no illegality in appointing 127 Group 'B' officers of SandT Department to the Junior Scale Group 'A' vide order dated 15.09.1992. It was also observed that the

Tribunal had committed an error of law in interpreting the relevant rule. The provisions of rule 4 of IRSSE (Group 'A') for variation of percentage from time to time in case of necessity, were held for all practical purposes to be equivalent to the power of relaxation. Copy of the judgment of the Hon'ble Supreme Court has been annexed by the applicants with the OA. All that further needs to be mentioned is that even though the judgment of the Bombay Bench as regards Electrical Department was delivered in the year 2000, but the benefit of additional vacancies had been given to the said Department for 99 vacancies vide notification dated 25.04.1992 with effect from 03.03.1992, and notification dated 18.11.1992 with effect from 18.11.1992, but subsequently the additional vacancies were taken back by the Railway Ministry vide notification dated 11.6.1996 and fixation of seniority was so modified vide notification dated 08.12.1996. The DPCs for the additional 52 vacancies which were to be held later, were also not held. It appears that after the decision was recorded by the Hon'ble Supreme Court in 2002, the applicants have been requesting the Railway Administration from time to time for implementing the ratio of the decision of the Apex Court. It is the case of the applicants that on representation, they were given assurance by the respondents. On 30.08.2004, a letter came to be issued by IRPOF to the Chairman, Railway Board for their immediate intervention in the process of induction for additional 93 vacancies of Electrical Department in the year 1992 of Group 'B' officers to Group 'A'. It is the case of the applicants that a letter was issued by IRPOF to Chairman, Railway Board requesting for conducting DPC in respect of 79 vacancies in Civil Engineering Department from Group 'B' to Group 'A' for the years 1992 to 1995, and the shortfall of 90 vacancies from 1989 to 2000 be also filled in view of the judgment of the Hon'ble Supreme Court dated 23.09.2002. Between 30.08.2004 and 07.06.2005, the issue of implementing the judgment of the Supreme Court came up for formal discussion before the Railway Board, and the Board agreed to consider the issue. It is further the case of the applicant that on 10.01.2005 during the meeting of IRPOF with the Railway Board, the respondents assured to reconsider the issue of implementation of the judgment of the Supreme Court in the case of Civil Engineering and Electrical Engineering departments as well, thereby inducting Group 'B' officers to Group 'A' as per rule 4 of IRSE against the 238 vacancies sanctioned by UPSC, and 52

vacancies plus vacancies of 1993 (19 vacancies) and 1995 (13 vacancies) for the Electrical Engineering department, but no response came further to any application of the applicants. The applicants thereafter also submitted representations for which the respondents would assure them.

3. It is in wake of the facts as fully detailed above that the present Original Application has been filed with the prayer to issue direction to the respondents to fill the additional 52 posts approved for filling up by the Railway administration on account of acute stagnation in the department of Electrical Engineering, and also for filling up the vacancies for the years 1993 and 1995 (19 and 13 respectively), DPC for which has not been convened yet, with all consequential benefits. The other prayer of the applicants is to extend the benefits of the judgment dated 23.09.2002 passed by the Hon'ble Supreme Court by inducting the applicants and others belonging to Electrical Engineering Department as per rule 4 of the Recruitment Rules against the additional posts approved for filling up by the Railway Administration on account of acute stagnation in the department of Civil Engineering.

4. Pursuant to notice issued by this Tribunal, the respondents have filed a short reply, wherein it has inter alia been pleaded that the OA is highly belated and would be barred by limitation. It is pleaded that the reliefs asked for in the OA as regards direction to the respondents to fill up 52 additional posts in the promotion quota pertaining to recruitment year 1990, would be highly belated and hit by the provisions of Section 21 of the Administrative Tribunals Act, 1985. The other relief asked for by the applicants as regards extension of benefits of the judgment dated 23.09.2002 in the case of Electrical Engineering department passed by the Hon'ble Supreme Court is stated to be misconceived since the said judgment was passed in the case of Signal and Telecommunication department. It is then pleaded that in pursuance of the interim directions dated 21.12.1995 passed by the Bombay Bench in OA No.1133/1994, promotee Electrical Engineers so promoted on these 52 vacancies were adjusted in future promotee vacancies. Subsequently, the Bombay Bench vide order dated 13.11.2000 allowed the OA aforesaid and the directions have been complied with. The order of the Bombay Bench, it is stated, has attained finality, and, therefore, present OA would be

barred by the doctrine of res judicata or constructive res judicata. It is pertinent to mention here that the respondents have chosen to contest the matter only on technical points as mentioned above, and, therefore, it would be construed that the facts as mentioned in the OA are not in dispute. The applicants have filed rejoinder, and some additional affidavits have also been filed, but there would be no need to refer to the contents thereof as nothing based thereon has been urged during the course of arguments.

5. When this matter came up for hearing before us on 20.01.2012, we passed a speaking order, making mention of the basic facts of the case, the main points canvassed in support of the OA, and the preliminary objection raised by the respondents as regards limitation, etc., and directed the respondents to file an additional affidavit specifically stating as to whether the posts that may come in the share of direct recruits have been filled, and if so, when. An additional affidavit has been filed, but is it significant to mention that there is no averment that any vacancy out of 52 which may have gone to the share of direct recruits, in view of the judgment passed by the Bombay Bench of the Tribunal, has been filled. All that is stated earlier and now is that the 52 vacancies have been adjusted for future vacancies.

6. We have heard the learned counsel representing the parties and with their assistance examined the records of the case. The parties have also placed on records written arguments, which have been perused by us. The respondents, as mentioned above, while not disputing the facts incorporated in the pleadings made in the OA, have chosen to canvass dismissal of the OA only on technical grounds, which we shall mention hereinafter. The question of law that may need determination in the present case needs to be adjudicated. As mentioned above, it is not in dispute that insofar as the decision of the Bombay Bench of the Tribunal in OA No.1133/1994 is concerned, the same was exclusively based upon the decision rendered by the Principal Bench in OA No.574/1993. There is no dispute that insofar as the decision of the Principal Bench is concerned, the same pertained to the department of Signals and Telecommunication, whereas the decision recorded by the Bombay Bench is as regards the department of Electrical Engineering, to which the applicants belong, but no distinction is made nor can be

it be possibly made in the two decision, one recorded by the Principal Bench and the other by the Bombay Bench, only because the departments were different. It is by a common order that the posts were increased in all departments. The increase in the posts in the Electrical Engineering department is 52. Ms. Jyoti Singh, learned Senior Advocate representing the applicants, on the admitted facts, as mentioned above, would contend that once the decision of the Bombay Bench, which is exclusively based on the decision of the Principal Bench, and when the decision rendered by the Principal Bench has been over-turned by the Hon'ble Supreme Court, the judgment recorded by the Tribunal at Bombay Bench would be deemed to have been impliedly over-ruled. We find merit in the contention of the learned senior counsel, as noted above. Ms. Jyoti Singh, for her contention as noted above, has placed reliance upon the judgment of the Hon'ble Supreme Court in State of Uttarakhand and another v Rajendra Singh Arya and another [(2010) 11 SCC 756], which, indeed records that in a situation as the one in hand, the judgment which may be based exclusively upon another judgment which has been over-turned, then such judgment shall have to be set aside and the matter be remitted to the High Court for decision on merits. This judgment may not be completely covering the issue, but there was no dispute as well during the course of arguments that theory of implied over-ruling would apply. We have no doubt in our mind that in consequence of the Supreme Court setting aside the judgment of the Principal Bench in OA No.574/1993, the decision of the Bombay Bench, even though not specifically challenged, shall have to be held as having been impliedly over-ruled. Shri V. S. R. Krishna, when we heard oral arguments, would have nothing much to say on the issue as mentioned above, but in the written arguments it has been mentioned that the issue stands settled by the decision of the Bombay Bench of this Tribunal, and the doctrine of deemed over-ruling would not apply in the present case, since the judgment of the Bombay Bench has not been challenged in any higher judicial forum, and as a matter of fact, has been implemented. In support of the plea as raised in the written arguments, as mentioned above, reference is also to a judgment in some K. Ajit Babu's case. There is no citation of the judgment, nor copy of the same has been attached with the written arguments as noted above. The doctrine of deemed over-ruling would come into play only where there is no specific over-ruling, and, therefore, non

challenge to the judgment of the Bombay Bench, and to contend for that reason that the deemed over-ruling theory would not apply, is not correct, and thus cannot be accepted. As mentioned above, we have not been made aware of the law laid down in K. Ajit Babu's case, as there is no citation mentioned, so that the Tribunal might have located the judgment itself to see as to whether the same might have been applicable or not, nor even copy of the same has been annexed along with the written arguments. Shri Krishna would press dismissal of the OA on technical grounds, such as limitation, delay and laches, locus standi of the applicants, non-impleadment of direct recruits, unsettling settled seniority at this distance of time, res judicata and doctrine of precedent. The last ground has since already been dealt with, but the others we shall deal with in seriatim, but before we may do that, we may mention that the Government, which, in the Indian Democracy, is a Welfare State, of late have started raising all issues conceivable under the sun in opposing the cause of a citizen, even though he may have cast iron case on merits. Issues such as limitation, delay and laches, non-joinder of parties, not exhausting alternative remedies, mis-joinder of causes of action, etc., are often seen pressed by the State in almost every case. But for stating this as a factual position in most of the cases, we will comment nothing more, and leave the matter at that.

7. Shri Krishna contends that the present OA would be hopelessly barred by limitation. The statutory period of limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985 is one year from when the final order is passed, and one and a half year if representation or appeal as envisaged under rules is not decided by the competent authority. It is urged that in the present case, 52 vacancies that were created were meant to be filled exclusively from amongst promotee quota Electrical Engineers for the recruitment year 1990, whereas the OA for filling up the said vacancies has been filed in the year 2010, more than twenty years from 1990, and would thus be patently barred by limitation. The applicants have prayed for filling up the additional 52 vacancies sanctioned over and above the 40% promotion quota to remove long standing stagnation, and in that regard, the primary plea of the applicants is that the respondents have refused to extend the benefit of the judgment of the Hon'ble Supreme Court dated 23.09.2002, despite the fact that in other three departments the said judgment has

been implemented. It may be recalled that in all four departments, vide a common order the vacancies for promotion were increased after realizing acute stagnation of promotees to occupy higher/promotional posts. In all, 463 seats were increased. In Civil Engineering and SandT department the increase of posts was to the extent of 238, whereas in Electrical Engineering, Personnel and Traffic departments, the increase was 52, 49 and 48 respectively. It is the positive case of the applicants, and not denied anywhere, even in the written arguments, that it is only as regards the Electrical Engineering department, to which the applicants belong, that the benefit of the judgment of the Apex Court has not been extended, whereas, with regard to all other departments the judgment has been followed and implemented. There could not be any occasion for the applicants to have agitated the issue till such time the Hon'ble Supreme Court set aside the judgment passed by the Principal Bench of the Tribunal. The said Judgment came to be passed by the Supreme Court on 23.09.2002. The judgment, as mentioned above, was implemented for the other three departments only in 2007. The unrebutted pleadings that have been made in the OA would reveal that the applicants have been making representations for the respondents to redress their grievances, and on occasions, not only that the respondents were assuring them that the needful would be done in the matter, but positive notes were also being recorded. We may mention at this stage that it is the case of the applicants, and as mentioned above, not disputed by the respondents in their reply, that after the decision of the Apex Court in 2002, the applicants have been requesting the Railway administration from time to time to implement the ratio of the decision aforesaid, and that they were given assurances by the respondents. On 30.08.2004, a letter came to be issued by IRPOF to the Chairman, Railway Board for their immediate intervention in the process of induction for additional 93 vacancies of Electrical Department in the year 1992 of Group 'B' officers to Group 'A'. It is the case of the applicants that a letter was issued by IRPOF to Chairman, Railway Board requesting for conducting DPC in respect of 79 vacancies in Civil Engineering Department from Group 'B' to Group 'A' for the years 1992 to 1995, and the shortfall of 90 vacancies from 1989 to 2000 be also filled in view of the judgment of the Hon'ble Supreme Court dated 23.09.2002. It is further the case of the applicants that between 30.08.2004 and 07.06.2005, the issue of implementing the judgment of the Supreme Court came

up for formal discussion before the Railway Board, and the Board agreed to consider the issue, and that on 10.01.2005 during the meeting of IRPOF with the Railway Board, the respondents assured to reconsider the issue of implementation of the judgment of the Supreme Court in the case of Civil Engineering and Electrical Engineering departments as well, thereby inducting Group 'B' officers to Group 'A' as per rule 4 of IRSE against the 238 vacancies sanctioned by UPSC, and 52 vacancies plus vacancies of 1993 (19 vacancies) and 1995 (13 vacancies) for the Electrical Engineering department. The applicants submitted representations thereafter as well. At no stage, the respondents took a positive stand so as not to implement the judgment of the Supreme Court in the case of the department of the applicants. Rather, all through it was under consideration, with positive notes, as mentioned above. Last representation of the applicants appears to have been made on 22.09.2009, and when the same also brought no tangible results, nor even an adverse order was passed, the present OA came to be filed on 23.03.2010. In the facts and circumstances of this case, we do not find the OA to be barred either by limitation or suffering from unexplained delay and laches. This Tribunal was confronted with almost a similar situation, where, even though prima facie it appeared that the OA may be barred by limitation, but when the respondents were themselves considering the case of the applicant, it was found that the OA would not be dismissed on the plea of bar of limitation. We may refer to the pertinent observations made by us in OA No.104/2008 in the matter of Dev Sharma v Government of NCT of Delhi and others, decided on 17.11.2008, thus:

"We would have delved further in the matter, but the facts of the case are such that the plea of limitation raised by the respondents needs to be rejected for variety of reasons. It may be recalled that the claim of the applicant for promotion to the post of Grade-IV (DASS)/LDC was never in dispute. When OA No.1658/2006 came to be filed, the respondents, pursuant to notice issued to them, in their counter reply themselves pleaded that the service particulars of the applicant received from the concerned DDO/HO had been forwarded to the Services Department, and his case for promotion to Grade-IV (DASS)/LDC was under consideration with the Services Department. Not only that the right of the applicant for promotion was acknowledged in writing, pursuant to time-bound directions issued by this Tribunal the applicant had indeed been promoted as well.

When the respondents themselves were all through considering the case of the applicant for promotion and the same, thus, in other words, was never rejected, there would be no plea of limitation for the applicant to seek redressal of his grievances. Terminus a quo for limitation is normally when the right of a party is denied. We may reiterate that at no stage the right of the applicant for promotion was denied. The respondents had always been considering his case but appropriate orders could not be passed only due to lack of receipt of his service particulars by the concerned department.”

We may also refer to our judgment in OA No.2456/2008, which came to be dismissed by us in limine, but by a speaking order on 22.11.2008 in the matter of Arun Kumar Srivastava v Union of India and others. The OA aforesaid was dismissed being barred by limitation. The facts of the case would reveal that the applicant was seeking seniority over and above Shri Farid Ahmad, the 4th respondent arrayed in the OA. It was his case that the said respondent had been wrongly shown above him in the seniority list. He made representation, which was rejected on 25.08.1998 stating that the seniority list circulated on 09.10.1998 had been prepared in accordance with the instructions of the Government of India in that regard, and, therefore, his request could not be acceded to. The applicant made another representation on 21.01.2004, and thereafter in 2008. In the facts, as mentioned above, we were of the view that once, the representation of the applicant had been rejected way back in 1998, his repeated representations in 2004 and 2008 would not revive a cause of action that stood barred by limitation. Our order was challenged before the High Court of Delhi in WP(C) No.502/2009, and vide order dated 10.02.2009, the same was set aside and the matter was remitted to us for fresh decision. The reason why our order was set aside was that the respondents had acted upon second representation that was made by the applicant in 2004. So much so, the respondents had sent the representation to Under Secretary, Ministry of Culture on 05.10.2007 to obtain the advice of DOP and T in this regard. The original records summoned by the High Court revealed that after receiving the clarification, there was noting made in the file that further necessary action in accordance with the advice of DOP and T be taken. Thereafter there was another noting dated 21.10.2008 seeking comments of UPSC through Ministry of Culture and that too for making further submissions. The

issue as regards seniority was thus under consideration. Considering the merits of the controversy and being prima facie of the view that the applicant would be senior to the fourth respondent, the High Court observed that if the matter was pending active consideration with the department and the clarification given also went in favour of the applicant, the case should not have been dismissed in limine. The OA aforesaid is still pending, but based upon the decision of the High Court remitting the matter, we dismissed a review application bearing RA No.279/2011 in OA No.364/2010 in the matter of P. S. Behl v Government of NCT of Delhi, decided on 23.09.2011. O.A. No.364/2010 filed by Kuljit Singh was allowed by us vide order dated 01.12.2010. P. S. Behl, the fifth respondent arrayed in the OA aforesaid, filed a writ petition bearing WP(C) No.8314/2010 in the High Court of Delhi, which was disposed of on 11.08.2011 by recording the following order:

“1. After some arguments, learned counsel for the petitioner on instructions from the petitioner, who is present, seeks to withdraw the petition with liberty to approach the Tribunal to seek review of impugned order dated 1st December, 2010 with regard to his plea that the original application of the respondent No.5 was barred by time, as the said plea was taken as preliminary objection and was also canvassed before the Tribunal. However, the Tribunal had not decided the same.

2. The writ petition is dismissed as withdrawn with the liberty as prayed for, without prejudice to the other grounds and contentions raised by the petitioner in the writ petition which will be open for challenge.

3. The interim order granted by this Court by order dated 14th December, 2010, and any relief availed by the petitioner on account of interim order, however, shall continue for another four weeks. For period after four weeks, it will be open to the petitioner to approach the Tribunal for continuation of interim order and any relief availed by him, in accordance with law.

4. Dasti.”

Shri Behl thus filed an application seeking review of our order dated 01.12.2010. Without going into the question as to whether the plea was raised before us

originally when the OA was disposed of, we went into the question of limitation. On facts, we found that the dispute raised by Kuljit Singh, the original applicant, as regards his seniority over and above P. s. Behl was being considered by the respondents themselves, and on number of occasions favourable orders also came to be passed, but ultimately when he was not given the desired relief, he filed the OA aforesaid. In that regard, we observed as follows:

“7. What clearly emerges from the factual scenario as mentioned above is that the applicant in very close vicinity of the orders dated 31.5.2004 and 22.6.2004, had made representation. It is not a case where representation of the applicant might have evoked no interest with the official respondents. The same was considered and found to have merit. We have given in details the way and manner the representation of the applicant came to be considered, and the orders passed thereon from time to time. Present is a case where not only that the respondents were actively considering the representation of the applicant, but all through favourable orders were being passed. So much so, the 5th respondent was issued memoranda as to why the orders giving him promotion from the dates as mentioned above should not be recalled. The fact that the matter was under consideration with all kinds of favourable comments, advices and orders, as mentioned above, is not in dispute. We are of the considered opinion that a citizen who may have been assured by positive orders having been passed from time to time that justice is likely to be done to him, could well await the final outcome of the matter, and in these circumstances, the terminus a quo for limitation would not commence.”

We then referred to the orders passed by the High Court against our decision dated 22.11.2008 in the matter of Arun Kumar Srivastav (supra). After referring to the orders passed by the High Court, as mentioned above, we observed as follows:

“Surely, the order of this Tribunal was set aside on the ground that the matter as regards representation of the applicant, which was second in series thereof, made after six years of rejection of the first representation and was considered, would not entail, even though prima facie, dismissal of the lis being barred by time.

Surely, if favourable consideration of the cause of an employee would be irrelevant, there was no question of the order of the Tribunal being set aside and its remittance for decision afresh. What can clearly be gathered from the orders of the High Court is that when a citizen is made to believe by some positive action or orders passed by the authorities that his case is under consideration, and when favourable advice, comments or orders are also passed, the terminus a quo for limitation would not commence.”

8. As regards locus of the applicants, it is the case of the respondents, as mentioned in the written arguments, that none of the applicants were eligible or within the zone of consideration in the year 1990 for being in a position to raise the grievances, if any, as regards filling up of the vacancies in the year 1990. This plea has to be rejected, as even if it be so that out of the applicants before us none of them may be eligible for promotion immediately in 1990, but surely if those above the applicants were to be promoted, admittedly the case of the applicants for promotion to the next higher post in Group ‘A’ would mature far earlier than if their seniors were not to be promoted by allocating all the 52 seats to promotees. Therefore, there may not be an immediate advantage to the applicants, but the fact being that they were bound to have the advantage of the increase in the seats to be filled only by promotees, it cannot be said that they would have no locus standi to file the present OA.

9. The plea as regards non-impleadment of direct recruits has also to be repelled, as surely and admittedly, no direct recruits in consequence of the judgment passed by the Bombay Bench have been appointed. It may be recalled that when the matter came up for hearing before us on 20.01.2012, we asked the respondents to file an additional affidavit, and the undisputed position as emerges is that the interim orders passed by the Bombay Bench are only as regards adjusting the vacancies that may fall to the promotees in future as commensurate to their quota under the relevant service rules. We repeat, no direct recruitment has been made against even one vacancy that may have gone to direct recruits pursuant to orders passed by the Bombay Bench. If perhaps, such appointments had been made, things would have been different, but in absence of any appointment of direct recruits against the increased posts, non-impleadment of

direct recruits would not be fatal. We are unable to understand as to how the present case would be un-settling the settled seniority. Once no direct recruits have been appointed against the increased vacancies, there is no question of fixation of their seniority vis--vis the applicants, nor would there be any question of un-settling the same.

10. The plea raised by the respondents as regards res judicata, on which Shri Krishna would endeavour for dismissal of the present OA, would also have no merit whatsoever. We do not know how res judicata, provisions whereof are contained under Section 11 of the Code of Civil Procedure, would be attracted in the facts of the present case. Earlier it was decided by the Bombay Bench of the Tribunal pertained to an order where all additional seats in the department of the applicants were to go to promotees, but what was urged before the Tribunal was that the said posts would have to go commensurate to quota for direct recruits and promotees as provided under the recruitment rules. The applicants in the present case derived their cause of action from the judgment passed by the Hon'ble Supreme Court upsetting the view as taken by the Bombay Bench exclusively based upon the judgment of the Principal Bench of the Tribunal. The issue in the present case is as to whether the judgment of the Bombay Bench can be given effect to when the same stands impliedly over-ruled. That aspect of the case we have discussed hereinabove, and there would be no need to repeat the same. Insofar as the doctrine of precedent is concerned, the same rather goes in favour of the applicants, inasmuch as the law laid down by the Supreme Court is that the Government could create additional posts and en bloc given the same to the promotees. It would be the law laid down by the Supreme Court which would be a precedent to be followed by all courts and tribunals, as ordained under Article 141 of the Constitution of India.

11. Before we may part with this order, we may also state that the respondents, but for stating that the promotees who were party respondents in the OA before the Bombay Bench, have not taken the plea aforesaid to its logical ends. The decision of the Bombay Bench is on records. What we find is that the OA aforesaid came to be filed by three persons, namely, Manoj Mahajan, G. C. Paunikar and D. N. Mahajan. They all were direct recruits to the Indian Railway Service of Electrical

Engineers (IRSEE) Group 'A' belonging to 1985 and 1986 examination batches. They had challenged orders dated 25.04.1992 and 10.02.1994, which were as regards increase in Group 'A' posts as mentioned above. The private respondents arrayed in the OA aforesaid were S/Shri J. N. Tiwari, R. K. Sethi, R. Rajgopalan, L. P. Pareba and R. Chandra Sekharan. None of them is an applicant before us. The respondents would not even plead as to how the respondents aforesaid are to be exclusively adversely affected of the judgment if the plea of the applicants is to be accepted. It is not even the case of the respondents that the respondents arrayed in the OA aforesaid were arrayed in their representative capacity, i.e., representing all persons who were to be promoted in consequences of the order with regard to increase in the posts which were to go exclusively to promotees. It is further not the case of the respondents that any application was made before the court and permission was granted that the respondents aforesaid may represent a class of promotees. Technically speaking thus also, therefore, the judgment of the Bombay Bench in which admittedly the applicants were not party respondents would not adversely affect them.

12. For the reasons mentioned above, present Original Application is allowed. Direction is issued to the respondents to extend the benefit of the judgment dated 23.02.2002 passed by the Hon'ble Supreme Court in Civil Appeal No.92 of 1997 to the applicants and others belonging to Electrical Engineering department as per the recruitment rules, against the additional posts approved for filling up by the Railway administration on account of acute stagnation in the department of Civil Engineers. It is clarified that it is against the additional posts sanctioned to be allocated to promotees only, that the respondents will do the exercise by constituting DPC, if so required, and consider the applicants and others equally situate for promotion from the dates they deserve to be so considered. In such exercise, if the applicants and others are promoted, they will get the consequential reliefs as they may be entitled to under rules, but insofar as arrears of pay on the promoted posts is concerned, the same shall be fixed only notionally. Costs of the litigation are made easy.