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K.K.M. NAIR AND ORS.

v.

UNION OF INDIA AND ORS.

MARCH 31, 1993

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[KULDIP SINGH, N.M. KASLIWAL AND R.M. SAHAI, JJ.]

Civil Services:

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Indian Ordnance Factories (Recruitment and Conditions of Service of Class III Personnel) Rules, 1956:

D

Rules 3(1), 8 and 12—Seniority—Promotional cadre—Circular giving benefit of accelerated chances of promotion—Later withdrawn by subsequent circular—Benefits of first circular restored by High Court—Consequential orders giving antedated seniority and promotions—Persons adversely affected but were not parties to the earlier litigation approaching Tribunal—Tribunal setting aside the order—Validity of.

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The Director-General, Ordnance Factories (D.G.) issued a Circular dated 6.11.1962 to the effect that the Diploma holders who have been appointed as Supervisor Grade 'B' (technical) or in equivalent grades, should on completion of one year's satisfactory service be promoted the post of Supervisor Grade 'A' (Tech.) and the Diploma holders who worked satisfactorily as Supervisor 'A' (Tech.) or in equivalent grades for 2 years should be promoted as Chargeman. Subsequently the D.G. issued another Circular dated 20.1.1966 according to which promotions were to be in accordance with normal rules i.e. on the basis of their listing by the relevant Departmental Promotion Committee and not merely on satisfactory completion of 2 years continuous service as Supervisor 'A' Grade or equivalent grades. In effect, the first Circular was withdrawn by the second Circular.

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In 1973 some Supervisors Grade 'A' filed a Writ Petition before the High Court claiming benefit of the first circular. Without going into the merits of the controversy, a Single Judge of the High Court dismissed the Writ Petition on the ground of delay. On appeal, a Division Bench of the High Court dismissed the Writ Petition on merits. On further appeal this

H. Court directed that the cases of those appellants be considered for promo-

tion as Chargeman Gr.II and they promoted them, unless they were found unfit, from the dates on which they ought to have been promoted. (*Virendra Kumar & Ors. v. U.O.I.*, C.A. No. 441/1981 decided on 2.2.81). Thereafter the present appellants filed Writ Petitions before the High Court praying for the same relief as was granted by this Court in *Virendra Kumar's* case. The High Court allowed the Writ Petitions. The Special Leave Petitions filed by the Union of India against the Judgment came to be dismissed. Consequently the D.G. issued an order giving antedated seniority to the appellants for the purposes of promotion. The appellants were also given deemed dates of promotion to post of chargeman Gr.II from the dates when they completed two years of service as Supervisor Gr. 'A' and consequent seniority in the other higher grades. This resulted in some employees who were senior to the appellants in the cadre of Chargeman Gr.II and other higher grades becoming junior to the appellants. These employees who were adversely affected by the order of the D.G. giving ante-dated seniority to the appellants and were not impleaded as parties at any stage of the litigation, challenged the DG's order before the Central Administrative Tribunal. The Tribunal allowed the application and set aside the DG's order giving ante-dated seniority to the appellants.

Aggrieved by the Judgment of the Tribunal, the appellants preferred the present appeal.

Dismissing the appeal, this Court,

HELD: 1. This Court has authoritatively laid down in *Paluru's* case that Civil Appeal No. 441/81 *Virendra Kumar v. U.O.I.*, was not correctly decided. The appellants have throughout been basing their claim on *Virendra Kumar's* case. Once the base is knocked out by the judgment of this Court in *Paluru's* case the appellants are left with no ground to sustain the order dated February 20/25, 1987 issued by the D.G. by which they were given ante-dated seniority. [917 B-C]

1.2. Even if it is assumed that the High Court judgment had become final with the dismissal of the SLP against it, and could not have been reviewed by the High Court or the Tribunal, it became final only between the parties *inter-se*. The first circular was issued in the year 1962. The appellants filed writ petitions in the High Court twenty years thereafter seeking enforcement of the first circular. The petitioners wanted the clock to be put back by two decades through the process of the Court. All those

A persons who were promoted in accordance with the rules during that long period and were not parties before the High Court could not be made to suffer for no fault of theirs. On the other hand some employees challenged the order dated February 20/25, 1987 which affected them adversely within the period of limitation before the Central Administrative Tribunal. In any case the judgment of this Court in *Virendra Kumar* having been over-ruled in *Paluru's* case, the appellants have neither the law nor the equity on their side. The judgment of the Tribunal being in conformity with the law laid down by this Court in *Paluru's* case there is no ground to interfere with the same. [918 A-D]

C *Paluru Ramkrishnaiah & Ors. etc. v. Union of India & Anr.*, [1989] 2 SCR 92, followed.

Virendra Kumar & Ors. v. Union of India & Ors., Civil Appeal No. 441/81 decided on 2.2.1981, referred to.

D CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1690 of 1993.

From the Judgment and Order dated 14.2.1991 of the Central Administrative Tribunal Jabalpur in O.A. No. 217 of 1987.

E M.K. Ramamurthi and V.J. Francis for the Appellants.

Narayan B. Shetye, K. Lahiri, Vineet Kumar, Ms. Sushma Suri, Ms. Kitty Kumar Mangalam, S.N. Terdo and B.K. Prasad for the Respondents.

The Judgment of the Court was delivered by

F KULDIP SINGH, J.

Special leave granted.

G This appeal is a sequel to the chequered litigation, over a period of two decades, between members of the Indian Ordnance Factories Class III Service (the Service). The first round of litigation was concluded in favour of K.K.M. Nair and others, the appellants, on July 28, 1986 when the special leave petitions filed by the Union of India, against the judgment of Madhya Pradesh High Court, were dismissed by this court. As a consequence the Director General Ordnance Factories (DG) issued an order dated H February 20/25, 1987 granting benefits to the appellants towards seniority

in different grades of the Service. S.K. Chattopadhyay and others, the respondents, who were not parties to the earlier litigation, challenged the order dated February 20/25, 1987 before the Central Administrative Tribunal. The Tribunal by its judgment dated February 14, 1991 allowed the application of S.K. Chattopadhyay and others and set aside the order dated February 20/25, 1987. This appeal by K.K.M. Nair and others is against the judgment of the Central Administrative Tribunal, Jabalpur.

The recruitment and seniority of the members of the Service are governed by the statutory rules called "Indian Ordnance Factories (Recruitment and Conditions of Service of Class III Personnel) Rules, 1956" (the rules). Rules 3(1), 8 and 12 of the rules which are relevant are reproduced hereunder:

"3(1). The Class III personnel service in the Indian Ordnance Factories to which these rules shall apply consists of the posts of the following grades, namely:

Foreman (including Foreman/Design).

Storeholder

Assistant Foreman

Assistant Storeholder

Chargeman, Grade I (including Chargeman, Grade I/Design)

Chargeman, Grade II

Supervisor, Grade 'A'

Supervisor, Grade 'B'.

8(1) Appointments by promotion shall be made by the Director-General on the basis of selection lists prepared for the different grades by the duly constituted Departmental Promotion Committees.

(2) Such Selection lists shall be prepared:-

A (a) In respect of appointment to the grade of Foreman, Storeholder, Assistant Foreman, Assistant Storeholder by the Departmental Promotion Committee II consisting of the Director-General and two officers of the Directorate General, Ordnance Factories nominated by the Director-General;

B (b) In respect of appointments to the grade of Chargeman, Grade I, and Chargeman, Grade II, by the Departmental Promotion Committee III (Central) consisting of the Deputy Director-General, Ordnance Factories and two officers of the Directorate-General, Ordnance Factories nominated by the Director-General after perusal of the recommendations of the Departmental Promotion Committee III (Factories) which shall be set up in each Factory and shall consist of the Superintendent of the Factory and two other gazetted officers of the Factory nominated by the Director-General; and

C (c) In respect of appointments to the grades of Supervisor 'A' and 'B' Grades by the Departmental Promotion Committee III (Factories) consisting of the Superintendent of the Factory and two other gazetted officers of the Factory nominated by the Director-General.

D (3). The Departmental Promotion Committee shall meet periodically at least once a year and as more often as may be necessary and shall prepare for each grade and category in order of merit a list of names of persons considered at for promotion.

E (4) A vacancy to be filled by promotion shall be filled by persons on the approved list strictly in the order in which names are arranged in that list provided that:-

F (i) appointments to the grade of Supervisors, Grade 'A' shall normally be confined to employees in the particular Factory in which the Vacancy has arisen; and

G (ii) in respect of appointment to other posts the next

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person on the list working in the Factory in which the vacancy has arisen may be appointed out of turn if the vacancy is not likely to last for more than nine months.

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12. No appointment to the posts to which these rules apply shall be made otherwise than as specified in these rules".

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Appellants 1, 6, 11 and 12 were appointed Supervisor Grade 'B' during the years 1961/62. The remaining appellants were appointed Supervisor Grade 'A' during the period 1964/65. Appellants 1 to 11 were promoted as Chargeman, Grade II on different dates during 1972/77. They were promoted to Chargeman Grade I during the years 1979/80. They were further promoted to the post of Assistant Foreman during the period 1981 to 1984. S.K. Chattopadhyay and others are respondents 4 to 9 in this appeal. Respondents 4 and 5 joined as Chargeman Grade II in the year 1966, respondent 9 in the year 1967, respondent 6 in the year 1971 and respondents 7 and 8 in the year 1974. They were promoted to Chargeman Grade I during the years 1978/1979. Respondents 4 to 9 were further promoted to the post of Assistant Foreman during the period from 1980 to 1984. It is not disputed that the recruitment and promotions of the appellants and respondents were made in accordance with the rules.

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It is necessary to lay down the factual matrix which led to the passing of the order dated February 20/25, 1987 by the DG.

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The DG issued circular dated November 6, 1962 (first circular) which is reproduced hereunder:

"D.G.O.F. has decided that Diploma holders serving as Supervisor 'A' (Tech)/Supervisor 'B'/(Tech) and in equivalent grades should be treated as follows:

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(i) All those Diploma holders who have been appointed as Supervisor 'B' (Tech) (and in equivalent grades) should on completion of one year's satisfactory service in ordnance factories be promoted to Supervisor 'A' (Tech) and in equivalent grades.)

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(ii) All those Diploma holders who work satisfactorily as Supervisor 'A' (Tech) or in equivalent grades for 2 years in Ordnance Factory should be promoted to Chargeman."

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A Subsequently the D.G. issued circular dated January 20, 1966 (second circular). The operative part of the second circular is as under:

B "The question of promotion of Diploma holders in Mech/Elec. Engineering and Ex-apprentices serving as
C Supr. 'A' Gr. or in equivalent grades has received further consideration of the D.G.O.F. who has decided that in future promotions of all such individuals will be effected in accordance with the normal rules i.e. on the basis of their listing by the relevant D.P.C. and not merely on completion of 2 years satisfactory continuous service as Super. A Gr. or equivalent grades."

D It is, thus, obvious that after the issue of second circular no Supervisor Grade 'A' could claim to have become eligible for promotion merely on completion of two years satisfactory service and his promotion thereafter could be effected only in accordance with the rules. In a nut-shell the first circular was withdrawn by the second circular.

E Seventy Five supervisors Grade 'A' (other than the appellants and the respondents before us) filed a writ petition in the Allahabad High Court in the year 1972 claiming benefit of the first circular. Their grievance was that they were not being promoted to the post of Chargeman Grade II on completion of two years satisfactory service even though large number of Supervisors Grade 'A' had already been promoted in terms of the first circular. The writ petition was contested by the Union of India, *inter alia*, on the ground that under rule 8 of the rules promotion from Supervisor
F Grade 'A' to Chargeman Grade II was to be made on the basis of selection. In the first instance the selection was to be made by the Departmental Promotion Committee at the Factory level and thereafter by the Departmental Committee at the central level. The promotions were to be made by the DG on the basis of the select list prepared as a result of the selections made by the two committees. It was further asserted that all the
G writ petitioners were considered for promotion in accordance with the rules but they were not found fit for promotion. The learned Single Judge of the Allahabad High Court, however, did not go into the merits of the controversy and dismissed the writ petition on the ground of delay. Against the judgment of the learned Single Judge appeal was preferred before a
H Division Bench of the High Court. The Division Bench went into the merits

of the controversy and came to the conclusion that promotion from Supervisor Grade 'A' to Chargeman Grade II could only be made in accordance with the procedure laid down under the rules. The learned Judges further took the view that the first circular was to be interpreted in conformity with the rules. It was further held that even if it was to be assumed that the DG promoted some Supervisors Grade 'A' to the post of Chargeman Grade II immediately on the completion of two years service, without following rule 8 of the rules, no right would accrue in favour of the writ petitioners inasmuch as such promotions would be contrary to the rules and would confer no legal right on the writ petitioners for likewise promotion in breach of the rules. The argument based on Article 16 was also rejected. The Division Bench of the Allahabad High Court, thus, dismissed the writ petition on merits. Against the judgment of the Allahabad High Court Civil Appeal No. 441 of 1981 was preferred in this Court. Since the order dated February 2, 1981 passed in *Virendra Kumar & Ors. v. Union of India and Ors.* Civil Appeal No. 441/81 is the backbone of the appellants claim we reproduce the said order hereunder:

"Heard counsel. Special leave granted.

Our attention has been invited by learned counsel for both the sides to the relevant rules which govern promotion to the post of Chargeman Grade II. It appears that a large number of persons have been promoted to those posts though they have completed only two years of service. The Government now appears to insist that in so far as the appellants are concerned they cannot be considered for promotion unless they complete three years of service. We see no justification for any such differential treatment being given to the appellants. If a large number of other persons similarly situated have been promoted as Chargeman Grade II after completing two years of service, there is no reason why the appellants should also not be similarly promoted after completing the same period of service. We are not suggesting that the appellants are entitled to be promoted to the aforesaid posts even if they are found unfit to be promoted.

We therefore direct that the concerned authorities will

A consider the cases of the appellants for promotion as Chargeman Grade II and promote them to the said posts unless they are found to be unfit. If the appellants are promoted, they will naturally have to be promoted with effect from the date on which they ought to have been promoted.

B This order will dispose of the appeal.

There will be no order as to costs."

C Thereafter K.K.M. Nair and 124 others, the appellants, filed six writ petitions before the Madhya Pradesh High Court during the period 1981-82. It was contended before the High Court that the reasons which weighed with this Court in allowing Civil Appeal No. 441/81 applied to the six writ petitions also and it was prayed that the same relief be granted to the petitioners. The Madhya Pradesh High Court, relying upon the judgment of this Court in Civil Appeal No. 441/81, allowed the writ petitions by its judgment dated April 4, 1983. Against the aforesaid judgment of the Madhya Pradesh High Court special leave petitions (Civil) Nos. 5987-92/86 were filed in this Court by the Union of India and were dismissed on July 28, 1986. Pursuant to the judgment of the Madhya Pradesh High Court dated April 4, 1983 the DG issued the order dated February 20/25, 1987 giving ante-dated seniority to the appellants for the purposes of promotion to the next higher grades. The appellants were, thus, given deemed dates of promotion to the post of Chargeman, Grade II from the date when they completed two years of service as Grade A and consequent seniority in the other higher grades. S.K. Chattopadhyay and others who were senior to the appellants in the cadre of Chargeman, Grade II and other higher grades in the service were made junior to the appellants as a consequence of the order dated February 20/25, 1987.

G At this stage we may notice the judgment of this Court in *Paluri Ramkrishnaiah & Others etc. v. Union of India & Anr.*, [1989] 2 SCR 92 delivered by a Three-Judge Bench of this Court dismissing a bunch of nineteen writ petitions under Article 32 of the Constitution of India. The petitioners in the afore-mentioned writ petitions claimed to have been appointed as Supervisors, Grade 'A' in various ordnance factories between 1962 to 1966 and had filed the writ petitions with the prayer that the same relief be granted to them as was given by this Court to seventy five

Supervisors, Grade A in Civil Appeal No. 441 of 1981. This Court in *Paluru's* case considered the rules, the first circular, the second circular and the order of this court in Civil Appeal No. 441/81 dated February 2, 1981. Dismissing the writ petitions this Court held as under:- A

1. The executive instruction could make a provision only with regard to a matter which was not covered by the rules and such executive instruction could not over-ride any provisions of the rules. B

2. Notwithstanding the issue of the instructions dated November 6, 1962 the procedure for making promotion as laid down in rule 8 of the Rules had to be followed, and the said procedure could not be abrogated by the executive instructions dated November 6, 1962. C

3. The only effect of the circular dated November 6, 1962 was that Supervisors Grade 'A' on completion of two years satisfactory service could be promoted by following the procedure contemplated by rule 8 of the Rules. This circular had indeed the effect of accelerating the chance of promotion. The right to promotion on the other hand, was to be governed by the rules. This right of promotion as provided by the rules was neither affected nor could be affected by the circular. D

4. After coming into force of the circular dated January 20, 1966 promotions could not be made just on completion of two years satisfactory service under the earlier circular dated November 6, 1962, the same having been superseded by the latter circular. E

5. Supervisor, Grade A who had been promoted before the coming into force of the circular dated January 20, 1966 stood in a class separate from those whose promotions were to be made thereafter. The fact that some Supervisors, Grade A had been promoted before the coming into force of the circular dated January 20, 1966 could not, therefore, constitute the basis for an argument that those Supervisors Grade A whose cases came up for consideration thereafter and who were promoted in due course in accordance with the rules were discriminated against. F G

6. There are sufficient indications that when Civil Appeal No. 441/81 was heard by this Court the circular dated January 20, 1966 and the legal consequences flowing therefrom were not brought to the notice of this Court by the learned counsel for the respondents or the same were not H

A properly emphasised.

It is thus obvious that the Three-Judge Bench of this Court in *Paluru's* case did not approve the order dated February 2, 1981 of Two-Judge Bench in Civil Appeal No. 441/81.

B Since the judgment of this Court in Civil Appeal No. 441/81 had become final inter-partes, it had to be implemented. While considering the extent of the relief to be given to the appellants in Civil Appeal No. 441/81 this Court in *Paluru's* case observed as under:-

C "As already noticed earlier certain writ petitions filed in Madhya Pradesh High Court were allowed by that Court were allowed by that Court on 4th April, 1983 relying on the judgment of this Court dated 2nd February, 1981 in Civil Appeal No. 441/81. Against the aforesaid judgment of the Madhya Pradesh High Court dated 4th April, 1983

D Special Leave Petitions (Civil) Nos. 5987-92 of 1986 were filed in this Court by the Union of India and were dismissed on 28th July, 1986. The findings of the Madhya Pradesh High Court in its judgment dated 4th April, 1983 thus stand approved by this Court. In this view of the

E matter to put them at par it would be appropriate that the appellants in Civil Appeal No. 441 of 1981 may also be granted the same relief which was granted to the petitioners in the writ petitions before the Madhya Pradesh High Court."

F The appellants have raised an argument based on the above quoted observations of this Court in *Paluru's* case which we shall consider at a later stage in this judgment.

G We may come back to the point of time when the Director General issued the order dated February 20/25, 1987 giving ante-dated seniority to the appellants in various grades of the service. As mentioned above S.K. Chattopadhyay and others were not impleaded as parties at any stage of the litigation earlier to the issue of the said orders. They were adversely affected in the matter of seniority for the first time by the order dated February 20/25, 1987. S.K. Chattopadhyay and others challenged the said

H order before the Central Administrative Tribunal, Jabalpur Bench. The

Tribunal by its judgment dated February 14, 1991 allowed the application of S.K. Chattopadhyay and others and set aside the order dated February 20/25, 1987 giving ante-dated seniority to the appellants. A

We agree with the conclusions reached by the Tribunal though we do not appreciate the reasoning adopted by the Tribunal in reaching the said conclusions. This Court has authoritatively laid down in *Paluru's* case that Civil Appeal No. 441/81 was not correctly decided by this Court. The appellants have through-out been basing their claim on the order dated February 2, 1981 in Civil Appeal No. 441/81. Once the base is knocked out by the judgment of this court in *Paluru's* case the appellants are left with no ground to sustain the order dated February 20/25, 1987 by which they were given ante-dated seniority. Following the judgment of this Court in *Paluru's* case and the reasoning therein we uphold the impugned judgment of the Central Administrative Tribunal, Jabalpur. B C

Mr. M.K. Ramamurthy, learned counsel for the appellants, has vehemently argued that the judgment dated April 4, 1983 by the Madhya Pradesh High Court in favour of the appellants having been approved by this Court in *Paluru's* case the Tribunal had no jurisdiction to negate the same. We do not agree with the learned counsel. D

We have reproduced above the paragraph from the judgment in *Paluru's* case wherein this Court has observed, "findings of the Madhya Pradesh High Court in its judgment dated 4th April, 1983 thus stand approved by this Court". It is not disputed that the said "approval" by this Court was by dismissing the special leave petitions against the judgment of the Madhya Pradesh High Court. There is no reasoned judgment/order by this Court approving the judgment of the Madhya Pradesh High Court. It is not necessary for us to go into the question whether in a situation like this any court below could have reversed the judgment by review or otherwise, because in this case we are faced with different situation. S.K. Chattopadhyay and others were not parties to the proceedings before the Madhya Pradesh High Court which ended by the dismissal of the special leave petitions by this Court on July 28, 1986. Till that date no action adverse to them had been taken by the DG or any other authority. It was incumbent on the appellants to have impleaded all the persons who were likely to be adversely affected in the event of appellants success in the writ petition before the Madhya Pradesh High Court. Under the circumstances E F G H

- A even if it is assumed that the Madhya Pradesh High Court judgment had become final and could not have been reviewed by the High Court or the Tribunal, it became final only between the parties *inter-se*. The first circular was issued in the year 1962. The appellants filed writ petitions in the Madhya Pradesh High Court twenty years thereafter seeking enforcement of the first circular. The petitioners wanted the clock to be put back by two decades through the process of the Court. All those persons who were promoted in accordance with the rules during that long period and were not parties before the Madhya Pradesh High Court cannot be made to suffer for no fault of theirs. On the other hand, S.K. Chattopadhyay and others challenged the order dated February 20/25, 1987 which affected them adversely within the period of limitation before the Central Administrative Tribunal. In any case the judgment of this Court in Civil Appeal No. 441 of 1981 having been over-ruled by Three-Judge Bench of this Court in *Paluru's* case, the appellants have neither the law nor the equity on their side. The judgment of the Tribunal being in conformity with the law laid down by this Court in *Paluru's* case, we see no ground to interfere with the same.
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- E Before parting with this judgment we may mention that because of contradictory judgments of various courts and Central Administrative Tribunals in the country the seniority position of the members of the service all over the country, numbering about twenty thousand could not be crystallised over a period of two decades. We have been informed by the Union of India that the Central Administrative Tribunals all over the country have, by and large, taken uniform view following the judgment of this Court in *Paluru's* case and the seniority lists have been issued in conformity therewith. It has been a long-drawn-out battle in the court-corridors causing lot of expense and suffering to the members of the service. We hope that this judgment has finally drawn the curtains over the controversy.
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The appeal, is therefore, dismissed. No costs.

G.N.

Appeal dismissed.