**Analysis of Case of Electrical Enginers –Gp.’ ‘B’**

A land mark judgement has been given recently by Principal bench CAT New Delhi on 07.03.2012 (**OA No. 1051 /2010-Arpan Kumar & others Vs. UOI and others).** All those, who monitored the same, deserve to be congratulated greatly – specially Sh. SK Jain, P. S. Dhaka, I. N. Pathak of electrical department, in addition to all those who contributed for the struggle all over the Indian Railways . Very special thanks to Sh. Y. S. Chaudhary – DYCE/ Survey of N. Rly who is responsible for this achievement, because but for his contribution, & monitoring / chasing it would not have been possible to achieve all this.

**2.0 What was the case?**

Railway Board in order to remove stagnation from Gp.‘B’ cadres for induction to Gp. ‘A’, sanctioned 463 addl. Posts (over and above the normal quota) for five departments i,e S&T personnel, T&C, Electrial & Civil Engineering Department – under one scheme, and one policy. The same were implemented for all the 5 departments, but the policy was challenged for 4 departments (except Personal Department) in different CATs. Only on one argument i,e

1. **The government is not empowered to enhance the stipulated quota of induction for Gp. ‘B’.**
2. While Madras CAT gave judgement in favour i,e The Government is empowered, all the other 3 CATs- for 3 different departments – gave judgement - government is not empowered, out of which the Bombay CATs decision (Electrical) was totally on the basis of principal bench decision (S&T department).
3. This as much as that the addition vacancies given to electrical department were taken back in 1996 clearly mentioning that this is based on S&T case (where on judgement in electrical was delivered in the year 2000 only)
4. The S&T case was appealed and was reversed by Honourable Supreme Court, on 23.09.2002, directing that the Government has power to enhance the quota.
5. On the basis of this, Electrical Officers also prayed that they should be given the benefit of implementation of supreme court judgement on electrical department too which was not accepted by the administration hence this application.

3.0 The Honorable Principal Bench has aptly explained this issue, as under:

**Para 2.**

**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 & S&T 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 & others Vs UOI & ors Principal Bench, New Delhi Signal & Telecommunication case decided on 4.8.1995**

**1993 865 of 1993 Ranjan Yadav Vs UOI & others Jabalpur Bench Civil Engg 5.8.1994**

**1994 283 of 1993 (MP 6641/93 P. Vishwanathan Vs. UOI Madras Bench Traffic & Comml decided on 14.2.1994**

**1994 1133 of 1994 Manoj Mahajan & ors. Vs UOI & 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:**

**Madras Bench**

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

**Jabalpur Bench**

**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.**

**Bombay Bench**

**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 & others v Union of India & others, decided on 04.08.1995, which pertained to the Signal & 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 & others v Union of India & 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 Honble Supreme Court in Civil Appeal No.92 of 1997 in the matter of Indian Railway Promotee Officers Federation & Union of India v Anil Kumar Sanghi & others, in which on 23.09.2002 the Honble 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 S&T 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 Honble 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 Honble 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 Honble 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.**

**“Para 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 Honble 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.”**

4.0 The Ho’ble court discussed this issue very clearly as under:

**“Para 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 & 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 Honble 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 Honble 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 Babus 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 Babus 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.”**

5.0 Para 8 is also important

**“Para 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, bur 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.”**

6.0 And finally the Hon,ble court gave the following clear directions, as under

**Para 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 Honble 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.**

In view of this un-ambiguous judgement given by the Hon,ble Court, the judgement is ought to have implemented immediately, specially when, the issue was raised to Law section of Railway Board, for their opinion, **It was opined that this Board though may be ok for not implementing** **the judgement of S&T for Electrical Department, but if individuals go to court, they may get favourable decision,** this is what has happened now with this case.

**Dear friends,**

 Though the administration have no case for appeal, but they may still try to go to higher courts in appeal. This is a big achiement. A large number of officers are likely to be benefitted for 2-3 years seniority. Evan those who are stiil waiting for induction will also find their seniority by 92 steps as 92 additional vacancies are likely to be filled from above them.

 People have tried and have brought this achiwevement, now it is your turn to defend it with all your might, so that the labour and sacrifice of all those who fought for it is not wasted.

 **RISE friends, RISE. Come forward with financial, labour, time, and moral support and what not. Do not allow this justice to be snatched away from your hands.**

 Awake and unite to defend your right.

 **S.K.Bansal**