

* **HIGH COURT OF DELHI : NEW DELHI**

+ **WP (C) No.8253/2007**

% Judgment decided on : 14.02.2011

Gobind Singh and Others Petitioners

Through: Mr P.S. Patwalia, Sr Adv. with Mr. S.K.
Sinha, Advocate

Versus

Union of India & Others Respondents

Through: Mr. K.K. Tyagi, Advocate with
Mr Iftikhar Ahmad, Advocate

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may
be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported
in the Digest? | Yes |

MANMOHAN SINGH, J.

1. This writ petition has been filed by the petitioners under Article 226 of the Constitution of India seeking quashing of the decision dated 24.08.2007 taken by respondent No.2, Board of Directors, Central Warehousing Corporation (for short hereinafter referred to as “respondents”) inasmuch as it has been decided to exclude the engineering cadre of the Corporation from the benefit of promotion on the ground of stagnation for 10 years or more, which is being extended to other employees of respondents on the aforesaid ground and a writ of mandamus directing the respondents to extend the benefit of promotion

on stagnation for 10 years or more to the petitioners and other employees of respondents.

2. The respondent No.3 (Central Warehousing Corporation) is a leading player in warehousing business which started with 7 warehouses and in the last four decades it registered a phenomenal growth and now it has 628 warehouses all over the country. The credit for this growth goes to all the employees of the respondents including the engineering cadre and the same can be assessed by the fact that such huge expansions in the infrastructure were executed by the engineering cadre under its supervision.

3. The petitioners belong to the Engineering Cadre of the respondents. They were originally appointed as Junior Engineers and in the last 25 to 35 years of service they have got only one promotion except for petitioner No.1 who has rendered 38 years of service and has got two promotions as Assistant Engineer that too some 15-20 years back.

4. On the date of filing of the writ petition the details of the petitioners about their stagnation in table form has been enclosed by the petitioners at pages 76 and 77 of the petition.

5. Some of the petitioners made representations against their stagnation, copies of which are filed along with the present writ petition. Some of the petitioners are stated to have been retired by this time.

6. In the 266th meeting of respondents an agenda was placed before the Board where it was observed that a large number of employees of respondents at different posts are stagnating for a long time even after

qualifying their eligibility period for next promotion and to remove this stagnation it was proposed to create vacancies at different posts for those employees who have been stagnating for 10 years or more and to promote all of them by conducting DPC.

7. The agenda item No.267.14 was approved in the 267th meeting dated 24.08.2007 of respondents but the Engineering Cadre of respondents was left out from the benefit thereof. The relevant portion of the minutes of the meeting are :

“to upgrade 224 posts, as mentioned in the Agenda, including relaxation to be made for SC/ST employees to remove stagnation of 10 years and more as on 30/06/2007, excluding Engg. Cadre, as one time measure, subject to fulfilling the promotion/recruitment rules. Resultant equal number of posts in the respective level and cadre will be surrendered consequent to their up gradation.”

8. According to the petitioners they have suffered stagnation more than any other cadre of the respondents. The petitioners and other engineers of respondents have been stagnating for more than 12 to 20 years since their last promotion. In fact the petitioners have got only one or two promotions after service of 23 to 37 years. This state of affairs clearly shows how the petitioners are being made to suffer on account of acute stagnation in service. The grievance of the petitioners is that they should be given similar treatment.

9. The petitioners have demonstrated in paras 3.2, 3.10, 3.11 and 3.12 of the writ petition that how unjust is the treatment meted out to them which are reproduced herein below:

“3.2. The petitioners were appointed between the years 1971-1982. Except for petitioner no.1, who has rendered 38 years of service, and has earned only two promotions in such a length of service, all other petitioners have earned only one promotion after rendering service from 25 to 31 years. This state of affairs clearly establishes acute stagnation being suffered by the petitioners. The Service Rules provide eligibility period for promotion after 3 to 6 years. The petitioners have crossed the eligibility period in some cases by about 15 years or more. The petitioners have been made to suffer on account of acute stagnation in service for last 12 to 20 years, with no promotional avenues in real terms.

3.10. That it can be seen that out of the 6000-employees belonging to other cadres have much more accelerated promotional avenues and it is evident from the fact that the petitioner no.1 who became Executive Engineer in the year 1987 has remained as Executive Engineer even after 20 years thereafter, whereas persons junior to him in the other cadre have reached Senior Managerial Levels in the Corporation. The other cadres have further created promotional avenues for themselves up to the level of Chief General Manager.

3.11. That the other factor which is a clear indication of gross stagnation being suffered by the Engineering Cadre is evident from the fact that by the impugned policy, the respondent Corporation could find only about 224 employees belonging to other cadres as stagnating for more than 10 years out of the total cadre strength of 6000. On the other hand, out of 200 engineering staff, 75 engineers have been stagnating for 12 to 20 years, as is evident from Annex P-2. The ratio of stagnation, therefore, works out to be 1:3 in the case of engineers as compared to 1:30 in respect of other cadres.

3.12. That some of the petitioners made representations to the respondents to remove the stagnation and consider their cases for promotion from time to time (Copies of the representations of the some of the petitioners are enclosed herewith as Annex P-6 Colly). However, no response was received thereon.”

10. The petitioners submit that it shows that the petitioners were singled out though they suffered most and the persons who have earned several promotions and have reached higher echelons of service have been granted stagnation promotion on account of their being on the same post for past 10 years. This is upto the level of AGM and DGM also. On the contrary, the petitioners who have stagnated for years together have been excluded from this benefit.

11. According to the petitioners the decision dated 24.08.2007 taken by respondents is discriminatory, arbitrary, unconstitutional and violative of Article 14.

12. This decision has been actuated by malafides of the dominant section of the officers who have been holding the decision making body, further decision dated 24.08.2007 shows that all efforts have been made to upgrade higher officers for their own progress depriving the engineers as a class of even the bare minimum.

13. In the counter affidavit filed on behalf of respondents it has been stated that it is incorrect to say that the other cadres have speedier promotions as compared to engineering cadre. According to the respondents the entry level post in the engineering cadre is Sectional officer (S.O) which is equivalent to the post of Technical Assistant (T.A) in the Technical Cadre and Junior Superintendant (J.S) in the General Cadre.

14. In the General Cadre T.A/J.S become eligible for their first promotion after five years of service in their respective Cadres. Whereas

in the engineering staff a Graduate S.O becomes eligible for promotion to the post of Assistant Engineer (AS) after 3 years of service and diploma holder after 5 years of qualifying service. The AE becomes eligible for promotion to the post of Senior Assistant Manager (SAM) after 3 years and thereafter 5 years SAM becomes eligible for promotion to the post of Executive Engineer which is equivalent to the post of Manager. It has further been stated that the general staff as compared to the engineering staff has to go through two more stages of promotion before they reach the level of Executive Engineer.

15. As per the counter the reason why the respondent No.2 did not consider the engineering cadre for promotion on the lines of other staff who had been stagnating for last 10 years and above is because respondent No. 3 is having surplus engineering staff and to it bring it down to size the Special Voluntary Retirement Scheme was suggested in the 268th meeting dated 28.09.2007 of respondent No. 2.

16. In the rejoinder, the petitioners have pointed out that the Parliament of India while enacting the Warehousing Corporation Act, 1962 has categorically mentioned under functions of Central Warehousing Corporation as the first function (activity) of the Corporation in para 11(a) of the Act, which says “acquire and build godowns and warehouses at suitable places in India”.

17. In fact, it were the engineers of the Central Warehousing Corporation which worked hard to create 594 warehouses all over the

country and even abroad. The necessity for construction of godowns is being felt very badly.

18. The petitioners have suffered stagnation because of non-availability of the posts. That is why the stagnation promotion for other cadres was introduced. The petitioners are subjected to group bias.

19. Learned senior counsel Mr P.S. Patwalia, appearing on behalf of the petitioners, has made submissions in support of his case and the same are summarized as under:

(a) Learned senior counsel for the petitioner submitted that the engineer cadre in the respondent organization is the only one which is excluded from the avenue of the promotion. The minutes of the meeting held on 24.08.2007 although provides for the promotion proposals to be done in view of the longstanding stagnation of the employees but, the same finds mention about the exclusion of engineering cadre. In the light of the same, the decision taken on 24.08.2007 in its meeting accord differential treatment to the employees of engineering cadre as against the other employees which is without any justification and thus arbitrary.

(b) Learned senior counsel argued that the impugned decision does not create classification on the basis of intelligible differentia which is the ground whereby state can create classification on the explained grounds. The

learned counsel explained the position by stating that the object which is sought to be achieved by way of promotion is to remove the stagnation of the employees. Some of the engineers of the respondents have been stagnating for the last 20 years and even more, and the decision of exclusion of the petitioners/ engineering cadre, being inconsistent with the objects sought to be achieved, makes it arbitrary and discriminatory and thereby violative of Article 14 and Article 16.

- (c) The third contention of the learned senior counsel for the petitioner is that the petitioners and their cadre is being singled out and thus suffers from group bias. It is also stated that the petitioner No. 1 has been given two promotions and the rest of the petitioners were given only one promotion. The stagnation of the employees stands on one footing and thus in view of this unexplained situation, the petitioners being similarly situated cannot be deprived of their right to be considered for the promotion.
- (d) Lastly, the learned senior counsel for the petitioner argued that the present case warrants interference of this Court under Article 226 of the Indian Constitution as the respondent has acted unfairly and in an arbitrary manner. Further, the respondent No.3 is an instrumentality of the state and has deprived the petitioners of their legitimate

right to be considered for the promotion which even though is not a fundamental right but is a normal incident of service. It was argued that such a longstanding stagnation of more than 10-20 years and thereafter doing nothing for the particular cadre is on the face of it arbitrary and warrants interference by this Court to direct suitable arrangements to be made for the petitioner cadre in accordance with the law.

20. Learned senior counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court of India in **Food Corporation of India v. Parashotam Das Bansal and Ors:** (2008) 5 SCC 100, wherein the Supreme Court after discussing the law on the subject has held that the courts jurisdiction to direct to make a scheme for promotion cannot be denied in cases involving stagnation for years.

21. The learned senior counsel concluded his submission by stating that in view of the well settled law, this court should interfere in this matter appropriately by passing the suitable directions.

22. Per Contra, learned counsel Mr K.K. Tyagi, appearing on behalf of the respondents, has made his submissions which can be outlined as under:

- (a) Learned counsel Mr K.K. Tyagi first argued that the present petition is not maintainable as the petitioners cannot seek mandamus against the respondents as no legal or fundamental enforceable right has been violated.

To substantiate his submission, the learned counsel stated that there is no legal right as prescribed under the law or the rules to provide for the increment. Neither there is any fundamental right of such sort provided under part III of the Constitution to enforce against the respondent. In these circumstances, the writ petition seeking mandamus commanding the respondents in the absence of any statutorily prescribed duty is not maintainable and is liable to be dismissed.

Learned counsel, Mr. K.K. Tyagi, relied upon the judgment passed by the Apex Court in the case of **The Bihar Eastern Gangetic Fishermen cooperative Society Ltd v. Sipahi Singh & Others, (1977) 4 SCC 145,** wherein the Hon'ble Supreme Court has held that the mandamus can be issued against the officer of the government only when there is a statutory duty to do something. The relevant excerpt of the judgment is reproduced below :

“15. Re : Contention No. 3 : This contention is also well founded and must prevail. There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows,

therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. (See *Lekhraj Satramdas, Lalvani v. Deputy Custodian-cum-managing Officer, Dr. Rai Shivendra Bahadur v. The Governing Body of the Nalanda College and Dr. Umakant Saran v. State of Bihar*). In the instant case, it has not been shown by respondent 1 that there is any statute or rule having the force of law which casts a duty on respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also, not binding and enforceable. Accordingly, we are clearly of the opinion that respondent 1 was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and the High Court was not competent to issue the same.”

Learned counsel submitted that the petitioners have failed to point out any statutorily prescribed duty to be performed by the respondents to do something with regard to the promotion. Therefore, the present petition has no merit and is liable to be dismissed.

- (b) Learned counsel for the respondents submitted that it is merely a policy decision of the respondents whereby it has been decided to upgrade the employees of the respondents and to exclude the engineers cadre from the purview of the said upgradation. Such decision being purely executive decision is beyond the scope of judicial intervention. This Court, as per the learned counsel for the respondents, ought not to interfere in purely policy

matters as the said thing would be violative of the doctrine of separation of powers which balances the framework in the constitution.

Learned counsel relied upon the following judgments to support the various propositions of the law in this respect:

- i) In **K.V. Rajalakshmiah Setty & Anr v. State of Mysore & Anr: 1967 SCR (2) 70** passed by Supreme Court on November 7, 1966 the Apex Court has held that the concessions shown to the batch of 41 persons were mere adhoc concessions. The court therefore could not issue mandamus commanding the state to show such concession or indulgence to the petitioners because there was no such service rule which the state had transgressed. (State must have powers to pick and choose)
- ii) In **Mallikarjuna Rao & Others v. State of Andhra Pradesh: (1990) 2 SCC 707**, the Hon'ble Supreme Court has held that the Administrative Tribunal or the High Court cannot advise the government/ executive to exercise the rule making power. The court can also not direct the government to frame rules under Article 309 of the Indian Constitution.
- iii) In **Division Manager Aravali Golf Club & Another versus Chander Hass & Others: 2007**

(14) *SCALE 1*, the Hon'ble Supreme Court has held that the power to create the posts is the sole prerogative of the executive and legislative authorities and the court cannot direct for the creation of the post under the rules which is violative of the principles of separation of powers.

iv) In *Subha B. Nair & Others, State of Kerala & Others: (2008) 7 SCC 210*, the Hon'ble Supreme Court has held that the bonafide decision to leave certain vancancies unfilled cannot be assailed. The court has held :

“A decision on the part of an employer whether to fill up the existing vacancies or not is within its domain. On this limited ground in absence of discrimination or arbitrariness, a writ court ordinarily would not interfere in such matters. This has been so held by this Court in *Deepa Keyes v. Kerala State Electricity Board*, [(2007) 6 SCC 194] observing that the rank list having expired and the validity having not been extended, no relief could be granted to the appellants therein.”

v) In *State of Kerala versus Naveena Prabhu & Others: (2009) 3 SCC 649*, the Hon'ble Court observed as under:

“The decision of the Government to exclude the staff of the hospital attached to the College from the purview of the aforesaid orders was made specifically stating that direct payment system is not introduced by the Government so far as the College hospital is concerned. The same being a policy decision of the Government and having

not been challenged as either arbitrary or discriminatory at any stage by the respondents, thus we are not called upon to scrutinise the legality and validity of the aforesaid decision. Besides, the same being a policy decision of the Government, the same stands as this Court generally does not interfere with the policy decision of the Government.”

Relying upon the aforementioned judgments, the learned counsel for the respondents submitted that by no way the petitioner could have challenged the impugned decision and asked this court to interfere as the present decision is a policy decision and this Court cannot interfere in the same.

- (c) Thirdly, learned counsel for the respondents submitted that the posts of executive engineers and superintending engineers were not promotional posts and the said posts were for direct recruitment quota. Learned counsel relied on para 3.17 of the counter affidavit in support of his submission.

Learned counsel has argued that even otherwise the corporation has already decided to phase out the engineering cadre as per the recommendation of Tata consultancy services. Learned counsel relied upon para 1.4 and para 3.18 of the counter affidavit. It was argued that the engineering cadre is surplus staff with the respondents and required to be brought down and for the same the retirement scheme has been introduced by the

respondent and this is the reason for non consideration of the promotion on the lines of other staff who are stagnating for the last 10 years.

(d) It was lastly argued that it is not the petitioners or the engineering cadre which is stagnating but rather there are other cadres like financial and technical ones which are equally stagnating. Learned counsel has given instances of acute stagnation in the respondent corporation and he argued that it is not correct that the other cadres have much more speedier promotion than engineering staff as the entry level post in Engineering Cadre is Sectional Officer (SO) which is equivalent to the post of Technical Assistant (TA) in Technical Cadre and Junior Superintendent (JS) in General Cadre.

(i) As per CWC (Staff) Regulations, TA/JS after 5 years of service in their respective cadres are eligible for promotion to the post of Supdt. in the pay scale of Rs7800-230-13320, and again after serving 5 years on the post of Superintendent they become eligible for promotion to the post of Storage & Inspection Officer (SIO) in the pay scale of Rs. 8600-250-14600. Whereas, a Graduate S.O. after 5 years of qualifying service becomes eligible for promotion to the post of Assistant Engineer (AE) which is equivalent to the post of Storage

& Inspection Officer (SIO). Thus Technical and General Cadres reach up to level of A.E. after 10 years of service whereas S.O. having diploma becomes AE in 5 years.

(ii) Similarly, SIO after serving for three years first becomes eligible for promotion to the post of Senior Assistant Manager (SAM) and thereafter 5 years for the post Manager whereas AE after 6 years of qualifying service is directly promoted to the post of Executive Engineer (EE) which is equivalent to the post of Manager.

According to the learned counsel for the respondents, in view of the above, it is evident that general staff has to go through two more stages i.e. Superintendent and SAM before reaching the level of Executive Engineer. Hence, it is not correct that other cadres have much speedier promotion channel than Engineering Cadre and thus have more avenues for promotion. In fact the employees of other Management Cadre, who joined the Corporation in the same year in which S.O. has joined, are yet to reach at the level of AE/EE. In real terms, Engineering Cadre is more benefited than other cadres.

23. The learned counsel for the respondents thus sought to justify the said stagnation by stating that the decision to exclude engineering cadre cannot be faulted with.

24. In the light of the aforementioned submissions, the counsel for the respondents submitted that the present petition ought to be dismissed as no case is made out for the interference by this court.

25. I have gone through the petition, counter affidavit and documents filed therein and have also taken due note of submissions made at the bar. I have considered the submissions of the learned counsel for the parties and shall now proceed to deal with them point wise.

26. Firstly, I shall deal with the objection of the learned counsel for the respondents that this court cannot issue the writ of mandamus as the impugned decision is a policy decision. I find merit in the submission of the learned counsel for the respondents and there is no quarrel to this proposition that the extent of judicial scrutiny in the purely executive function is extremely limited. It is equally well settled that the court by way of mandamus cannot direct the legislature to enact the legislation in a particular manner or the executive to implement the same or frame the rules in a particular manner. This court respects all the judgments passed by the apex court in given circumstances as good law. However, it needs to be emphasized that it is trite that the judgment is a precedent for the proposition which emerges therefrom and not what is logically deduced therefrom. (see *Haryana State Coop. Land Development Bank v. Neelam*: (2005) 5 SCC 91)

27. The present case relates to stagnation of one of the cadres in the respondent organization which is engineering cadre. The petitioners have been stagnating for long time, in fact in some cases for more than 20

years. The Apex court has specifically dealt with this issue which has also become the subject of judicial opinion on more than one occasion before Hon'ble Supreme Court. Their lordships have always held that although it is trite that the court cannot direct the executive to frame rules in view of the doctrine of separation of powers but the jurisdiction of the court in cases relating to longstanding stagnation and when it is evident before the court is not completely obliterated.

28. The reference is invited to the judgment passed in **Food Corporation of India** (supra) passed by Hon'ble Supreme Court wherein it has discussed the law in extenso about the jurisdiction of the court in the cases like the present ones. The following excerpts of the judgments are worth noting:

“12. When the employees are denied an opportunity of promotion for long years (in this case 30 years) on the ground that he fell within a category of employees excluded from promotional prospect, the superior court will have the jurisdiction to issue necessary direction.

13. If there is no channel of promotion in respect of a particular group of officers resulting in stagnation over the years, the court although may not issue any direction as to in which manner scheme should be formulated or by reason thereof interfere with the operation of existing channel of promotion to the officers working in the different departments and the officers of the government but the jurisdiction to issue direction to make a scheme cannot be denied to a superior court of the country”

29. The **Food Corporation of India** (Supra) relies upon the earlier decisions in **State of Tripura v. K.K. Roy: (2004) 9 SCC 65**, **Dr. Ms. O.Z. Hussain v. Union of India: (1990) Suppl SCC 688**, **M/s.**

Ujagar Prints etc. v. Union of India: (1989) 3 SCC 531 wherein the Supreme Court has adopted the same reasoning while discussing promotional avenues accorded to section/ group of persons within the organization.

30. All this has been discussed by the Apex Court in **Food Corporation of India** (Supra) while affirming the order passed by the Calcutta High Court wherein the similar directions were issued by the writ court and in those circumstances, the apex court opined that the court will have limited jurisdiction to issue directions to frame a scheme for promotion as the promotion is the normal incident of the service and is a facet of limited enforceable right. The court can thus issue directions to make a scheme for promotional avenues for general well being of the citizens given there are state directives which are enshrined in the Indian constitution.

31. The Supreme Court has again in **A. Satyanarayana and Ors v. S. Purushotham and Ors: (2008) 5 SCC 416** held that mere chance of promotion is not a fundamental right but the right to be considered for the same is one. Further, where a policy decision wherein all promotional avenues in respect of a category of employees for all time to come cannot be nullified and the same would be hit by Article 16 of the Constitution of India.

32. In view of the same, the question of this Court entertaining the petition and passing direction stands answered as this Court's jurisdiction is explicitly preserved by the Hon'ble Apex Court in **Food Corporation**

of India (Supra) case and the same is by virtue of Article 141 of Indian Constitution binding on this court. Thus, the judgments referred by the learned counsel for the respondents passed by the Supreme Court wherein the aspects relating to statutory duty to be enforced, mandamus in general, direction to create post being violative of separation of powers, powers to issue advisory sermons to frame rules under article 309 of Indian Constitution are dealt with in the judgments passed in the given cases where the courts have exceeded the jurisdiction. But once the jurisdiction to issue direction has been expressly preserved by the Apex Court in cases relating to stagnation where there is an exclusion of cadre/ group of persons from promotional avenues, then the judgments relied upon by the learned counsel for the respondents does not aid the case of the respondents. Thus, I find that in view of the above, the jurisdiction of this court to issue direction and to entertain the writ is not obliterated in the case like the present one.

33. Secondly, the submission of the learned counsel for the respondents that the post of engineering is not important and the same is soon going to be abolished and for the same, the steps have been taken in the form of voluntary retirement scheme, is again not meritorious due to following reasons:

- a) The said submission of the respondents stand countered by the petitioners by stating it is incorrect on the part of the respondent to say that the said post of engineering is not important. The petitioners have relied upon Warehouse

Corporation Act, 1962, wherein the object of the Central Warehousing Corporation is mentioned which says “Acquire and build godowns and warehouses at suitable places in India”. The petitioners have stated that the engineers are always required in the respondent organization and the records suggest their demands were made by the respondents for their other warehouses wherein the postings of the engineers were made from time to time. The said answer of the petitioners makes it doubtful as to how the petitioners/ engineering cadre can be completely abolished.

b) Even otherwise, the law does not make distinction between the important and unimportant employees. The Hon’ble Supreme Court in *Food Corporation of India* (Supra) has frowned on making pleas regarding the important and unimportant employee in the following paragraphs:

“ We fail to understand how the cadre of Medical officers would be important as like the respondents, they also do not contribute towards the main function of the appellant. Such a plea even otherwise is wholly untenable. An employee is an employee. How the employees would be structured is undoubtedly within the realm of the statutory authority but by reason thereof, it cannot tinker with their essential fundamental right.

We wish such a plea had not been raised by the appellant before us.”

Thus, the engineering cadre is being done away with is no ground to deprive the petitioners from their promotional avenues till the time petitioners are working in the respondent organization and the same cannot come in the way of their getting promotion. Further, the existing avenues cannot be shut even if the respondents decide anything in relation to the same.

c) Lastly, there is no material on record to support the said plea of the respondents be it unimportant nature of the work of the engineering cadre or the engineering cadre being surplusage to the work of respondents. The respondents have contended that there are some recommendations of TCS for phasing out the engineering set up which the respondents are considering and acting upon which is again a matter of policy.

The petitioners, however, dispute the said plea which becomes a disputed question of fact and for the same reason in any circumstances cannot become a ground to take away promotional avenues from the petitioners.

34. Hence, the said plea of the respondents does not aid the case of the respondents and is hereby rejected due to the aforementioned reasoning.

35. It has been contended by the respondents that the petitioners cannot argue that only they are being stagnated. There are other cadres as

well which are equally stagnating. Further, the petitioners are rather benefitting due to their less qualifying years of service as a requirement for the promotion as against the general and technical staff wherein it is more difficult to attain promotion. This has been explained by the respondents by stating that in engineering cadre, section officer (Group 'C' post) gets promoted into assistant engineer (Group 'B' Post). Whereas in General and technical cadres, Junior Superintendent/ technical assistant in Group 'C' which is equivalent to section officer gets promoted in Superintendent and again from superintendent to Storage and Inspection officer/Assistant Manager and then Sr. Assistant Manager (Group 'A'). It has been stated that from Group 'C' to Group 'A', there are two posts within the group B itself. Thus, the petitioners if they stand wherever they are cannot complain of any discriminatory treatment. I am not inclined to accept this explanation due to the following reasons:

- a) Firstly, by giving this explanation, the respondent has sought to justify the stagnation which means that the stagnation is present in the respondent organization. It is, however, pertinent to mention that merely because others are stagnating more than the petitioners, it cannot be a ground to justify the stagnation of the petitioners.
- b) Secondly, the creation of post is again a matter of policy, it is upon the respondents in which cadre to make a posts more than the ones in another. But that again cannot be the only good ground to deprive the petitioners of promotion for years together

like in the present case more than 20 years. Merely because there are few posts in one cadre, does not mean that by doing mathematics the said cadre stands anyway lower than the other ones unless the rules prescribe so. The respondents have not cited any judgment to support this argument to show that any such calculation has been accepted by the court.

- c) The petitioners have sought to reply this argument which I find as a tenable explanation that due to lack of the posts in the engineering cadre, there is no creation of new post which ultimately culminated in to stagnation as there are no posts within the groups to get early promotion. Thus, the argument of the respondents that there are more levels within the groups itself in general or technical cadres rather goes against the respondents that there are more posts which have been created in those cadres as against the petitioners cadre.

36. For all these reasons, there is no force in the argument of the respondents as raised by them that the petitioners after qualifying years of promotion are lesser than that of the other cadres and the same can be a justifiable ground for stagnation.

37. I have already rejected the respondents reasoning to support their case that the petitioners are stagnating for just reasons. As the reasoning given by the respondents does not stand on the legally explained grounds as to the fact of the exclusion of the petitioners from that of the promotional avenues. Thus, the court can appropriately issue

directions in view of **Food Corporation of India** (Supra) leaving it open to the court to issue directions to frame a scheme for stagnating employees/cadre of employees. The promotional avenues can be accorded to the petitioners in the form of higher pay scale with perks or higher post with higher pay scale etc.

38. Accordingly, the present petition warrants interference by this Court in the form of directions. The following directions are issued to the respondents:

- a) It shall be obligatory on the part of the respondent Central Warehousing Corporation to consider the promotional avenues of the petitioners/ engineering cadre and take a decision with regard to the same keeping the aforesaid observations made hereinabove
- b) The respondent No.3 shall place the matter before the board of directors for immediate decision making which shall be taken expeditiously not beyond 6 months from the date of the order.
- c) The respondent No 1 ministry shall supervise the said decision making or the scheme which shall be decided by the respondent No. 2 which shall implement the same as per the law.
- d) The petitioners are at liberty to revive this petition if no decision is taken in this regard by the respondents.

39. The writ petition is disposed of with these terms and directions.

40. No costs.

MANMOHAN SINGH, J.

FEBRUARY 14, 2011
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