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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P. (C) 635/2009

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Judgment Reserved on: 10th January, 2017

Judgment Pronounced on: 6th March, 2017

SUBHASIS KUNDU AND ORS.

..... Petitioners

Through : Mr. Manish Jain, Mr. Ankur Garg, Mr.
Rohit Goel and Mr. Siddharth Sharma,
Advs.

versus

UOI & ANR.

..... Respondents

Through : Mr. V.S.R. Krishna, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

G.S.SISTANI, J.

1. Rule D.B. was issued in this matter on 19.07.2011.
2. Challenge in this writ petition is to the orders dated 31.10.2007 in O.A. No. 239/2007 and 20.02.2008 in R.A. No. 01/2008 passed by the Central Administrative Tribunal, Principal Bench, Delhi (briefly the '*Tribunal*') whereby both the application and the review filed by the petitioners herein have been dismissed.
3. Brief facts to be noticed for the disposal of the present writ petition are that the petitioners at the relevant point of time were working as 'Personal Assistants' (later redesignated as 'Stenographers Grade-I') in the Research, Designs and Standards Organisation/respondent no. 2 (briefly the '*RDSO*'), which was an attached office with the Ministry of Railways. As per the prevalent recruitment rules, the next promotional avenue for Stenographers was that of 'Private Secretary', which was to

be filled up 50% by seniority-cum-suitability and 50% by Limited Departmental Competitive Examination ('LDCE').

4. By a circular dated 31.05.2002, it was decided to hold a LDCE for forming a panel for the post of Private Secretary. Pursuant to the examination and a typing test, the petitioners qualified and their names figured in the Select List/ panel dated 30.01.2003 at serial nos. 2 to 5 in the order of merit after one, Sh. Surya Pal Yadav. On 14.02.2003, Sh. Yadav was promoted to the exclusion of the petitioners herein.
5. Since the petitioners were not promoted despite their names figuring in the select list, the petitioners made a representation to the respondents seeking promotion, which was not responded to. Accordingly, the petitioners approached the Lucknow Bench of the Tribunal by filing an O.A. No. 552/2003, which was disposed of on 24.11.2003 with a direction to the respondents to consider the appointment of the petitioners. It is the case of the petitioners that even thereafter, no order was forthcoming, which led to the filing of a contempt petition (C.P. 21/2004). In the contempt proceedings, the respondents informed the Tribunal that the claim of the petitioners had been rejected by a memorandum dated 12.01.2004. Accordingly, the contempt petition was dismissed. The memorandum bearing F-II/CC/P/2003/SK dated 12.01.2004 reads as under:

“

MEMORANDUM

In reference to their joint representation dt. 03.09.2003 received as annexure No.7 of OA No.552 of 2003 Shri Subhasis Kundu and Others are hereby informed that only two vacancies of Private Secretaries (Group 'B') had occurred on 01.08.2003 due to superannuation of two Private Secretaries (Group 'B') on 31.07.2003. Out of these two vacancies, one was in the share of Departmental Quota and the other was in the share of LDCE Quota.

You are aware that vide Gazette Notification dt.16.10.2002, the status of RDSO has been changed from attached office of Railway Board to Zonal Railways and a high level committee was constituted by Railway Board to give its recommendations for restructuring of RDSO. The said committee had submitted its confidential report in May 2003 and the copies of this report were also given to the recognized staff associations on 07.08.2003. After considering the views of staff associations, Railway Board had accepted the recommendations of the said committee vide their Confidential Letter dt.24.09.2003.

After change of status of RDSO, the employees of RDSO had been brought at par with the employees of Zonal Railways. Accordingly, the posts of Private Secretary (Group 'B') have been reduced from 37 to 4 and 20 number higher grade posts in group 'C' category are being created to provide better promotional prospects to the category of Personal Assistant (Group 'C'). Hence, a large number of Private Secretaries (Group 'B') are already in excess in this organization. However, they will retain their Group 'B' status on personal basis.

In view of the above, there is no post of Private Secretary (Group 'B') available for your promotion. In this connection, it is also pointed out that none of your juniors has been promoted to the post of Private Secretary (Group 'B')."

(Emphasis Supplied)

6. Aggrieved by the denial of promotion, the petitioners filed a fresh application, O.A. No. 239/2007, before the Tribunal.
7. The stand of the respondents before the Tribunal was that the process of selection was initiated by circular dated 31.05.2002 for forming a panel of 5 vacancies (one existing and four anticipated) in the post of Private Secretary, which was a Group 'B' gazetted post in the scale of Rs. 6,500-10,500/ 7,500-12,000 (provisional). Even before the select list was prepared, the status of RDSO was changed from an attached office to that of Zonal Railways by Gazette Notification dated 11.10.2002,

which mandated the bringing of employees of RDSO at par with Zonal Railways. Accordingly, a high-level committee was constituted to work out the modalities of restructuring of RDSO, which submitted its report in May, 2003. As per the report, the posts of Private Secretary were reduced to 4 and the remaining posts were to be downgraded in Group 'C' after their vacancy by the existing incumbents. The recommendations were accepted by the Railway Board vide its confidential letter dated 24.09.2003 and accordingly, Gazette Sanction Memo No. 8 of 2004 was issued on 21.01.2004. The respondents stated that after 14.02.2003, i.e. the promotion of Sh. Yadav, no promotion to the post of Private Secretary has been made as the report of the high-level committee had made it evident that the posts are not likely to be continued.

8. The OA filed by the petitioners was dismissed on 31.10.2007 and the review petition filed thereafter has also been dismissed on 20.02.2008, which has led to the filing of the present writ petition.
9. Mr. Jain, learned counsel for the petitioners, submits that the orders of the Tribunal are bad in law and should be set-aside. Learned counsel submits that the figuring of the name of the petitioners in the select list or the promotion of Sh. Yadav are not disputed and consequently, it was incumbent upon the respondents to promote the petitioners to the vacant posts of Private Secretaries. He submits that the granting of promotion to Sh. Yadav to the exclusion of the petitioners was in clear violation of the mandate of Article 14 of the Constitution of India. He submits that the circular dated 31.05.2002 clearly stipulated that there were 5 vacancies proposed to be filled up, the subsequent decision not to fill up vacancies having been taken without any justifiable reasons is liable to be quashed.

10. Learned counsel contends that despite the Gazette Notification dated 11.10.2002, the respondents went ahead with the selection process which culminated in the creation of the panel on 30.01.2003. He submits that initially 10 vacancies were proposed to be filled up from which 50% were to be filled from the LDCE Quota. Sh. Yadav filled up the first vacancy; while additionally, the third (31.07.2003), fifth (31.10.2003), seventh (31.12.2004) and ninth vacancy (30.06.2004) were also to be filled up from the panel dated 30.01.2003.
11. Drawing the attention of the court to paragraph 14 of the Report of the high-level committee, Mr. Jain submits that the recommendations were to be effected only prospectively. Accordingly, learned counsel submits that the vacancies which had occurred prior to the acceptance of the report vide confidential letter dated 24.09.2003, had to be filled up from the existing panel. He concludes that despite the recommendations having a prospective affect, the respondents have failed to fill the vacancies which had occurred prior to the acceptance of the recommendations on 24.09.2003. Mr. Jain submits that the Tribunal has failed to appreciate that the restructuring was affected only on 21.01.2004, however, since there were vacancies prior thereto, the petitioners had acquired in indefeasible right to promotion in respect of the posts.
12. Learned counsel next contends that the promotion of Sh. Yadav on 14.02.2003 to the exclusion of the petitioners herein smacks of arbitrariness and consequently, the petitioners should have been promoted. To this end, counsel submits that even at the time of promotion of Sh. Yadav, the respondents were aware of restructuring, yet they went ahead by promoting him. The petitioners, being on a similar footing as that of Sh. Yadav, should have also been considered

for promotion against the existing vacancies. Mr. Jain concludes that such discrimination on the part of the respondents is clearly arbitrary. Relying upon ***Shankarsan Dash v. Union of India*, (1991) 3 SCC 47** (paragraph 7), learned counsel submits that even though the State is under no legal obligation to fill up vacancies; but at the same time, this does not give a licence to the State to act in an arbitrary manner.

13. The final contention of the learned counsel for the petitioners is that the vacancies having occurred on or before 01.11.2003, had to be filled up in terms of the relevant departmental rules and the failure to do so is clearly arbitrary. He submits that as on 01.11.2003, no restructuring order was effected or issued and therefore, the respondents should have considered the case of the petitioners in light of the rules relevant on that date. He relies upon paragraph 28 of the judgment of the Supreme Court in ***Major General H.M. Singh, VSM v. Union of India & Anr.*, (2014) 3 SCC 670**, which reads as under:

“28. The question that arises for consideration is, whether the non-consideration of the claim of the appellant would violate the fundamental rights vested in him under Articles 14 and 16 of the Constitution of India. The answer to the aforesaid query would be in the affirmative, subject to the condition that the respondents were desirous of filling the vacancy of Lieutenant-General, when it became available on 1-1-2007. The factual position depicted in the counter-affidavit reveals that the respondents indeed were desirous of filling up the said vacancy. In the above view of the matter, if the appellant was the seniormost serving Major-General eligible for consideration (which he undoubtedly was), he most definitely had the fundamental right of being considered against the above vacancy, and also the fundamental right of being promoted if he was adjudged suitable. Failing which, he would be deprived of his fundamental right of equality before the law, and equal protection of the laws, extended by Article 14 of the Constitution of India. We are of the view that it was in order to extend the benefit of the fundamental right enshrined under

Article 14 of the Constitution of India, that he was allowed extension in service on two occasions, firstly by the Presidential Order dated 29-2-2008, and thereafter, by a further Presidential Order dated 30-5-2008. The above orders clearly depict that the aforesaid extension in service was granted to the appellant for a period of three months (and for a further period of one month), or till the approval of the ACC, whichever is earlier. ...”

(Emphasis Supplied)

14. Relying upon the aforequoted paragraph, learned counsel submits that where the Supreme Court found the reason for denying promotion to be arbitrary, it granted promotion holding the same to be a violation of Article 14 of the Constitution. Similarly in the present case, Mr. Jain submits that the action of depriving the petitioners of promotion to the post of Private Secretary is arbitrary, as is evident from the following factors:
- (i) The petitioners were eligible for the post;
 - (ii) The Select Panel was acted upon as Sh. Yadav was promoted therefrom;
 - (iii) The vacancies in question arose prior to 01.11.2003, i.e. the date of effecting of restructuring;
 - (iv) The restructuring actually took place on 21.01.2004; and
 - (v) The high-level committee had specifically held that its recommendations are to be effected prospectively.
15. *Per contra*, Mr. Krishna, learned counsel for the respondents, submits that an assessment of vacancies for the post of Private Secretaries for the period 01.07.2002 to 30.06.2004 was carried out and vacancies (one existing and nine anticipated) were proposed to be filled. The details of vacancies are as under:

<u>Vacancy</u>	<u>Date of Occurrence</u>	<u>Remarks</u>
Existing: 01		
Anticipated: 09		Due to Retirement of
	1. 28.02.2003	Mam Chand
	2. 31.07.2003	Ram Swaroop
	3. 31.07.2003	G.N. Srivastava
	4. 31.08.2003	Phool Singh
	5. 31.10.2003	R.K. Dausia
	6. 31.12.2003	Hari Lal
	7. 31.12.2003	Chain Singh
	8. 31.03.2004	Chaube Lal
	9. 30.06.2004	P.D. Harwani

16. One temporary post was surrendered on 01.03.2003 and the incumbent of the post was adjusted against the vacancy occurring due to retirement of Sh. Mam Chand. Since the recruitment rules provided for 50% quota through LDCE, the one existing vacancy and anticipated vacancy at serial nos. 3, 5, 7 and 9 were proposed to be filled through LDCE. Accordingly, circular dated 31.05.2002 was issued and pursuant thereto the panel dated 30.01.2003 was created. Sh. Yadav, whose name figured at serial number 1 was promoted to the post of Private Secretary on 14.02.2003.
17. Learned counsel submits that once the Report of the Committee was given in May, 2003, it was clear that the cadre structure would undergo a change and the posts of Private Secretary would be reduced, thus, no further promotions were effected. Subsequently, the strength of Private Secretaries was reduced when the restructuring was effected. He submits that the then Director, Administration-II, RDSO was the

Secretary of the high-level committee and therefore, knew that the anticipated vacancies in Private Secretary were not likely to be continued when the report was submitted in May, 2003. He also relies upon *Shankarsan Dash (Supra)* to submit that the declaration of a candidate as successful does not give any right to the employee to be appointed.

18. Mr. Krishna submits that after the restructuring was effected, majority posts of Private Secretary were downgraded and the panel could no longer be affected as the same pertained to a Group 'B' gazetted post. He additionally submits that the decision not to effect promotions cannot be said to be arbitrary as the same was taken for valid and cogent reasons.
19. We have heard the learned counsel for the parties and gone through the material placed on record.
20. It is not in dispute that pursuant to an assessment of vacancies, circular dated 31.05.2002 was issued proposing LDCE for creation of a panel for promotion to the post of Private Secretary. The petitioners qualified the same and their names figured as serial numbers 2 to 5 of the select panel created on 30.01.2003 on the basis of their merit. From the panel, Sh. Yadav, whose name figured at serial number 1, was promoted on 14.02.2003 against an existing vacancy, but the respondents did not effect any further promotions thereafter. As the petitioners have not been promoted despite being eligible and their name figuring in the select panel has led to the applications before the Tribunal and the present petition.
21. The contentions of the learned counsel for the petitioners are threefold: first, the petitioners had an indefeasible right to be considered for promotion against vacancies which had occurred prior to the

restructuring; second, promotion of Sh. Yadav to the exclusion of the petitioners is arbitrary and consequently, the petitioners have a right to be considered against the vacancies; and third, vacancies which had occurred prior to the restructuring were to be filled in terms of the erstwhile departmental rules unaffected by the subsequent restructuring.

22. The question whether a candidate achieves a right to be appointed/promoted once having been found eligible and placed in the select list has been repeatedly faced by the courts. The Constitution Bench of the Supreme Court in ***Shankarsan Dash (Supra)*** was examining the question “*whether a candidate whose name appears in the merit list on the basis of a competitive examination, acquires indefeasible right of appointment as a Government servant if a vacancy exists*” (paragraph 1). The appellant therein was on top of the merit list when certain vacancies arose in the general category of Indian Police Services (‘IPS’). Similar vacancies had arisen in reserved category and duly filled from the merit list in which the name of the appellant also figured. The appellant sought parity with the reserved category and appointment against the subsequent vacancies. The stand of the Union was that though vacancies had been filled up from the existing merit list as and when they arose, but by the time the appellant was at the top, the process of appointment for the next year had begun and the government had decided to close the process of selection. In this background, the Supreme Court rejected the case of the appellant and ultimately dismissed the appeal. Justice L.M. Sharma, giving the opinion for the bench, held as under:

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied.

Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subash Chander Marwaha [(1974) 3 SCC 220: 1973 SCC (L&S) 488 : (1974) 1 SCR 165] , Neelima Shangla v. State of Haryana [(1986) 4 SCC 268 : 1986 SCC (L&S) 759] , or Jatinder Kumar v. State of Punjab [(1985) 1 SCC 122 : 1985 SCC (L&S) 174 : (1985) 1 SCR 899].

...

10. The main contention on behalf of the appellant has been, however, that the authorities in keeping the vacancies arising later unfilled, acted arbitrarily. Mr Goswami referred to several documents annexed to the special leave petition and affidavits filed on behalf of the parties and contended that although appointments of many candidates in the other services were made in the later vacancies, the vacancy in the Indian Police Service which subsequently became available to the appellant was refused without any just cause, resulting in illegal discrimination. This was emphatically denied on behalf of the respondent. ... From the materials produced before us it is fully established that there has not been any arbitrariness whatsoever on the part of the respondent in filling up the vacancies in question or the other vacancies referred to by the learned counsel for the appellant. The process of final selection had to be closed at some stage as was actually done. A decision in this regard was accordingly taken and the process for further allotment to any vacancy arising later was closed. Mr Goswami relied upon certain appointments actually made subsequent to this stage and urged that by those dates the further vacancies in the Indian Police Service had arisen to which the appellant and the other successful candidates should have been adjusted. We do not find any

merit in this contention. It is not material if in pursuance of a decision already taken before closing the process of final selection, the formal appointments were concluded later. What is relevant is to see as to when the process of final selection was closed. Mere completing the formalities cannot be of any help to the appellant. We do not consider it necessary to mention all the details in this connection available from the large number of documents which we closely examined during the hearing at considerable length and do not have any hesitation in rejecting the argument of the learned counsel in this regard based on the factual aspect.”

(Emphasis Supplied)

23. Even in case of DPCs, the department is fully justified in with deferring promotions by taking a conscious decision not to fill up vacancies provided the same is not actuated by *mala fides* or is due to administrative lapses [See *UOI & another v. K.L. Taneja & Anr.*, 2013 (1) ADR 530; *Pradeep Kumar & Ors. v. Govt. of N.C.T. of Delhi & Ors.*, 2016 SCC OnLine Del 4599; *Union of India & Anr. v. The Defence Marine Engineering Technical Staff Welfare Association & Ors.*, 2016 SCC OnLine Del 6564; *Union of India & Anr. v. Shri H.N. Saini & Anr.*, W.P. (C) 485/2009 dated 20.01.2017].
24. In *Subha B. Nair and Ors. v. State of Kerala and Ors.*, (2008) 7 SCC 210, even though the cooperative bank had gained approval for 208 posts, it only filled up only 201 vacancies. The Supreme Court rejected the contention of the appellants and held as under:

“19. The question as to whether there existed 7 vacancies or 16 vacancies in the aforementioned situation loses all significance. We would assume that as per the requisition, 9 more vacancies could be filled up but it is trite that if the employer takes a policy decision not to fill up any existing vacancy, only because a person's name is found in the select list, the same by itself would be a ground to compel the Bank to fill them up.”

(Emphasis Supplied)

25. A coordinate bench of this Court, of which one of us (G.S. Sistani, J.) was a member, was faced with a similar situation in ***Tanay Rana and Ors. v. Union Public Service Commission and Ors.***, **MANU/DE/3832/2015** wherein the petitioners had alleged that despite there being clear vacancies, the respondents had failed to exhaust the reserve panel. This Court rejected the contention of the petitioners and held as under:

“19. The same question has been dealt by the Hon'ble Apex Court in several other cases including the case of Food Corporation of India v. Bhanu Lodh and Others: (2005) 3 SCC 618 and All India SC and ST Employees Association and Another v. A. Arthur Jeen and Others: (2001) 6 SCC 380 wherein the Hon'ble Apex Court has held that merely because the names of the candidates were included in the panel indicating their provisional selection, they did not acquire any indefeasible right for appointment even against the existing vacancies and the State is under no legal duty to fill up all or any of the vacancies as laid down by the Constitution Bench of this Court, after referring to earlier cases in Shankarsan Dash v. Union of India: (1991) 3 SCC 47, the relevant part of the judgment reads thus:--

...

21. On perusal of facts and contentions of both the parties, we are of the considered view that recruitment process cannot become an unending process. The respondents are not legally bound to fill up all the notified vacancies. The State has a discretionary power to decide as to how many vacancies are to be filled up and there is no corresponding duty vested in the State to fill up all the vacant posts. There is no mandatory provision to suggest that more than one list is to be requisitioned wherein it is obligatory on the part of the respondents to fill up all advertised vacancies to the extent of exhaustion of the said vacancies. In the present case, the recruitment process was completed with the result being declared pertinent to the posts and the completion of the same exhausts the recruitment process. The decision on the part of

the respondent not to fill up all the advertised vacancies is neither arbitrary nor unreasonable and therefore, the instant Writ Petition is devoid of merit.”

(Emphasis Supplied)

26. It would also be useful to refer to ***Rakhi Ray and Ors. v. The High Court of Delhi and Ors.***, (2010) 2 SCC 637 (paragraph 26) and ***Vijoy Kumar Pandey v. Arvind Kumar Rai and Ors.***, (2013) 11 SCC 611 (paragraphs 13 - 16).
27. From the foregoing, it is clear that the State is not bound to fill up all the notified vacancies. It may take a policy decision not to fill up the vacancies and defer promotions/appointments for valid reasons. It has been held that mere because name of a candidate figures in the select panel extends no indefeasible right for appointment against a vacancy. This is subject to a caveat that the State has not acted in an arbitrary manner or resorted to cronyism ignoring the comparative merit of the eligible candidates whose names figure on the select list/ panel.
28. Accordingly, the present case has to be judged on the touchstone of the law laid down in the foregoing judicial pronouncements.
29. The first contention advanced by the counsel for the petitioners warrants to be rejected at the threshold itself, as no right can accrue to the petitioners to be considered against the vacancies occurring prior to the restructuring simply due to their names figuring in the select list/ panel dated 30.01.2003.
30. The second and third contention of the counsel for the petitioners is that the decision not to fill up vacancies occurring prior to effecting of restructuring is arbitrary and therefore, is bad in law. Though extensive arguments have been led in respect of the date of effecting of restructuring, the same are irrelevant for deciding the present matter as the relevant consideration is whether the respondents decided not to fill

up vacancies and that such decision is not vitiated by arbitrariness or cronyism. The date of effecting restructuring has no bearing on the present matter.

31. The stand of the respondents remains that once the Report of the high-level committee was received by the RDSO, it was clear that the posts of Private Secretary will be reduced converting many existing posts into supernumerary posts, therefore, further promotions were not carried out. The petitioners have also placed on record the internal notings of the respondents, which read as under:

“1. Shri S. Kundu, PA and 03 others (Pas) had filed a case in Hon'ble CAT/LKO and prayed to give them promotion to the post of PS (Group B) against existing vacancies. Vide PUC, the orders of the Hon'ble Tribunal dated 23.11.2003 has been received through Legal Cell which is self explanatory.

2. In this reference, it is stated that as per assessment of vacancies for the period 01.07.2002 to 30.06.2004 an LDCE panel of 05 candidates was made out of which the first, Shri. S.P. Yadav has already been promoted to the post of PS. The present OA is filed by the other four candidates.

3. RDSO was granted the status of Zonal Rly. w.e.f. 01.01.2003 vide Gazette Notification dated 16.10.2002. A committee was set up to recommend the modalities for the change of status of RDSO which had submitted its report in May, 2003 which was received in this office vide Bd's letter No. 2002/ER/3400/16 dated 5-8-2003. As per the recommendations of this committee the number of posts of PS (Group B) was reduced from 37 to 4 and it was mentioned that the existing incumbents, these posts will be operated in group 'C'. Therefore, on receipt of the above report, it was clear that the vacant posts of PS (Group B) were not likely to continue and many more group B posts of PS were to be converted into supernumerary posts.

These recommendations has [sic: have] been accepted by the Board vide their orders No.2002/ER/3400/16 dt.

24.09.2003.

4. Only two vacant posts of PS were available w.e.f. 01.08.2003 due to superannuation. In view of the above facts the vacant posts of PS were not filled since August, 2003.

5. Hon'ble CAT/LKO's orders received through Legal Cell are placed alongside for perusal.

Submitted for orders please.

Sd./-
17.12.2003

Sd./-
17.12.2003

As per Bd's orders the vacant posts are to be distributed in Gr 'C' as per laid down % and a proposal in this regard has already been moved by TDA-III for finance vetting.

The proposal for creation of supernumerary post has been sent to finance for vetting. In view of instructions issued by Rly. Bd. The promotion is not possible at the present since vacancies are no more existing in this cadre."

(Emphasis Supplied)

32. The aforequoted notings received the requisite approval which led to the passing of the order dated 12.01.2004. We now proceed to examine the background in which the decision to halt further promotions was arrived at. On 11.10.2002, the status of RDSO was changed from an 'attached office' to Zonal Railways which mandated the restructuring of the office to bring it at par with Zonal Railways. To suggest the modalities thereto, a high-level committee was constituted, which submitted its report in May, 2003. The relevant portion of the report reads as under:

"7.2.2. Stenographer :-

Stenographic cadres in RDSO are being maintained broadly on Board pattern as per the grade structure indicated below:-

<i>Sl. No.</i>	<i>Designation</i>	<i>Scale Rs.</i>	<i>No. of posts</i>
<i>1</i>	<i>Principal Private Secretary</i>	<i>10000-15200</i>	<i>2</i>
<i>2</i>	<i>Private Secretary</i>	<i>6500-10500/ 7500-12000 (Provisional on the strength of Court judgment)</i>	<i>38</i>
<i>3</i>	<i>Personal Assistant [sic]</i>	<i>5500-9000</i>	<i>92</i>
<i>4</i>	<i>Steno Gr III</i>	<i>4000-6000</i>	<i>57</i>

7.2.2.1 *In the wake of RDSO having been declared as Zonal Railway, Committee feels that the stenographic cadre should be brought at par with the Zonal Railways/Production Units as per the provisions contained in Board's letter No.PC-V/99/I/9/1 dated 28-09-99 and PC-V/97/R-II/48 dated 15.09.2000. As per these instructions the stenographic cadre will have to be maintained as per the grade structure and percentage distribution given below:*

	<u>Scale</u>	<u>No. of posts</u>
<i>Attached to DG (Gr. Rs.24050-26000 & ADG (Gr. Rs.22400-24500/RDSO</i>	<i>- Rs.8000-13500 (Gaz. Gr. 'B')</i>	<i>1+1</i>
<i>Attached to HAG Officers Gr. Rs.22400-24500</i>	<i>- Rs.7500-12000 (Gaz. Gr. 'B')</i>	<i>4</i>
<i>Attached to SAG Officers (Gr. Rs.18400-22400)</i>	<i>- Rs.6500-10500 (Non-gaz.)</i>	<i>20</i>
<i>(i) Steno Gr. I Gr. Rs.5500-9000</i>	<i>- 20%</i>	
<i>(ii) Steno Gr.II Gr. Rs.5000-8000</i>	<i>- 40%</i>	
<i>(iii) Steno Gr.III Gr. Rs.4000-6000</i>	<i>- 40%</i>	

7.2.2.2 *The stenographic cadre should be brought at par with the Zonal Railways/Production Units as indicated above by suitable adjustment in the existing strength. The existing incumbents of the posts of grade of Rs.10000-15200 continue in scale Rs.10000-15200 till the vacation of the post by them. On vacancy of the post, it will be operated in grade Rs.8000-13500. Similarly, the existing incumbents in grade Rs.6500-*

10500/7500-12000 (Provisional) will continue to hold the post in grade Rs.6500-10500/7500-12000 (Provisional) with the existing stage subject to final outcome of Writ Petition No. 3866/98 filed in High Court/Delhi. On vacation by the existing incumbents, these posts will be suitably adjusted as Ill./- the cadre structure in grade Rs. 6500-10500 (non-Gaz.) indicated above. The posts of Stenographer available in grade Rs. 5500-9000 and Rs. 4000-6000 will be adjusted and operated on the basis of percentage distribution of posts in the ratio 20:40:40 as mentioned in para 7.2.2.1. ...

...
14. *The recommendations made by the Committee will have prospective effect only.”*

(Emphasis Supplied)

33. The categorical stand of the respondents remains that once the Report came to the knowledge of the administration, all further promotions from the panel were stopped as it was manifest that many existing posts shall become supernumerary posts. The respondents contend that the then Director/Administration-II/RDSO being the Secretary of the committee and therefore, it was known to the administration that the posts will be abolished and accordingly, vacancies occurring on or after 01.08.2003 were not filled up. It was clear in the report that the posts of Private Secretary were to be reduced to 4 in the scale of Rs.7500-12000 (Gaz. Gr.'B') and further 20 higher grade posts were to be created in the scale Rs.6500-10500 to provide better promotional avenues.
34. Thereafter, the recommendations of the high-level committee were discussed in the Railway Board's meetings on 4th and 11th September, 2003, wherein the recommendations contained in paragraphs 7.2.2.1, 7.2.2.2 and 7.2.2.3, reproduced foregoing, were accepted by the Board. Subsequently on 04.12.2003, the restructuring order was issued accepting the recommendations of the committee and giving effect to

the same from 01.11.2003. The posts of Private Secretary were reduced from 37 to 4 in terms of the recommendations of the committee and the order dated 04.12.2003 vide Gazette Sanction Memo No. 8 of 2004 dated 21.01.2004. By the Memo, 33 posts of Private Secretary were downgraded to Group 'C' posts from Group 'B'.

35. It is evident that when the report of the high-level committee came to the knowledge of the administration, it became manifest that numerous posts of Private Secretaries (Group 'B') will be downgraded to Group 'C' and consequently, the administration halted all further promotions against occurring vacancies. This decision in our view is not arbitrary and is based on sound reasoning. The State cannot be forced to make appointments or promotions against vacant posts when it has become evident that they shall be abolished in the near future. Therefore, the decision cannot be faulted with on this ground alone.
36. The petitioners have relied upon the judgment in ***Major General H.M. Singh (Supra)*** to state that the failure to fill up vacancies was arbitrary. We are unable to accept the submission of the learned counsel for the reason that the facts in ***Major General H.M. Singh (Supra)*** were completely different as the appellant therein was denied promotion to the rank of Lieutenant-General even when he had been clamouring for consideration since long and his name had been recommended by the Selection Board before he reached the age of retirement. The recommendation was then sent to the Appointments Committee of the Cabinet for its approval, which could not be finalized in time and the President granted extensions to the appellant for short periods or "*till the approval of ACC.*" The Committee did not approve the case of the appellant solely on the ground that he had attained the age of retirement and was on extension. In this factual matrix, the Division Bench of the

Supreme Court found such decision to be arbitrary and invalid. The State never decided not to fill up the vacancy and the question was of rationale for rejecting the candidature of the appellant. Therefore, the case does not come to the aid of the petitioners.

37. Final aspect to be considered is whether the promotion of Sh. Yadav to the exclusion of the petitioners reeks of arbitrariness to entitle the petitioners to promotion. We think not. For the reason that Sh. Yadav was promoted on 14.02.2003, prior to the receipt of the report of the high-level committee. At that time, no decision was taken to defer promotions. Additionally, his name also figured admittedly at serial number 1, i.e. higher than the petitioners herein and therefore, such an act cannot be said to be arbitrary. Since, the promotion of Sh. Yadav was effected prior to the report of the committee which led to halting of all further promotions and as the comparative merit of the candidates has been taken into consideration, his appointment cannot be said to be an arbitrary action on the part of the respondents.
38. Resultantly, we do not find any infirmity in the orders passed by the Tribunal which would require us to interfere in the proceedings under Article 226 of the Constitution of India. No ground is made out to entertain this petition. The writ petition is dismissed accordingly.
39. No costs.

G.S.SISTANI, J.

VINOD GOEL, J.

MARCH 6th, 2017

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