

DIRECTOR, LIFT IRRIGATION CORPORATION LTD. AND  
ORS. ETC. ETC.

v.

PRAVAT KIRAN MOHANTY AND ORS.

FEBRUARY 12, 1991

[KULDIP SINGH AND K. RAMASWAMY, JJ.]

*Civil Services: Orissa State Lift Irrigation Corporation Ltd.—Reorganisation of set up—Amalgamation of composite cadre of Electrical-Mechanical into Electrical or Mechanical cadre—Validity of—Gradation List—Fitment of personnel of composite cadre as per date of initial appointment vis-a-vis scale of pay—Consequent loss of seniority and reduction in chances of promotion—Whether violative of Articles 14 and 16 of the Constitution—Right to promotion—Whether a fundamental right.*

*Constitution of India, 1950: Articles 14 and 16—Gradation List—Prepared consequent to amalgamation of cadres—Seniority and chances of promotion affected—Whether violative of right to equality—Right to Promotion—Whether a fundamental right.*

*Administrative Law: Judicial Review—Policy decision to reorganise set up and amalgamate cadres on administrative exigency—Whether open to judicial review.*

The Lift Irrigation Corporation Ltd. had three categories of services, namely, Mechanical, Electrical and Composite unit of Mechanical-Electrical when it was carved out of the Government organisation. Subsequently, due to administrative exigency, the Corporation decided to reorganise its set up and classify the employees into two categories' namely, Electrical and Mechanical by amalgamating the composite Electrical and Mechanical Engineering diploma holders either in Electrical or Mechanical wing, and invited objections to the scheme. It also called for options from persons holding only the composite diploma, namely, Mechanical and Electrical Engineering Supervisors. On consideration of options received, the Corporation prepared two gradation lists in the order of seniority from the respective dates of appointment to the posts and higher scale of pay held by respective persons and fitted them in the respective lists as per options.

Respondent No. 1, a diploma holder in Electrical Engineering, who

A was working as Sub-Assistant Engineer (Electrical) in Government service, and had been drawn on deputation to the Corporation along with Respondents No. 6 and 7, appellants in third appeal, holders of double diploma in Mechanical and Electrical Engineering, and working as Mechanical Supervisors, along with others, had not filed any objection to the scheme, but questioned before the High Court the graduation of Respondents No. 6 and 7 and others in the Electrical Wing.

The High Court quashed the gradation lists and directed the Government and the Corporation to treat Respondent No. 1 and the other respondents as belonging to two cadres of Sub-Assistant Engineer (Electrical) and (Mechanical) respectively.

C The Corporation, the State Government and the aggrieved employees filed separate appeals, by special leave, contending that the Corporation had the power to amalgamate the three sections into two, due to administrative exigency and to prepare seniority lists from respective dates of employees' initial appointment, etc.

D Respondent No. 1 contended that his seniority as No. 2 in the Electrical Wing could not be disturbed by taking Mechanical Supervisors into the Electrical Wing offending his right to promotion enshrined under Articles 14 and 16 of the Constitution.

E Allowing the appeals, this Court,

F HELD: 1.1 The Government or the Corporation, due to administrative exigencies, is entitled to and has power to reorganise the existing cadres or amalgamate some or carve out separate cadres. The decision to amalgamate the existing cadres by reorganising them into two cadres being a policy decision, taken on administrative exigencies, is not open to judicial review unless it is *mala fide*, arbitrary or bereft of any discernible principle. [345E, G]

G 1.2 On account of amalgamation into two cadres by absorbing the personnel working in the composite cadre, namely, Electrical-Mechanical in either Electrical or Mechanical cadre, and their adjustment, the order of seniority of the employees working in Electrical or Mechanical cadres is likely to be reviewed. When the persons in the composite Electrical-Mechanical cadre opted to the Electrical cadre, they were entitled to be considered for their fitment in the cadre as per the seniority from the date of their initial appointment vis-a-vis their scale of pay. This was the procedure adopted by the Corporation in fixing the

*inter se* seniority. The procedure adopted is just, fair and reasonable and beneficial to all the employees without affecting their scales of pay or losing the seniority from the date of initial appointment. [345G-H, 346A-B]

Undoubtedly, in this process, the first respondent lost some place in seniority which is consequential to amalgamation. He has not been deprived of his right to be considered for promotion; only his chances of promotion have been receded.

1.3 There is no fundamental right to promotion. An employee has only right to be considered when it arises, in accordance with the relevant rules. [346C]

1.4 In the circumstances, the High Court was not right in holding that the gradation list prepared by the Corporation was in violation of Respondent No. 1's right to equality enshrined in Article 14 read with Article 16 of the Constitution, and that he was unjustly denied of the same. [346D]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 699 of 1985.

From the Judgment and Order dated 17.5.1984 of the Orissa High Court in O.J.C. No. 936 of 1979.

G.L. Sanghi, Adv., R.K. Mehta, Ms. Uma Jain, M.A. Firoz and P.N. Misra for the appearing parties.

The Judgment of the Court was delivered by

**K. RAMASWAMY, J.** These three appeals are against the judgment of the Orissa High Court in O.J.C. No. 936 of 1979. The Division Bench allowed the writ petition and quashed the gradation lists of sub-Asstt. Engineers (Electrical) and Sub-Asstt. Engineer (Mechanical), Annexures 5 & 6 before the High Court and the promotions given to the respondents Nos. 4 and 5 therein Annexure 7. The Government and the Corporation were directed to consider the question of promotion treating the writ petitioner and the respondents as belonging to two cadres of Sub-Asstt. Engineer (Electrical) And (Mechanical). These three appeals were filed, one by the Corporation, another by the State Government and the third one by the aggrieved employees.

A The facts are simple. Shri Bidura Charan Mohapatra, the 6th respondent/first appellant in the third appeal, a diploma holder in Mechanical and Electrical Engineering, was appointed as Mechanical Supervisor on August 24, 1962 in the pay scale of Rs.215-396. Shri Parijat Ray, the 7th respondent/2nd appellant, equally possessed of diploma in Electrical and Mechanical Engineering, was appointed in B the same scale of pay as a Mechanical Supervisor on November 5, 1962. Shri P.K. Mohanty, the writ petitioner in the High Court and the respondent in these appeals holds diploma in Electrical Engineering and was appointed as Hand Driller in the pay-scale of Rs.100-155, on October 23, 1963 and Sub-Assistant Engineer (Electrical) in the pay-scale of Rs.185-325 on September 1, 1965. The Lift Irrigation Corporation Ltd., a part of the Government Organisation, was carved out C separately and the three persons alongwith others were drawn on deputation from the Government service to the Corporation in the year 1963. Three categories of services were existing in the Corporation, namely, Mechanical, Electrical and Mechanical-Electrical composite unit. In the year 1971, three tentative gradation lists were prepared for classification purpose of those three divisions as Sub-Assistant Engineer (Mechanical), Sub-Assistant Engineer (Electrical), D Supervisors, Electrical and Mechanical which includes Electrical Supervisors, Mechanical Supervisors, Drilling Supervisors and Foreman-cum-Instructors. In 1977 the Corporation decided to reorganise its set up and to classify the employees into two categories, namely, E Sub-Assistant Engineer (Electrical), Sub-Assistant Engineer (Mechanical) to attend to the respective works, namely, mechanical and electrical. The Corporation invited objections to amalgamate Composite Electrical and Mechanical Engineering Diploma Holders, either in Electrical or Mechanical Wing. Options were called for from the persons holding only the composite diploma, namely, Mechanical F and Electrical Engineering Supervisors. The respondent-writ petitioner did not file any objection to the scheme. On consideration of the objections filed by others, two gradation lists were prepared in the order of seniority from the respective dates of appointment to the posts and higher scale of pay held by respective persons and fitted them in the respective lists as per options. As stated earlier the respondent G questioned their gradation in the Electrical Wing in the High Court and the High Court quashed it and the appellants obtained leave of this Court under Art. 136.

The contention of the appellants is that the respondent has no right to be kept in a particular wing. The Corporation, with a view to H create two categories, namely, Mechanical and Electrical sought to

amalgamate the third Composite Mechanical/Electrical Wing and sought for options from the persons holding the composite posts. This was taken due to administrative exigency. The Corporation has power to carve out by amalgamating three sections, into two divisions and to prepare the seniority lists from the respective date of their initial appointment, etc. The High Court, therefore, was unjustified to quash the gradation lists. It was contended for the respondent by Sri Misra, his learned counsel, that the persons from the three wings are only deputationists holding lien on Government posts. The Corporation did not frame any scheme of its own to appoint its own employees, nor given options to all the deputationists for confirmation as its employees. So long as the employees are continuing on deputation, they are entitled to have seniority in the respective wings: The writ petitioner admittedly has been working on the Electrical Wing and was No. 2 in the order of seniority as Sub-Assistant Engineer (Electrical). His right to seniority, cannot be disturbed by taking Mechanical Supervisor into the Electrical Wing, offending his right to promotion enshrined under Arts. 14 and 16 of the Constitution.

The writ petitioner holds only Diploma in Electrical Engineering. S/Shri Bidura Charan Mohapatra and Parijat Ray hold double diploma of Mechanical and Electrical Engineering. It is settled law that the Government or the Corporation, due to administrative exigencies, is entitled to and has power to reorganise the existing cadres of amalgamate some or carve out separate cadres. The pre-existing three separate cadres, namely, Electrical, Mechanical and the composite cadre, namely, Electrical-Mechanical were sought to be amalgamated into two cadres by absorbing the personnel working in the composite cadre, namely, Electrical-Mechanical in either Electrical cadre or Mechanical cadre. Options have been called for in that regard from all the persons working in the Electrical-Mechanical cadre and the appellants exercised their options for absorption in Electrical cadre. The employees working in the Electrical and Mechanical cadres were also aware of the same. It was, therefore, open to the respondent to raise any objection to the policy at that stage. But he failed to do so. The decision to amalgamate the existing cadres by reorganising into two cadres was a policy decision taken on administrative exigencies. The policy decision is not open to judicial review unless it is *mala fide*, arbitrary or bereft of any discernable principle. On account of the amalgamation and adjusting the composite Electrical-Mechanical cadre in either of the Electrical or Mechanical cadre as per the options given, the order of seniority of the employees working in Electrical or Mechanical cadres is likely to be reviewed. When the persons in the

- A composite Electrical-Mechanical cadre opted to the Electrical cadre, they are entitled to be considered for their fitment to the cadre as per the seniority from the date of their initial appointment vis-a-vis their scale of pay. This was the procedure adopted by the Corporation in fixing the *inter se* seniority. The procedure adopted is just, fair and reasonable and beneficial to all the employees without effecting their scales of pay or loosing the seniority from the date of initial appointment. Undoubtedly, in this process the respondent/writ petitioner lost some place in seniority which is consequential to amalgamation. He has not been deprived of his right to be considered for promotion, only his chances of promotion have been receded. It was not the case of the respondent that the action was actuated by *mala fide* or colourable exercise of power. There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with the relevant rules. From this perspective in our view the conclusion of the High Court that the gradation list prepared by the Corporation is in violation of the right of the respondent/writ petitioner to equality enshrined under Art. 14 read with Art. 16 of the Constitution, and the respondent/writ petitioner was unjustly denied of the same is obviously unjustified.

The appeals are accordingly allowed and the writ petition stands dismissed. But in the circumstances, parties are directed to bear their respective costs.

N.P.V.

Appeals allowed.