(2001) 01 SC CK 0079

Supreme Court of India

Case No: C.A. No.-000441-000441 / 2001

E.S.P.Rajaram and Others		APPELLANT
	Vs	
Union of India and Others		RESPONDENT

Date of Decision: Jan. 10, 2001

Acts Referred:

- Civil Procedure Code, 1908 - Section 107(1)(a), Order 41 Rule 33
- Land Acquisition Act, 1894 - Section 4, 4(1), 6, 11, 23
- Indian Railway Establishment Code, - Rule 1A
- Constitution Of India, 1950 - Article 32, 136, 129, 136, 141, 142, 142(1), 144, 145(5), 226, 309

Citation: (2001) AIRSCW 200 : (2001) 3 CALLT 37 : (2001) 1 JT 573 : (2001) 4 MPHT 1 : (2001) 1 SCALE 146 : (2001) 1 SCR 203 : (2001) 1 Supreme 169 : (2001) 1 UPLBEC 730

Hon'ble Judges: Shivaraj V. Patil V. Pati, J; S. Rajendra Babu, J; G. B. Pattanaik, J; Doraiswamy Raju, J; D.P. Mohapatra, J

Bench: Full Bench

Advocate: K.N. Raval, Additional Solicitor General, Raju Ramachandran, R. Venkataramani, Ms. Chandan Ramamurthi, S. Wasim A. Qadri, D.N. Ray, Bipul Kumar, S. K. Dwivedi, Gaurav Agrawal, C.A. Brijesh, K.B.S. Rajan, Ms. Pushpa Rajan, Ms. Janani, S. Muralidhar, S. Vallinayagam, for the Appellant;

Final Decision: Dismissed

Judgement

D.P. MOHAPATRA, J.

Leave granted.

The appellants who were appointed as Traffic Apprentices in Southern Railway prior to May 15, 1987, have filed this appeal challenging the judgment of the Madras Bench of the Central Administrative Tribunal (for short the CAT) dated October 4, 1996 in OA No. 1096 of 1996 dismissing the case with the observation that it would be appropriate for the applicants to approach the Supreme Court for any

clarification/review of the judgment in the case titled 264231 . The controversy which arose in that case was regarding the claim of Traffic Apprentices appointed prior to 15-5-1987 that they should be given the scale of pay of Rs. 1600-2660, benefit of which was available to Traffic Apprentices recruited after 15-5-1987. Similar claims were raised before different benches of the CAT. There had been divergence of opinion between the different benches, some accepting the claim of pre 1987 Traffic Apprentices for the higher scale of pay, some other benches taking a contrary view. The Ernakulam bench of CAT had quashed the memorandum dated 15-5-1987 issued by the Railway Board in which it was provided that the higher scale of pay would be admissible only to the Traffic Apprentices recruited after the date of the memorandum. These conflicting views taken by different benches of the CAT came up for consideration by this Court in the case of Union of India and others vs. M. Bhaskar and others (supra), in which a Bench of three learned Judges held inter alia (i) that Rule 1-A of the Indian Railway Establishment Code which had come to be made pursuant to the power conferred by the proviso to Article 309 of the Constitution permitted the Railway Board to issue necessary instructions regarding recruitment in the lowest grade and the memorandum dated 15--5--1987 having been issued in exercise of that power, the Board had valid authority to issue the memorandum;
ii) that since the recruitment of apprentices under the impugned memorandum was to man the posts, not of Assistant Station Masters, Assistant Yard Masters etc. as before, but of Station Masters and Yard Masters and the standard of examination for the apprentices to be recruited after 15-5-1987 was required to be higher than that which was prevailing, giving them higher pay scales or reducing the period of their training, could not be said to be discriminatory, arbitrary or unreasonable.

iii) That the cut off date 15-5-1987 is not arbitrary since the court felt satisfied that the date is of relevance and the memorandum as given came to be issued in the circumstances noticed in the judgment. This Court upheld the validity of the memorandum. The conclusions arrived at by this Court were summed up in paragraph 17 of the judgment which reads as follows:

"17.All the appeals, therefore, stand disposed of by setting aside the judgments of those tribunals which have held that the pre-1987 Traffic/Commercial Apprentices had become entitled to the higher pay scale of Rs.1600-2660 by the force of memorandum of 15-5-1987. Contrary view taken is affirmed. We also set aside the judgment of the Ernakulam Bench which declared the memorandum as invalid; so too of the Patna Bench in appeal @ SLP (C) No. 15438 of 1994 qua Respondent 1. We also state that cases of Respondents 2 to 4 in appeals @ SLPs (C) Nos. 2533-35 of 1994 do not stand on different footing."

In paragraph 18 of the judgment this Court considering the hardship which may be caused to the appellants concerned directed Union of India and its officers not to recover the amount already paid. The said paragraph is quoted herein below:

"18. Despite the aforesaid conclusion of ours, we are of the view that the recovery of the amount already paid because of the aforesaid judgments of the Tribunals would cause hardship to the respondents/appellants concerned and, therefore, direct the Union of India and its officers not to recover the amount already paid. This part of our order shall apply (1) to the respondent/appellants who are before this Court; and (2) to the pre-1987 apprentice in whose favour judgment had been delivered by any CAT and which had become final either because no appeal was carried to this Court or, if carried, the same was dismissed. This benefit would be available to no other."

In pursuance of the directions issued by this Court in the judgment, the departmental authorities gave appropriate placement in the scale of pay to the appellants who were recruited as Traffic Apprentices prior to 15-5-1987. They were given the pay of scale of Rs. 455-700 which stood revised as Rs. 1400-2300 on the recommendation of the 4th Pay Commission and not the scale of Rs.550-750 which was revised to Rs. 1600-2660. Feeling aggrieved by the said order the appellants filed OA No. 1096/96 which was disposed of by the judgment dated 4th of October, 1996 of the Madras Bench of the CAT in the manner noted earlier. Thereafter the appellants filed SLP No. 5373 of 1997 giving rise to this appeal. In the said SLP a bench of three learned Judges of this Court by the Order passed on 6-11-1997 directed that the matter be placed before a constitution bench, since the judgment in M. Bhaskar''s case (supra) was delivered by co-equal bench. The referral order is quoted hereunder;

"In this SLP the grievance of the petitioners is against the Direction No.2 contained in Para 18 of the judgment of this court in 264231 passed by the Bench of Three learned Judges whereby it has been directed that the order contained in para 18 would apply to pre-1987 apprentices (Traffic) in whose favour judgment has been delivered by any CAT and which had become final either because no appeal was carried to this Court or, if carried, the same was dismissed. The learned counsel for the petitioners has challenged the correctness of these directions on the ground that finality of the orders passed in the case of the petitioners as a result of the SLP filed against the order of the CAT having been dismissed by this Court, could not be reopened as a result of the said directions. Since the judgment in M Bhaskar''s case (supra) was delivered by a Bench of three learned judges of this Court, we consider it appropriate that the matter be placed before the Constitution Bench. It is directed that the matter may be placed before the Hon''ble Chief Justice for directions in this regard.

In the meanwhile, it is directed that the Status quo with regard to reversion in rank and reduction in pay scales shall be maintained, as it exists today."

The main thrust of the arguments of learned counsel appearing for the appellants was that the observations and directions given by this Court in M. Bhaskar''s case (supra) particularly in paragraph 18 thereof are unsustainable since it was passed

without giving any notice to the appellants and/or other similarly placed employees who were seriously prejudiced by such directions. Elucidating the contentions, the learned counsel submitted that the appellants who had been given fitment in the higher scale of pay, Rs. 1600-2660 and on that basis some of them had got further promotions should not have been subjected to the directions in the judgment of this Court particularly when the SLP filed by the Union of India and the Railways against the judgment of CAT (Madras Bench) dated 4th of December, 1989 in OA No. 322 of 1988 and 488 of 1987 (the appellants were applicants in OA 322 of 1988) accepting their claim for the higher scale of pay had been dismissed in limine by this Court. In any view of the case, submitted the learned counsel, the principle of natural justice required that the appellants should have been given notice and afforded an opportunity of hearing before the order prejudicially effecting their interest was passed.

The learned Additional Solicitor General appearing for the respondents on the other hand contended that in the context of the facts and circumstances of the case and the nature of the controversy raised, this Court rightly passed the order, issuing the directions in paragraph 18 of M. Bhakar''s case (supra) for the purpose of bringing about uniformity amongst all the employees similarly placed, that is, those who were recruited as Traffic Apprentices prior to 15-5-1987. The further submission of the learned Addl. Solicitor General was that this Court taking note of the hardship which may be caused to the appellants and other similarly placed employees issued the further direction that no recovery shall be made of the amount which they might have received in the higher scale of pay. In the submission of the learned Addl. Solicitor General, the directions in paragraph 18 of the judgment were issued with a view to do complete justice between all pre-1987 Traffic Apprentices and therefore calls for no interference.

Since, the thrust of the arguments of the learned counsel appearing for the petitioners and the intending interveners was that the observations in paragraphs 17 & 18 of the judgment in M.Bhaskar''s case (supra) by which they have been seriously prejudiced were not made without giving notice to them, we specifically asked the learned counsel to place their arguments on the merits of the directions contained in the said paragraphs for the purpose of satisfying ourselves if a re-look at the said decision is necessary. The learned counsel could not raise any contention of substance questioning the correctness of the decision in the aforementioned case except stating that many of the persons who were parties in the cases decided by the Tribunal taking the contra-view and some others had been given benefit on the basis of the decision of the Tribunal and some of them have even got further promotions which have become vulnerable in view of the decision of this Court in M. Bhaskar case (supra). It was their contention that this Court should have made it clear that the decision in M. Bhaskar case (supra) will not affect the parties in whose favour judgments have been delivered by any bench of CAT and which had become final either because no appeal was carried to this Court or if carried the same was

dismissed and further the benefit should have been extended to others who though not parties in any proceeding before any bench of CAT had been given service benefit on the basis of the judgment delivered by a bench of the CAT taking the view which was rejected by this Court in M. Bhaskar case (supra).

We have carefully perused the judgment in M. Bhaskar''s case (supra). The decision in that case has been taken on a detailed analysis of the relevant provisions of the Indian Railway Establishment Code and the Indian Railway Establishment Manual (1968 Edn.), and in the light of certain general principles of law relating to recruitment cogent reasons have been given in support of the findings and conclusions arrived at in the judgment. As noted earlier no contention was advanced before us pointing out any serious error in the decision therein. We are satisfied that in the facts and circumstances of the case placed before their Lordships the decision is correct and warrants no interference.

If it is necessary to trace the source of power of this Court to issue the directions and pass the order as in paragraph 18 of M Bhaskar''s case (supra) one can straightaway look to Article 142 of the Constitution. The said provision vests power in the Supreme Court to pass such decree or make such order as is necessary for doing complete justice in any case or mater pending before it. The provision contains no limitation regarding the causes or the circumstances in which the power can be exercised nor does it lays down any condition to be satisfied before such power is exercised. The exercise of the power is left completely to the descretion of the highest court of the country and its order or decree is made binding on all the Courts or Tribunals throughout the territory of India. However, this power is not to be exercised to override any express provision. It is not to be exercised in a case where there is no basis in law which can form an edifice for building up a super structure. This Court has not hesitated to exercise the power under Article 142 of the Constitution whenever it was felt necessary in the interest of justice.

In the case of 289637 a bench of three learned Judges of this Court considering the power of the Court to recall its own order in a criminal case referred to the relevant observations in 289327 and held that under Article 142 of the Constitution the Supreme Court cannot altogether ignore the substantive provisions of a statute and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute. The following passage from the headnote of the case of Supreme Court Bar Association v. Union of India (supra) was quoted with approval:

"However, the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant while dealing with a cause pending before it. This power cannot be used to `supplant'' substantive law applicable to the case or cause under consideration of the Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express

statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by `ironing out the creases'' in a cause or matter before it. Indeed the Supreme Court is not a court of restricted jurisdiction of only dispute-settling. The Supreme Court has always been a law-maker and its role travels beyond merely dispute settling. It is a `problem-solver in the nebulous areas'' but the substantive statutory provisions dealing with the subject-matter of a given case cannot be altogether ignored by the Supreme Court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the subject."

In the case of 295403 concerning applicability of certain service rules to officers of the CRPF this Court relying on the power vested in Article 142 "for doing complete justice in any cause or matter" issued the following directions.

"There are two petitioners in WP(C) No.211 of 1997. Out of these two, it is stated that one has already retired from the service. In the light of the interim orders dated 19.1.1998 and 27.1.1998, the first petitioner (C.M Bahuguna) is still in service in the promoted post. In the circumstances, we are of the view that notwithstanding the dismissal of the writ petition, the petitioner, viz. C.M Bahuguna who is still in service in the promoted post, should be allowed to continue in the said promoted post, if necessary, by creating a supernumerary post. However, we make it clear that all further promotions shall be made in the light of this order."

In the case of 275266 considering the petition for review, a Bench of three learned Judges of this Court interpreting Article 142(1) held that the provision does not and cannot override Article 145(5) and observed that the decrees or orders issued under Article 142 must be issued with concurrence of the majority of the Judges hearing the matter. This Court referred to the following observations made by the Court in Prem Chand Garg vs. Excise Commissioner U.P. 1963 Supp.(1) SCR 885:

"It does not and cannot override Article 145(5). The decrees or orders issued under Article 142 must be issued with the concurrence of the majority of Judges hearing the matter. In the case of Prem Chand Garg v. Excise Commnr. U.P. a Bench of five Judges of this Court considered a Rule made by this Court providing for imposition of terms as to costs and as to giving of security in a petition under Article 142 were very wide and could not be controlled by Article 32. Negativing this contention, this Court said:

"The powers of this Court are no doubt very wide and they are intended to be and will always be exercised in the interest of justice. But that is not to say that an order can be made by this Court which is inconsistent with the fundamental rights guaranteed by Part III of the Constitution. An order which this Court can make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws. Therefore, we do not think it would be possible to hold that Article 142(1) confers upon this Court powers which can contravene the provisions of Article 32."

Similarly, powers conferred by Article 142(1) also cannot contravene the provisions of Article 145(5). Article 142 would not entitle a Judge sitting on a Bench of two Judges, who differs from his colleague to issue directions for the enforcement of his order although it may not be the agreed order of the Bench of two Judges. If this were to be permitted, it would lead to conflicting directions being issued by each Judge under Article 142, directions which may quite possibly nullify the directions given by another Judge on the same Bench. This would put the Court in an untenable position. Because if in a Bench of two Judges, one Judge can resort to Article 142 for enforcement of his directions, the second Judge can do likewise for the enforcement of his directions. And even in a larger Bench, a Judge holding a minority view can issue his order under Article 142 although it may conflict with the order issued by the majority. This would put this Court in an indefensible situation and lead to total confusion. Article 142 is not meant for such a purpose and cannot be resorted to in this fashion."

In the case of 268156 concerning a departmental proceeding against a police constable this Court rejecting the contention raised by the appellant that the Supreme Court could not cure inconsistency because the respondent had not filed any cross appeal, this Court removed the inconsistency by invoking Article 142 of the Constitution and by referring to Order 41, Rule 33 and Section 107(1)(a) of the Code of Civil Procedure, 1908. This Court referring to the decision of the Constitution Bench in Supreme Court Bar Association case (supra) reiterated the position that while exercising power under Article 142 of the Constitution the Court cannot ignore the substantive right of a litigant while dealing with a cause pending before it and can invoke its power under Article 142. The power cannot however be used to supplant substantive law applicable to a case. This Court further observed that Article 142 even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby achieve something indirectly which cannot be achieved directly.

In the case of 293449 this Court dealing with the binding nature of the orders issued by the Supreme Court to the High Court referring to the provisions of the Articles 141 142 and 144 of the Constitution made the significant observations:

"The afore-narrated words, we think, presently, are enough to assert the singular constitutional role of this Court, and correspondingly of the assisting role of all authorities, civil or judicial, in the territory of India, towards it, who are mandated by the Constitution to act in aid of this Court That the High Court is one such judicial authority covered under Article 144 of the Constitution is beyond question. The order dated 14.1.1994 of this Court was indeed a judicial order and otherwise enforceable throughout the territory of India under Article 142 of the Constitution. The High Court was bound to come in aid of this Court when it required the High Court to have its order worked out. The language of request often employed by this Court in such situations is to be read by the High Court as an obligation, in carrying out the constitutional mandate, maintaining the writ of this Court running large throughout the country."

In the case of 292669 a case relating to grant of permit to private operators on nationalised routes, this Court referring to Articles 136 142 and 226 of the Constitution held that the Court should endeavour to neutralise any undeserved and unfair advantage gained by a party invoking its jurisdiction. Therein it was observed by this Court (at p.630):

"This Court in Grindlays Bank Ltd. v. ITO held that the High Court while exercising its power under Article 226 the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised. It was further held that the institution of the litigation by it should not be permitted to confer an unfair advantage on the party responsible for it. In the light of that law and in view of the power under Article 142(1) of the Constitution this Court, while exercising its jurisdiction would do complete justice and neutralise the unfair advantage gained by the 50 operators including the appellants in dragging the litigation to run the stage carriages on the approved route or area or portion thereof and forfeited their right to hearing of the objections filed by them to the draft scheme dated February 26, 1959."

In the case of 287896 relating to a proceeding for criminal contempt a Bench of three learned Judges of this Court dealing with the preliminary objection raised on behalf of the contemner and the State Bar Council held that this Court is not only the highest court of record, but under various provisions of the Constitution, is also charged with the duties and responsibilities of correcting the lower courts and tribunals and or protecting them from those whose misconduct tends to prevent the due performance of their duties. Therein this Court distinguished the decisions in Prem Chand Garg (supra) and relied on the decisions in 292527 and 280318 , and this Court made the following relevant observations in connection with the power vested under Article 142:

"Apart from the fact that these observations are made with reference to the powers of this Court under Article 142 which are in the nature of supplementary powers and not with reference to this Court''s power under Article 129, the said observations

have been explained by this Court in its later decisions in Delhi Judicial Service Assn. v. State of Gujarat and Union Carbide Corpn. v. Union of India. In para 51 of the former decision, it has been, with respect, rightly pointed out that the said observations were made with regard to the extent of this Court''s power under Article 142(1) in the context of fundamental rights. Those observations have no bearing on the present issue. No doubt, it was further observed there that those observations have no bearing on the question in issue in that case as there was no provision in any substantive law restricting this Court''s power to quash proceedings pending before subordinate courts. But it was also added there that this Court''s power under Article 142(1) to do complete justice was entirely of a different level and of a different quality. Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of this Court. Once this Court is in seisin of a matter before it, it has power to issue any order or direction to do complete justice in the matter. A reference was made in that connection to the concurring opinion of Justice A.N.Sen in 280004 where the learned Judge observed as follows:

"Very wide powers have been conferred on this Court for due and proper administration of justice. Apart from the jurisdiction and powers conferred on this Court under Articles 32 and 136 of the Constitution, I am of the opinion that this Court retains and must retain, an inherent power and jurisdiction for dealing with any extraordinary situation in the larger interests of administration of justice and for preventing manifest injustice being done. This power must necessarily be sparingly used only in exceptional circumstances for furthering the ends of justice."

The Court has then gone on to observe there that no enactment made by Central or State legislature can limit or restrict the power of this Court under Article 142 of the Constitution, though the Court must take into consideration the statutory provisions regulating the matter in dispute. What would be the need of complete justice in a cause or matter, would depend upon the facts and circumstances of each case.

In the case of Union Carbide Corporation and others Vs. Union of India and others (supra), a Constitution Bench of this Court dealing with the power of the Apex Court to withdraw unto itself cases pending in the district court at Bhopal, considered the scope and ambit of the power vested in the Court under Article 142 of the Constitution. In para 60 of the judgment it was observed:

"Any limited interpretation of the expression "cause or matter" having regard to the wide and sweeping powers under Article 136 which Article 142(1) seeks to effectuate, limiting it only to the short compass of the actual dispute before the Court and not to what might necessarily and reasonably be connected with or related to such matter in such a way that their withdrawal to the apex Court would enable the court to do "complete justice", would stultify the very wide constitutional powers. Take, for instance, a case where an interlocutory order in a matrimonial cause pending in the trial court comes up before the apex Court. The parties agree

to have the main matter itself either decided on the merits or disposed of by a compromise. If the argument is correct this Court would be powerless to withdraw the main matter and dispose it of finally even if it be on consent of both sides. Take also a similar situation where some criminal proceedings are also pending between the litigating spouses. If all disputes are settled, can the court not call up to itself the connected criminal litigation for a final disposal? If matters are disposed of by consent of the parties, can any one of them later turn around and say that the apex Court''s order was a nullity as one without jurisdiction and that the consent does not confer jurisdiction? This is not the way in which jurisdiction with such wide constitutional powers is to be construed.

While it is neither possible nor advisable to enumerate exhaustively the multitudinous ways in which such situations may present themselves before the Court where the Court with the aid of the powers under Article 142(1) could bring about a finality to the matters, it is common experience that day in and day out such matters are taken up and decided in this Court. It is true that mere practice, however long, will not legitimize issues of jurisdiction. But the argument, pushed to its logical conclusions, would mean that when an interlocutory appeal comes up before this Court by special leave, even with the consent of the parties, the main matter cannot be finally disposed of by this Court as such a step would imply an impermissible transfer of the main matter. Such technicalities do not belong to the content and interpretation of constitutional powers.

In para 83 of the judgment this Court rejected as unsound and erroneous the proposition that a provision in any ordinary law irrespective of the importance of the public policy on which it is founded, operates to limit the powers of the apex Court under Article 142(1).

In paragraph 214 of the judgment summing up the conclusions reached this Court observed:

"(i) The contention that the apex Court had no jurisdiction to withdraw to itself the original suits pending in the District Court at Bhopal and dispose of the same in terms of the settlement and the further contention that, similarly, the Court had no jurisdiction to withdraw the criminal proceedings are rejected.

It is held that under Article 142(1) of the Constitution, the Court had necessary jurisdiction and power to do so.

Accordingly, contentions (A) and (B) are held and answered against the petitioners."

In the case of 296130 taking note of the piquant situation caused due to inordinate delay in payment of compensation for the property acquired u/s 4 of the Land Acquisition Act, this Court made the following observation.

"The petitioners because of the delay and inaction on the part of the respondents are in a great predicament. Any amount determined as market value of their lands

acquired, with reference to the dates of issuance of notifications under sub-section (1) of Section 4 of the Act i.e. at the rate prevalent 15-21 years prior to the dates of the making of the award, cannot be held to be compliance of the mandate regarding payment of market value of the land so acquired under the Constitution and the Act. This Court faced with such a situation, where proceedings have remained pending for years after issuance of declarations u/s 6, in order to protect the petitioners concerned from irreparable injury i.e. getting compensation for their lands acquired with reference to the date of notification under sub-section (1) of Section 4, which may be more than a decade before the date of the making of the award, has advanced the date of notification under sub-section (1) of Section, so that market value of the land so acquired is paid at a just and reasonable rate. Reference in this connection may be made to the cases of 289278 ; 279432 and 268925 . This Court has advanced the date of notification under sub-section (1) of Section 4 of the Act, in the cases referred to above, without assigning any reason, as to how the date fixed by Sections 11 and 23 of the Act, can be altered for ascertainment of the market value of land. The power of this Court under Article 142 is very wide and can be exercised in the ends of justice. The scope of the said Article was recently examined in the case of 280318

In the case of 285837 which arose from a civil suit this Court in the facts and circumstances of the case considered it fit for invoking Court''s power under Article 142 for giving equitable relief to the plaintiff-respondents, not on ground on which they claimed relief in the suit but on the ground of promissory estoppel equity and fair play.

From the conspectus of the views expressed in the decided cases noted above it is clear that this Court has invoked the power vested under Arts. 142 of the Constitution in different types of cases involving different fact situations for doing complete justice between the parties.

In the case on hand the controversy relates to the scale of pay admissible for Traffic Apprentices in the Railways appointed prior to the cut-off date. The controversy in its very nature is one which applies to all such employees of the Railways; it is not a controversy which is confined to some individual employees or a section of the employees. If the judgment of the tribunal which had taken a view contrary to the ratio laid down by judgment of this Court in M. Bhaskar''s case (supra) was allowed to stand then the resultant position would have been that some Traffic Apprentices who were parties in those cases would have gained an unfair and undeserved advantage over other employees who are or were holding the same post. Such enviable position would not only have been per se discriminatory but could have resulted in a situation which is undesirable for a cadre of large number of employees in a big establishment like that of the Indian Railways. To avoid such a situation this Court made the observations in paragraph 17 of the judgment. At the cost of repetition we may reiterate that since the main plank of argument of the

appellants was that since they were not parties in the case they had no opportunity to place their case before this Court made the observations in paragraph 17 of the judgment as aforementioned we specifically asked learned counsel appearing for the parties to place the argument in support of their challenge to the observations made by this Court on merits. No point of substance assailing the observations on merits could be placed by them. The only contention made in that regard was some of the employees who were given benefit in the judgments of the CAT have got further promotions and they may lose the benefit of such promotion in case the observations made in paragraph 17 of the judgment are allowed to stand as it is. We are not impressed by the contention raised. If some employees were unjustly and improperly granted a higher scale of pay and on that basis were given promotion to a higher post then the basis of such promotion been on a non-existent; the superstructure built on such foundation should not be allowed to stand; This is absolutely necessary for the sake of maintaining equality and fair play with the other similarly placed employees. However, in our considered view, it will be just and fair to clarify that any amount drawn by such employees either in the basic post (Traffic Apprentice) or in a promotional post will not be required to be refunded by the employee concerned as a consequence of this judgment. This position also follows as a necessary corollary from the observations made by this Court in paragraph 18 of the judgment in M.Bhaskar''s case (supra).

On the discussions made and the reasons set forth in the preceding paragraphs the appeal is dismissed but in the circumstances of the case without any order for costs.