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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.3057/2002

New Delhi, this the 11th day of March, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K.NAIK, MEMBER (A)

Dr. B.K.Rai
J.R.O., SIDTE/JS BR, SI;
c/o Army Head Quarter
Ministry of Defence
Sena Bhawan
New Delhi - 110 011. ... Applicant

(By Advocate: Sh. P.K.Sharma)

Versus

Union of India through

1. Secretary
Ministry of Defence
New Delhi.

2. The Joint Secretary
(Trg.) and CAO
Ministry of Defence
C-II, Hutments
New Delhi.

... Respondents

(By Advocate: Ms. Harvinder Oberoi)

O R D E R

Justice V.S. Aggarwal:-

Applicant Dr. B.K.Rai was selected and joined as Senior Technical Assistant (for short 'STA'). The next promotion is to the post of Junior Research Officer in the concerned ministry. The post of Junior Research Officer has specific recruitment rules which have undergone changes here and there and the relevant columns pertaining to qualifications required for direct recruitment and promotion for the above post reads:

"Direct Recruitment		Promotion
<u>Essential</u>		
SRO 89 of 1981	i) At least 2nd Class Master's degree in Mathematics or Mathematical Statistics from	i) STA with three years of regular service in the grade failing which

recognised University or equivalent.

ii) 2 years research experience in Mathematics / Mathematical Statistics or in work involving application of Theory of Numbers or Groups.

STA with 8 years of regular service in the grade of STA and TA combined together and possessing

- a) Masters Degree in Mathematics or Mathematical Statistics of a recognised University or equivalent or
- b) Bachelor's Degree and Interpretership Course / Diploma from a recognised University/Institution in any one of the foreign languages viz Chinese, Burmese, Tibetan, Bhutanese, Nepali, Sinhalese, Indonesian, Malaysian, Russian, Pusto, Persian and Arabic.

Desirable

i) Knowledge of a foreign language (to be specified at the time of recruitment)

ii) Training or experience in programming on electronic data processing systems.

SRO 262
of 1988

Essential

i) Master's degree in Mathematics/ Statistics/ Mathematical Statistics from recognised University or equivalent.

ii) 2 years research experience in Mathematics/ Mathematical Statistics or in work involving application of Theory of Numbers or Groups.

STA with 3 years regular service in the grade failing which STA with 8 years combined regular service in the grade of STA and TA and possessing the following educational qualifications:-

- a) Degree in Mathematics/ Statistics/Mathematical Statistics or a higher qualification in the above mentioned subjects from a recognised University/ Institution.
- b) Diploma/Interpretership in one of the foreign languages, viz Chinese, Burmese, Tibetan, Bhutanese, Nepali, Sinhalese, Indonesian, Malaysian, Russian, Pusto, Persian and Arabic; or

Desirable

i) Knowledge of a foreign language (to be specified at the time of recruitment).

ii) Training or experience in programming on electronic data processing system.

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c) A certificate/Diploma in computer programming from a recognised University/Institution.

SRO 106
of 1995

Essential

i) Master's degree in Mathematics/ Statistics from a recognised University or equivalent.

ii) 2 years research experience in Mathematics/ Mathematical Statistics or in work involving application of Theory of Numbers or Groups.

Desirable

i) Knowledge of a foreign language (to be specified at the time of each recruitment)

ii) Training/experience in programming on an Electronic Data Processing System.

STA with 3 years regular service in the grade failing which 5 years combined regular service in the grade of STA and Data Entry Operator Grade 'D' out of which 2 years must be in the grade of STA and possessing the following educational qualifications:-

Diploma/Interpretership in one of the foreign languages, viz Chinese, Burmese, Tibetan, Bhutanese, Nepali, Sinhalese, Indonesian, Malaysian, Russian, Pusto, Persian and Arabic from a recognised University/ Institution.

SRO 249
of 2000

Essential

i) Master's degree in Mathematics/ Statistics or Mathematical Statistics/ Electronics/Computer Science from a recognised University or equivalent.

ii) Diploma/interpretership in a foreign language (exact language to be specified at the time of each recruitment)

iii) 2 years research experience in Mathematics or Mathematical Statistics/Computer Programming or in work involving application of Theory of Numbers or Groups.

STA with 3 years regular service in the grade possessing a Diploma/ Interpretership in Chinese, Burmese, Tibetan, Bhutanese, Nepalese, Sinhalese, Indonesian, Malaysian, Russian, Pusto, Persian and Arabic from a recognised University/Institution.

Note: STAs recruited on direct recruitment basis and holding the post on regular basis on the date of notification of this revised rule are exempted from possessing of the above qualifications."

2. By virtue of the present application, the applicant seeks to declare the recruitment rules i.e. SRO-262, SRO-106 and SRO-249 published on 29.10.1988, 17.5.1995 and 16.10.2000 respectively, for promotion from STA to JRO, to be null and void and further to direct the respondents to follow the recruitment rules

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of the year 1981 because applicant had joined the service at that time, he was entitled for promotion according to the said rules with effect from 1991.

3. The applicant contends that there was no requirement of an extra foreign language qualification for direct recruitment of Junior Research Officer in the year 1988. The vacancies had arisen in the year 1991-92. They were not filled up at the appropriate time. It was deliberately delayed in order to allow other candidates to acquire the qualification. The applicant had acquired the said qualification in the year 1999 when the respondents' department sponsored his name. In this process, the applicant became junior and was discriminated. It is on these broad facts that the above said reliefs are being claimed.

4. In the reply, the respondents have controverted the assertions. It has been pleaded that the qualification of diploma/interpretership course in one of the specified foreign languages has been prescribed as an essential qualification under all the recruitment rules. In the SROs of 1981 and 1988 alternative qualifications have been provided which had enabled the respondents to consider and promote those STAs who did not possess diploma/interpretership in one of the specified languages. Only in SRO of 1995 no alternative qualification to the diploma/interpretership was provided as a result of which many of the seniors became ineligible for consideration for promotion to the grade of JRO. To overcome the situation, the respondents floated a proposal for amending the recruitment rules which

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could not materialise immediately on account of the temporary ban imposed by the Department of Personnel & Training on framing and amendment of recruitment rules. Only after the ban was lifted, the respondents got the SRO-249 of 2000 issued wherein the existing Senior Technical Assistants were exempted from possessing the diploma/interpretership in the specified foreign language.

5. It is pleaded that during the pendency of the proposal for amendment of the recruitment rules some of the Senior Technical Assistants acquired the diploma/interpretership in one of the specified foreign languages. Since they fulfilled the conditions prescribed in the recruitment rules of 1995 a Departmental Promotion Committee meeting was held and those persons were promoted. One Shri Rajiv Sharma filed OA 256/2001, challenging the promotion of Shri J.P. Mahto on the ground that on the date of occurrence of the vacancy he did not possess the qualifications. This Tribunal had allowed the application with direction to hold a review DPC to consider the case of the eligible STAs including the applicant in terms of the Rules of 1995. The respondents have implemented the Judgement. It transpires that one Kum. Karabi Dey Biswas who had been earlier promoted on the basis of the panel had to be reverted. The respondents reverted the said individual. Km. Biswas challenged her reversion in OA 2043/2002 but the application was dismissed. It is denied that the applicant has been discriminated.

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6. So far as the challenge to the validity of the rules of 1995 is concerned, this question had been raised in the application filed by Dr. (Kum) Karabi Dey Biswas in her OA 2043/2002 which was dismissed on 28.2.2003 and this Tribunal held:

"As regards the constitutional validity of the 1995 Rules, the same should not now be in question as the Department itself had revised the Rules and framed fresh Rules in the year 2000 considering the Rules of 1995 as infirm on certain grounds. Therefore, the relief claimed, that the Rules of 1995 be quashed, does not remain the question to be decided by us. Moreover, action taken by the review DPC on 28.5.2002 in accordance with 1995 Rules was strictly in execution of the direction of the Tribunal in OA 256/2001. The Tribunal had itself directed Respondents No.1 and 2 to hold review DPC meeting for the vacancies of 1996-97 and 1997-98 in accordance with the then existing Rules i.e. Rules of 1995. Therefore, we are of the firm opinion that there was no infirmity in the action taken by the respondent-department in holding fresh DPC on 28.5.2002 in accordance with the 1995 Rules and those rules need not be quashed, as they are not existence any more."

7. Not only that framing of Recruitment Rules is an executive action. The rules are framed mostly in exercise of power of Article 309 of the Constitution. Unless the rules are ex facie discriminatory, illegal, without jurisdiction, mala fide or some such situation affixed to it, the Tribunal will not interfere. In the present case, we do not find that the rules can be taken to be discriminatory because if at a particular time the department felt that particular rules should be framed for better management, it cannot be declared or held to be discriminatory.

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8. Learned counsel for the applicant in that event had drawn our attention to the instructions/guidelines for preparation of schedules and notifications and particularly relied upon paragraph 3.1.1. which reads:

"3.1.1. In cases where a new service is formed and the recruitment rules are framed for the first time and that there are officers already holding different categories of posts proposed to be included in the service on a regular/long term basis, a suitable 'Initial Constitution' Clause may be inserted in the Notification so as to count the regular service rendered by such officers before the date of notification of the Rules.

3.1.2. It may so happen that in some cases of promotion, the senior officers would not have completed the required service where the juniors would have completed the required eligibility condition for promotion. In such cases senior will be left out from consideration for the higher post. To avoid such a situation, a suitable note should be inserted in the recruitment rules so that the seniors who have completed the probation period, are also be considered where the juniors who have completed the requisite service are being considered."

9. We are not delving into the same for the simple reason that herein the matter is governed by the statutory rules. The guidelines can only supplement the rules but cannot supplant or override the same. We have thus no hesitation in rejecting the said contention so much thought of by the learned counsel.

10. In that event, the learned counsel contended that vacancy had arisen in the year 1991-92. The applicant has been discriminated because he was only sent for having the necessary qualifications afterwards. In his view, the matter should be

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governed by the rules applicable in the year 1991-92 when the vacancy arose. So far as the first plea of the argument is concerned, we do not dispute the proposition that in normal circumstances, it is those rules that would govern, at the relevant time when vacancy arose which should be taken into consideration. But when decision is taken expressly or impliedly not to fill the vacancies at that time in that event, it cannot be that the department can revert back to those rules. When such an implied inference can be drawn, the decision of the Supreme Court in the case of Y.V. Rangaiah v. J. Sreenivasarao, 1983 SCC (L&S) 382 will not come into play.

11. In the present case, it is not shown that any person junior to the applicant was promoted by pressing into service the relevant rules of 1991. Therefore, when in the present case, it is apparent that no post was filled up for years together it would be a clear case that impliedly the department did not want to fill up the post at the relevant time.

12. The main plea which was secondary of the argument noted above was that the applicant was sent for acquiring the necessary qualifications much later. We were informed that this was a mala fide act. Though at the first blush we thought that the argument had some basis but on a closer scrutiny, we find that such contentions cannot be accepted. The reasons for saying so is that our attention has been drawn towards the letters written by the applicant himself during the years 1996 to 1997, copies of which have been placed on record. Applicant for certain personal

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
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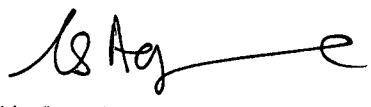
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reasons, did not want to join the course for acquiring the qualifications for the higher post. Now, it is too late for him to turn around and state that he has been discriminated. Otherwise also he should have objected at the relevant time that the junior persons should not be sent for acquiring the qualifications. Once the persons junior to the applicant have acquired the qualifications, they were promoted as per the recruitment rules then prevalent. Thus, the contention must fail.

13. Taking stock of these facts, it is obvious that the pleas of the applicant in the facts of the present case cannot be accepted and that the same are without any merit.

14. Resultantly, the OA being without merit must fail and is dismissed. No costs.


(S.K. Naik)
Member (A)


(V.S. Aggarwal)
Chairman

/NSN/