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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.2512 OF 2002

New Delhi, this the 26th day of April, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

R.B. Srivastava
84, Prashant Apartments,
I.P. Extension, Patparganj,
Delhi-110092.

.....Applicant

(By Advocate : Shri G.D. Gupta senior counsel with
Shri S.K. Sinha)

Versus

1. Union of India through Secretary, U.P.S.C.,
Dholpur House, Shahjahan Road, New Delhi-11.
2. Hon. Lt. Governor, Delhi, through Secretary
to the Lt. Governor,
Raj Niwas, Delhi-110054.
3. The Chief Secretary, Govt. of NCT of Delhi
Player's Building, I.P. Estate,
New Delhi-110002.
4. Principal Secretary cum Director, Training &
Technical Education, Govt. of NCT of Delhi,
Muni Maya Ram Marg, Pitampura, Delhi-110088.

.....Respondents

(By Advocate : Shri V.S.R. Krishna for R-1
Shri Ajesh Luthra for R-2 to R-4)

ORDER (ORAL)

SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER:-

The applicant who is working as Principal Group 'B' in the scale of Rs.6500-10500 has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking a direction to quash and set aside the DPC held on 29.8.2002 for promotion to the post of Principal Group 'A' in the scale of Rs.10,000-15,200. The applicant has also made an alternative prayer to quash and set aside a part of the Recruitment Rules as published in the Delhi Gazette dated 3.8.1989 wherein it has been provided that the requirement about the education

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qualification shall not be applicable in the case of departmental candidates holding the feeder post on regular basis on the date of promulgation of these rules.

2. It is stated by the applicant that he was initially appointed as Foreman Instructor in the scale of Rs.650-960 on 8.5.1972. The next promotional post for the applicant was Principal Group 'B'. Since the applicant had completed five years of regular service, he claims to be eligible for promotion to the post of Principal Group 'B' in the year 1977. However, he was actually promoted to the said post of Principal Group 'B' as per order dated 5.6.1990 (Annexure A/4) w.e.f. 1.6.1990. As per the Recruitment Rules notified on 3.8.1989 33 1/3% of the posts were to be filled up by promotion from the Principals/Sr. Surveyors/ Training Evaluation Officers having 5 years regular service in the scale of pay of Rs.2200-4000 (pre-revised) and holding degree in Engineering/Technology in the subject concerned or its equivalent. For the remaining 66 2/3% of posts, candidates working as Principals and Vice Principals, ITIs, etc. with 8 years regular service in the scale of Rs.2000-3500 (pre-revised) and holding degree in Engineering/Technology in the subject concerned or its equivalent were to be considered. Note below this Rule provides as :-

"The requirement about the educational qualifications shall not be applicable in the case of the Departmental candidates holding the



feeder posts on regular basis on the date of promulgation of these rules."

3. The claim of the applicant is that he was eligible for being promoted to Principal Group "B" from the year 1977 but he was actually promoted w.e.f. 1.6.1990. It is claimed that if the applicant had been promoted as Principal Group "B" earlier, he would have been promoted Principal Group "A" even before the introduction of rules as per Gazette notification dated 3.8.1989. The grievance of the applicant is because the applicant does not hold a degree as per the above rules but if he was promoted prior to Gazette notification dated 3.8.1989, he would have been eligible for further promotion to Principal Group "A; even without having qualification of a degree.

4. The learned counsel of the applicant urged that the note below column 12 of the Rules is arbitrary as it prescribes a date which has no rationale. Therefore, it deserves to be struck down as ultra vires of the Constitution of India being hit by the provisions contained in Article 14 of the Constitution of India. The said note is based on no intelligible differentiation. Therefore, it is against the principle of equality enshrined in Article 14 of the Constitution of India. Alternatively, it was urged that the applicant should not suffer on account of delay of the administration in promoting the applicant to the post of Principal Group "B".

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5. The respondents have opposed the prayer of the applicant. In the reply filed on behalf of the respondent No.1 - Union Public Service Commission, it is stated that the applicant's name appeared at Serial No.12 in the list of employees who were to be considered for promotion to the post of Principal Group 'A' in the scale of pay of Rs.10,000-15,200. In the remarks column of the list, it was intimated that the applicant was "not qualified". The applicant held only diploma in printing technology whereas the Recruitment Rules required a degree. It has also been stated that the applicant was promoted to Principal Group 'B' on 1.6.1990 only whereas the rules were notified prior to this date. Therefore, the relaxation of qualification as per note below column 12 of the Recruitment Rules was not applicable in the case of the applicant.

6. On behalf of respondents no.2 to 4, it has been stated that as per rules, a degree in Engineering/Technology is an essential qualification for promotion to the post of Principal Group 'A' whereas the applicant holds only a diploma in printing technology. Therefore, he was not eligible for being promoted to the post of Principal Group 'A'. In any case, the relaxation of essential qualification could be considered if the applicant was holding the "feeder" post on the date of promulgation of the Recruitment Rules. In this case, the applicant was promoted to feeder grade of Principal Group 'B' after

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the Recruitment Rules were published in the Gazette on 3.8.1989. It has also been stated that DPC proceedings held on 23.9.2002 cannot be set aside as the applicant being not eligible has no locus standi to challenge the DPC proceedings. There was even no case of review DPC as the case of the applicant was considered but he was found not eligible as per the Recruitment Rules.

7. We have heard the learned counsel of the parties and have perused the material available on record.

8. The mere fact that the applicant was eligible for being promoted as Principal Group "B" does not automatically bestow any right in his favour for being promoted to such a post. It is an admitted position that no junior was promoted prior to the promotion of the applicant to the post of Principal Group "B". Even if there is a vacancy, the applicant cannot claim a promotion from the date of vacancy either to Principal Group "B" or further promotion to the post of Principal Group "A". Even if it is assumed for the sake of argument that the DPC had considered the name of the applicant for promotion as Principal Group "B" prior to the issue of Gazette Notification, it will not create a right in favour of the applicant unless the DPC minutes was approved and the applicant was promoted on the basis of the

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recommendations of the DPC by a competent authority and he had actually assumed the charge of higher post in pursuance of such a promotion order.

9. In the present case, the applicant has been promoted as a Principal, Group 'B' w.e.f. 1.6.1990. He cannot get any benefit of ante dating of his promotion order either on the ground of there being a vacancy, the applicant being eligible or on the basis of holding of a DPC. Therefore, the question of any benefit to the applicant on account of administrative delay does not arise. As a matter of fact, there has been no administrative delay. It is for the respondents to decide as to when they want a particular post to be filled up. At the cost of repetition, it may be stated that even though the applicant might be eligible for promotion and even though there are existing vacancies, the applicant cannot claim back dated promotion. Perhaps, any right could accrue in his favour if some junior person was promoted prior to the promotion of the applicant. No such case is made out by the applicant.

10. The alternative plea of the learned counsel that the applicant was in the feeder cadre even on the date of Gazette notification has to be rejected, as he was not holding the post of Principal Group 'B' on the date of Gazette Notification on 3.8.1989. His plea that he was holding a post which was feeder to the feeder post cannot be accepted.

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There is no such stipulation in the Rules. The note below column 12 of the Recruitment Rules envisage situation where the applicant was holding the feeder post and not a post feeder to feeder post on the date of Gazette notification of the Recruitment Rules.

11. The learned counsel of the applicant has placed reliance on the decisions of the Hon'ble Supreme Court in the case of Pradip Gogoi and others Vs. State of Assam and others (1998) 8 Supreme Court Cases 726 and P. Savita and others Vs. Union of India and Others AIR 1985 Supreme Court 1124 in support of his claim that the applicant cannot be denied benefit of his promotion on account of administrative delays. As can be seen from the facts of this case, these decisions are not supporting the contention of the applicant. There has been no administrative delay in promoting the applicant as Principal, Group 'B' or even considering his claim as Principal Group 'A'. In this view of the matter, reliance placed on both decisions are misplaced. The Hon'ble Supreme Court in the case of P. Savita and Others (supra) have held that higher salary for one group of employees on seniority-cum-fitness basis is violative of Article 14 of the Constitution of India. The decision of the Supreme Court is apparently not applicable on the facts of this case. The Hon'ble Supreme Court in the case of Pradip Gogoi and others (supra) have held that delay in initiation of recruitment process was violative of Article 16(1) of the Constitution. In

Pradip Gogoi

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that case before the Hon'ble Supreme Court, no action was being taken to initiate recruitment process after issuing the advertisement and making recruitment. It was on these peculiar facts that the observations of the Hon'ble Supreme Court has been made. On the facts of this case, the decisions of the Hon'ble Supreme Court do not help the claim of the applicant.

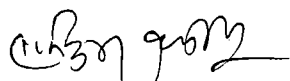
12. The respondents' learned counsel has made out a case that the foot note below column 12 of the Recruitment Rules does ^{not} violate the principle of equality enshrined in Article 14 of the Constitution of India. According to him, there is ^{an} intelligible criteria prescribed for distinction. The persons holding the feeder posts on the date of Gazette notification of the Recruitment Rules have been given some benefits. This itself is a good reason for different treatment being accorded to such class of people. Therefore, there is no violation of principle of equality enshrined in Article 14 of the Constitution of India. We find that the relaxation of essential qualification is based on acceptable ground for distinction. Therefore, the note below column 12 of the Recruitment Rules notified on 3.8.1989 cannot be said to be ultra vires of the Constitution of India.


13. Since the applicant was not holding essential technical qualification for being promoted as Principal Group 'A' and no relaxation of essential

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qualification could be made in his case, we do not find any justification to interfere with the orders of the respondents..

14. In view of what is stated in the preceding paragraphs, this Original Application is dismissed without any order as to costs.


(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER


(V.S. AGGARWAL)
CHAIRMAN

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