

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

RA. No. 188/2003
in
OA 925/2002

New Delhi, this the 3rd day of October, 2003

HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Shri Dal Chand & Ors. ...Originall applicants
(By Shri A.K.Behra, Advocate)

Shri S.Karthik,
S/o Sh. V. Sivaprakasam,
R/o 1122, R.K.Puram, Sector 4,
New Delhi - 110 022. ...Review applicant

(By Shri K.Venkatraman, Advocate)

VERSUS

UNION OF INDIA & ORS. ...Respondents
(By Shri V.P.Uppal, Advocate)

ORDER

Order delivered by Mr. Shanker Raju, Member (J)

In OA 925/02 filed by Data Entry Operators (hereinafter referred to as DEO) Grade-D challenging notification dated 23.10.2001 whereby DEO Grade-D stood merged in the cadre of DPA Grade 'A' and re-designated post of DPA Grade-A, sought consideration for promotion as Programme Assistant/Console operator on the basis of 1990 rules which existed at the time of occurrence of vacancies in the cadre on the strength of the fact that recruitment rules of 1995 for DPA Grade-A and B which were neither notified nor gazetted, have not taken any effect.

2. After hearing the applicants and official respondents, OA was allowed setting aside the Notification dated 23.10.2001 and respondents had been directed to consider the applicants' claim for promotion as Programme

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Assistants/Console Operators in accordance with 1990 rules and 1995 rules of DPA grade-A and B were declared ineffective.

3. The present review application has been filed by direct recruit DPA grade-A who was appointed on the basis of advertisement. As the decision in OA had adversely affected his right on the ground that he has not been impleaded as a party, this court, vide an order dated 10.07.2003, issued notices for hearing on RA.

4. Shri K.Venkatraman, counsel for the review applicant has taken the following grounds to assail the orders with prayer to recall the order passed in OA 925/2002:-

"A. Because the order passed by the Division Bench observing that 1995 Rules is ineffective has seriously affected the applicant and the other similarly situated persons who were DPA Grade A/B recruits under the 1995 Rules and neither the applicant nor any of the similarly situated persons working as DPA Grade A/B was ever made party in O.A.

B. Because on the basis of guidelines dated 11.9.1989 issued by the Ministry of Finance for granting promotional opportunities the DEOs working in the Department, the DEOs were restructured as DEO Grade A, Grade B, Grade C and Grade D. Vide Notification dated 6.2.1995, Income Tax Department Data Entry Operators, (Grade C and Grade D) Recruitment Rules 1995 was framed. All the four applicants in OA who were appointed as DEOs on the basis of 1987 Rules by 1994 Rules, these applicants were redesignated as DO Grade A and Grade B respectively and subsequently on the basis of 1995 Rules all the four applicants were promoted vide dated 12.1.1995 to the post of DEO Grade C in the pay scale of RPS. 1400/- to Rs. 2300/- as per the guidelines laid down in the O.M. dated 11th September, 1989 issued by the Government of India, Ministry of Finance. The applicants in the OA were

promoted on regular basis as Data Entry Operator Grade C w.e.f. 6.9.1995, and subsequently they were also promoted as DEO Grade D w.e.f. 3.4.2000 and they have accepted the above-mentioned post and taken all the benefits attached to the post as per the new rules thereby clearly accepting that the post of DEOs was non-existence after supersession of 1987 Rules by 1994 Rules.

C. Because the applicants in the OA have not challenged the Income Tax Department Data Entry Operators Recruitment Rules 1994 and Income Tax Department Data Entry Operators (Grade C and D) Recruitment Rules 1995 on the basis of which they were promoted to Data Entry Operator Grade D, order dated 18th August, 1994, re-designating PA/CO as DPA Grade A/Grade B, and Income Tax Data Proceeding Assistants Grade A and Grade B Recruitment Rules 1995. The applicant further submits that the DEOs Recruitment Rules 1987 is superseded by 1994 Rules and therefore Directorate of Income Tax System Programme Assistant/Console Operator Recruitment Rules, 1990 per se become inoperative with respect to DEOs.

D. Because the applicant in the OA have also not challenged the order of restructuring issued on 18.8.1994 on the basis of ministry of Finance OM dated 11.9.1989 and also the Recruitment Rules for the post of DPA Grade A and Grade B were issued vide dated 14th September, 1995 in supersession of the Directorate of Income Tax (Systems) Programme Assistant/Console Operators (Recruitment Rules 1990).

E. Because the applicant in OA have concealed the material facts from this Hon'ble Court in respect of the fact that vide dated 30.12.1994 in exercise of the powers conferred by the proviso to Article 309 of the Constitution income Tax Department (Attached and Subordinate Offices) Data Entry Operators Recruitment Rules 1987 was superseded by the Income Tax Department Data Entry Operators Recruitment Rules 1994 wherein existing Data Entry Operators were restructured as DEO Grade A and DEO Grade B. Further all the Data Entry Operator who were having graduation as minimum qualification and appointed under the Income Tax Department (Attached and Subordinate Offices) Data Entry Operators Rule 1987 was designated as DEO Grade B. According to Income Tax Department (DEO) (Recruitment Rules 1994), all the DEOs Grade A who have rendered minimum 5 years of Service as DEOs were eligible for promotion against promotion quota vacancies of DEO Grade B in the pay scale of 1350-2200 pre-revised.

F. Because the Recruitment Rules of 1990 prescribed 10 years as Data Entry Operator for promotion to PA/CO have become obsolete after the 1994 Rules and after the DEOs were restructured as DEO Grade A, B and C and D and the applicants in the OA after having taken the benefit of this rule have accepted the said rule and after the restructuring of DEOs from the DEO Grade A to Grade D, the post of DEOs (1987) become non-existence and therefore the applicant in the OA is not legally entitled to promotion as PA/CO. It is also pertinent to point out that the pay scale of DEO Grade D and the pay scale of PA/CO which was then in existence prior to the restructuring of DEOs remained identical and promotion cannot be made on the same pay scale.

G. Because there is statutory recognition of DPA Grade D and DPA Grade A (post of PA/CO) restructured as DPA Grade A and B in the Recruitment Rules published on 27.7.2001 which provides that DPA Grade B with five years of service and DPA Grade A with 8 years service are eligible for the post of Acts. Director (System).

H. Because the order dated 23.10.2001 on the basis of which the OA was filed was merely a continuation of earlier restructuring scheme formulated on 18.8.1994 which was never challenged and all the restructured rules are still in existence.

I. Because since the applicant in OA were not DEO but they were DEO Grade D and only DEO with 10 years of experience were eligible for the post of PA/CO as per 1990 rules which was then superseded after the DEOs were graded as DEO grade A to Grade D and the said restructuring was accepted by the applicant in the OA and they were promoted as DEO Grade D only on the basis of the restructuring of the DEO and therefore the applicant in OA is legally not entitled to the relief claimed in the O.A.

J. Because the applicant in the OA were re-designated as Data Entry Operator Grade B on the basis of Income Tax Department Data Entry Operators Recruitment Rules 1994 which made the DEOs as non-existing after supersession of 1987 Rules thereby rendering Directorate of Income Tax (System) (Programme Assistant/Console Operator) Recruitment Rules 1990 inoperative.

K. Because the applicant in the OA after availing the benefit of restructuring as DEO Grade C in the year 1995 cannot now turn back and say that the restructuring is bad in law specially after expiry of the

period of limitation which is one year of the accrual of the cause of action and therefore the applicant in the OA was not entitled to the benefits in view of restrictions on limitation imposed in Section 21 of the Administrative Tribunal Act, 1985.

L. Because the applicant in OA were promoted as DEO Grade C on regular basis w.e.f. 6.9.1995 and as DEO Grade D w.e.f. 3.4.2000 and having accepted the above-mentioned promotion on the basis of Income Tax Department Data Entry Operators (Grade C and D) Recruitment Rules 1995 without challenging the same, having impliedly accepted the factum of non-existence of DEOs, thereby rendering Directorate of Income Tax (System) (Programme Assistant/Console Operator) Recruitment Rules 1990 inoperative and superseded."

5. On the other hand, official respondents filed their reply. Shri V.P. Uppal, counsel for the respondents contends that for direct recruitment in pursuance of a notification, offer of appointment was issued on 21.11.1996. As per the notification dated 27.07.2001, DPA Grade-B with five years service failing which combined service of 8 years in DPA grade - A & B and a minimum of two years service in DPA grade-B shall be eligible for promotion to the post of Assistant Director (Systems). As the applicants have no case on limitation as well as on merits, applicants who cleared eligibility criteria for promotion to the post of PA/CO only in the year 1988, their approach to the Tribunal was beyond limitation.

6. It is contended by Shri Uppal that recruitment rules of DEOs issued in the year 1987 which is a feeder cadre for promotion to the post of Programme Assistant/Console operator were superseded by the recruitment rules of 1994 which were duly notified and

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issued under the proviso to Article 309 of the Constitution. As per rules, the cadre of DEO was restructured into DEO Grade-A & B. These rules superseded the recruitment rules of 1987. Subsequently vide notification dated 6.2.1995 two more cadres of DEO Grade-C & D were created. Applicants who stood promoted to Grade-D in 2000 having duly accepted the promotions, the feeder cadre for the post of Programme Assistant/Console Operator i.e. DEO which had ceased to exist after the promulgation of DEO Grade A & B, 1990 rules laid down eligibility criteria of 10 years as DEO have become inoperative. The post of DEO has become non-existent after the restructuring of cadre of DEO into further grades. However, it is contended that pay scales of DEO grade D and post of Programme Assistant/Console Operator were identical.

7. Respondents i.e. original applicants in OA represented through Shri A.K. Behra, vehemently opposed the maintainability of the present RA on the ground that review applicant having acted upon the decision of the Tribunal has already acquiesced and is precluded from filing the present RA. The aforesaid review is an abuse of the process of court.

8. Shri Behra states that it is not open for the review applicant to approbate and reprobate in the present case. Admittedly review applicant made representation for formally getting the rules issued under Article 309 of the Constitution and notification as well as publication in the official gazette, they are precluded from having a different stand now. Once the judgement is accepted and

representation is made on the principle of election, review applicant cannot challenge the decision of the Tribunal.

9. It is stated that the applicant is yet to be confirmed as DPA grade-A. Before appointment the official respondents had put the review applicant to notice that the appointment would be subject to any change in the constitution of recruitment rules for DPA grade-A. Shri Behra states that in absence of any error apparent on the face of record, the attempt of the review applicant is to re-argue the entire case which has been duly considered and is not permissible beyond the ambit of Section 22 (3) (f) of the A.T. Act, 1985.

10. In so far as issue of concealment of material fact from the court regarding 1987 recruitment rules, it is stated that recruitment rules of 1987 for DEO which was feeder cadre of Programme Assistant/Console Operator were superseded by 1995 rules. The letter of CBD&T dated 14.5.1997 is not a statutory rule and the authority not competent under proviso to Article 309 of the Constitution.

11. It is stated that DPA grade - A & B rules were neither in accordance with the guidelines for framing recruitment rules nor approved by the competent authority in consultation with DOP&T and UPSC. These rules were also not notified in the Gazette and as such not statutory and these rules had never come into existence as such any supersession of the old rules of 1990 cannot be countenanced. The rules of 1990 have been duly approved after following due process

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of law.

12. As per the recruitment rules of Programme Assistant/Console operator of 1990 as well as the DOP&T OM dated 18.03.1988 relating to the revision of guidelines for framing recruitment rules issued on 22.5.1989, it has been held as follows :-

" 1.1. As soon as a decision is taken to create a new post/service or to upgrade any post or re-structure any Service, action should be taken immediately by the Administrative Ministry/Department concerned to frame Recruitment Rules therefore."

13. As soon as a decision is taken to create a new post/service or to upgrade any post or restructure any service, action should be taken immediately by the Administrative Ministry concerned to frame recruitment rules, therefore, amendment proposal in the recruitment rules has to be approved by the DOP&T and UPSC. The recruitment rules so approved are required to be notified within ten weeks.

14. As per GIMF OM dated 25.11.1993 a post should not be created without finalising the recruitment rules.

15. In the conspectus of above, it is stated as the rules were neither finalized nor published were not statutory rules under Article 309 of the Constitution. As such any post created without finalisation of recruitment rules and appointment made against such post, the incumbent had no right and his appointment cannot be treated as per rules. As there is no legal existence of DPA grade-A & B,

the re-designation as DPA grade A & B cannot be countenanced as the only recruitment rules existing are for the post of PACO in 1990 in view of the settled position of law the vacancies having arisen in 1988, applicants have a right to be considered against the old rules.

16. We have carefully considered the rival contentions of the parties and perused the material on record.

17. As per the decision of the Apex Court in Gopa Bandhu Biswal vs. Krishna Chand Mohanty, 1998 (4) SCC 447, in the event a party whose interest has been adversely affected by a decision of the Court has a remedy to file a review and on rejection of review he has a right to file a fresh proceedings and to persuade the court to take a different view and if the view earlier taken is reiterated, the only remedy is by way of an appeal. However, if the court disagrees with the earlier view, the matter should be referred to a Larger Bench. In this view of the matter having regard to the above, we entertain the review of the applicant.

18. Having considered the contention put forth by the review applicant, we are of the considered view that the order whereby DEO grade D has been redesignated as DPA grade-A was non-est in law. The recruitment rules issued in 1995 have not come into effect as these were neither approved by the competent authorities nor published and gazetted as per the procedure laid down as discussed in the

para above, the rules do not take shape to a statutory rule valid under proviso to Article 309 of the Constitution. The earlier stand taken by the court declaring the rules as ineffective does not suffer from any infirmity. We reiterate the same.

19. The contention putforth that the applicant having accepted the promotion under Grade 'D' and DEO cadre has become extinct, 1990 rules which had been superseded cannot be followed to consider the case of the applicant in OA cannot be countenanced. once the 1995 rules are not legally effective and non-existent the earlier rules of 1990 relating to promotion to PACO which were duly notified and issued under due process of law and are not declared ultra vires hold the filed and would be operative till the recruitment rules without DPA grade- A are validly notified and come into being after due process of law till then the vacancies, which had arisen admittedly in 1988, of PACO are to be filled as per the old recruitment rules in the light of the settled position of law and particularly in the light of a decision of the Apex Court in Y.B. Rangaiah vs. J.S.Rao, 1983(3) SCC 284. We do not find any error apparent on the face of the record or discovery of a new material which even after due diligence could not be produced by the contesting parties, the review cannot be used as a mode to re-argue the matter. Our view is fortified by the following decisions:

1. Chandra Kanta & Anr. vs. Sheik Habib
AIR 1975 SC 1500.
2. Meera Bhanja vs. Nirmala Kumari Choudhary
AIR 1995 SC 455

4. K.Ajit Babu & Ors. Vs. Union of India & Ors.
1998 (1) SLJ 85 (SC)
5. Subhsh vs. State of Maharashtra
SCSLJ 2002(1) 28

20. However, we find that though the appointment of review applicant was made in pursuance of a notification but the recruitment rules for DPA grade-A having non-existent and not valid in law, the applicant has no indefeasible right to claim any appointment under the rules. However, as the appointment has been made long back in 1995 in the interest of justice and not to unsettle the settled position and the fact that the review applicant is not at fault, his appointment and continuance is not disturbed. However, his interest would be safeguarded when the recruitment rules 1995 are validly and legally issued, to treat the aforesaid period on ad hoc officiation or any decision to this regard taken by the Government. With these observations, we do not find any merit in the RA, which is accordingly dismissed. no costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Member (A)

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