

(25) (26)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2274/2001 with OA No. 2467/2001 & OA No. 2315/2002

New Delhi this the 2nd day of May, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri Govindan S.Tampi, Member(A)

OA No. 2274/2001

1. Dr. A.R. Goyal
674, BKS Marg
New Delhi-1
2. K.L. Sharma
158, Sector XII
R.K.Puram, New Delhi-22
3. S.K. Verma
603A, Sector III
R.K.Puram, New Delhi-22

Applicants

(Shri P.N. Misra, Sr. Advocate with Shri Abhishek Kumar,
Advocate)

versus

Union of India, through

1. Secretary
Department of Personnel & Training
North Block, New Delhi
2. Secretary
Union Public Service Commission
Dholpur House
Shahjahan Road, New Delhi
3. M.K. Pushpakaran
1107, Sector VIII
R.K.Puram, New Delhi
4. V.J. Menon
15/284, Lodhi Colony, New Delhi
5. Bharat Prasad
50, Amrapali, Sector 1
Rohini, Delhi
6. R.C. Meena
806, Sector VIII
R.K.Puram, New Delhi
7. Mahendra Kumar
18-B, MIG Flat
Rampura, Delhi
8. K.S. Achar
10-C, DDA Flat
Taimoor Nagar, New Delhi
9. S.K. Arora
513, Sector IV, Gurgaon
10. C.L. Kaul
Z-51, Sarojini Nagar, New Delhi
11. Smt. Savita Prabhakar
S-378, Greater Kailash
New Delhi
12. Ashok Kumar
A-90, Vishal Enclave
Najafgarh Road, New Delhi
13. Baldev Singh Kutlehria
23/200, Lodhi Colony, New Delhi

14. S.K. Verma
A-45, Pandara Road, New Delhi .. . Respondents

(Shri K.R. Sachdeva and Mrs. B. Rana with Ms. Abhilasha,
Advocates for official respondents and Shri L.R.
Khatana, Advocate for private respondents
Respondent no. 14 - present in person)

OA No. 2467/2001

1. R.K. Ojha
14/834, Lodhi Colony
New Delhi
2. V.K. Gauba
Block No.2., H. No.2
Lodhi Colony, New Delhi
3. K.K. Mittal
1597, Sector IV
Urban Estate, Gurgaon
4. M.C. Luther
1311, A/B, Vasant Kunj, New Delhi
5. Dr. Parvinder Kaur
20/22, A/B, Vasant Kunj, New Delhi .. . Applicants

(Shri P.N. Misra, Sr. Advocate with Shri Abhishek Kumar,
Advocate))

versus

Union of India, through

1. Secretary
Dept. of Personnel & Training
North Block, New Delhi
2. Secretary
Union Public Service Commission
Dholpur House,
Shahjahan Road, New Delhi
3. Prabhakar
A-2468, Netaji Nagar, New Delhi
4. A. Narasimha Murty
2377, Sector VIII
R.K. Puram, New Delhi
5. Ishwar Chand Kamboj
111-Dhruva Apartments
IP Extension, Delhi
6. Suresh Sharma
B-538, Sarojini Nagar
New Delhi
7. K. John
16-A, Pocket 1, Mayur Vihar Phase I
Delhi
8. Ms. V. Saraswathy
1075, Sector VIII
R.K. Puram, New Delhi .. . Respondents

(Shri K.R. Sachdeva and Mrs. B. Rana with Ms. Abhilasha,
Advocates for official respondents and Shri
L.R. Khatana, Advocate for private respondents)

OA No. 2315/2002

Ms. Preeti Srivastava
Dy. Secretary, Ministry of
Environment & Forests
Paryavaran Bhavan
CGO Complex, New Delhi
(Shri N.S. Verma, Advocate)

Applicant

versus

Union of India, through

1. Secretary
Government of India,
Ministry of Personnel, Public Grievances
and Pensions,
(Dept. of Personnel & Training)
North Block, New Delhi
2. Secretary
Union Public Service Commission
Dholpur House,
Shahjahan Road, New Delhi
3. Vijay Kumar
20/34, Lodhi Colony, New Delhi
4. K.D. Upreti
23/137, Lodhi Colony, New Delhi
5. B.N. Singh
21/4, Sector-1,
Pushp Vihar, New Delhi
6. H.C. Baveja
1122, Sector 12
R.K. Puram, New Delhi

Respondents

(Shri K.R. Sachdeva and Mrs. B.Rana with Ms. Abhilasha,
Advocates for official respondents and Shri L.R.
Khatana, Advocate for private respondents
Respondent no. 3 - present in person)

ORDER

Justice V.S. Aggarwal

Applicants are the members of the Central Secretariat Service and were recruited as Section Officers through the Civil Services Examination held in the year 1982. They were promoted to Grade I (Under Secretary) in the year 1991 and further promoted to Selection Grade (Deputy Secretary) of the Central Secretariat Service on ad hoc basis in the years 1999 and 2000 as per individual cases.

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2. By virtue of the present applications, namely OA No.2274/2001, OA No.2467/2001 and OA No.2315/2002, the applicants seek quashing of the impugned panels of the Under Secretary for the years 1987, 1988, 1989 and 1990 issued by respondent No.1 and declaring them to be arbitrary and violative of Articles 14 and 16 of the Constitution of India. All these applications raise identical questions of law and fact and are, therefore, being disposed of by this common order.

3. It is not in dispute that the applicants are governed by the Central Secretariat Service Rules, 1962 (for short, "the Rules") and the regulations made thereunder namely, the Central Secretariat Service (Promotion to Grade I and Selection Grade) Regulations, 1964 (for short "the Regulations"). Under Regulation 5 of the Regulations, a select list of Grade I officers has to be prepared at least once every year if on the 1st July of the year, the number of officers already included in the select list for that Grade is below the strength fixed under Regulation 3(1). This is a statutory obligation on the respondents. The respondent No.1 on 9.5.2000, had brought out an Office Memorandum notifying the select lists for the years 1984, 1985, 1986, 1987, 1988 for appointment to Grade I (Under Secretary). As per the applicants, the said notification drastically altered the promotion of officers promoted in accordance with the Office Memorandum of 4.12.1991. The same is assailed on the ground that some retired officers who had been appointed pursuant to the directions of the Supreme Court

18/10/2001

were excluded from the select lists of 1987 and 1988 and if those retired officers are taken into consideration, some of the private respondents even may not fall within the zone of consideration. It is also asserted that the applicants were senior to the private respondents and by virtue of the said order, the juniors are scoring a march over them. Accordingly it is prayed that the impugned order should be quashed.

4. On behalf of the respondents, like the applicants, various contentions have been raised. Though different replies have been filed, the sum and substance of the same is that as per the respondents, the seniors who had since retired have been considered while drawing the impugned lists. It is contended that the applicants have suppressed certain facts and described that they had been appointed against the substantive posts while the appointments are ad hoc. Therefore, the applications must be dismissed. A plea has also been raised that the applicants have no locus standi to file the present applications because they were not eligible to be considered for promotion as per the recruitment rules and if the juniors were eligible and had been considered, the applicants have no cause of action or grievance.

5. In the first instance as referred to above, it was contended that because certain incorrect facts have been mentioned, namely that the applicants described themselves to have been appointed against substantive vacancies

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though in fact they had been appointed on ad hoc basis, therefore, the applications deserve to be rejected on basis of incorrect facts having been pleaded. In support of their contentions, the respondents relied upon a famous decision of the Supreme Court in the case of **S.P.Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. & Ors.**, JT 1993 (6) S.C. 331. The Supreme Court took serious objection to the facts which were being pleaded and turned out to be incorrect which was described as a fraud. The Supreme Court held that a person whose case is based on falsehood does not deserve any relief and his application can be dismissed summarily. The findings read:-

"The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."

The proposition of law referred to above is well-settled but necessarily each case has to be examined on its peculiar facts. Before pressing into service, the decision rendered by the Supreme Court in the case of **S.P.Chengalvaraya Naidu (supra)**, it has to be taken note of that the facts so alleged indeed are so false that they can be described as fraud practised on the court or not. Every fact which may not be wholly correct unless so projected with mala fide intentions may not be a

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ground to reject the applications at the threshold. Perusal of the Original Applications reveals that at times, the facts are not so correctly pleaded but at places, it has been mentioned that it was ad hoc promotion that was given. The applications have to be read as a whole and one paragraph should not be read in isolation of the other. In this back-drop, therefore, once the facts are so written in seriatim and if a paragraph of same does not appear to be correct that does not make out a ground that the applications should be rejected on this short ground alone. Therefore, we are proceeding to consider the main argument raised on behalf of the respondents.

6. Rule 12(2) of the Rules reads:-

"Vacancies in Grade I shall be filled by promotion of permanent officers of the section officers grade who have rendered not less than eight years approved service in that grade and of permanent officers of the Grade A of the Central Secretariat Stenographers Service who have rendered not less than eight years approved service in that grade and have worked as section officers for atleast a period of two years in accordance with the proviso to Rule 10 and are included in the select for Grade I of the service prepared under Sub Rule (4)."

This rule in unambiguous terms recites that the vacancies in the Grade I has to be filled up from Section Officers who have rendered not less than eight years approved service in the grade besides other provision with which we are not presently concerned. The applicants are challenging the fact that private respondents were junior to them and consequently as per the applicants, the private respondents should not be promoted in the panels

Agree

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of 1987, 1988, 1989, 1990. One fact that is borne from the pleadings of the applicants is that for these panels, they did not have the qualifying service. The private respondents who are not direct recruits had the eligible years of service. Once that is the situation, there is no legal bar in considering them. These very rules came up for consideration before the Supreme Court in the case of **R.Prabha Devi and others v. Government of India, through Secretary, Ministry of Personnel and Training, Administrative Reforms and others**, 1988(2) SLR 110. A similar question was under consideration and similar argument was considered. The same was rejected. Para 15 of the judgement which we are reproducing for the sake of convenience reads:-

"15. The rule-making authorities is competent to frame rules laying down eligibility condition for promotion to a higher post. When such an eligibility condition has been laid down by service rules, it cannot be said that a direct recruit who is senior to the promotees is not required to comply with the eligibility condition and he is entitled to be considered for promotion to the higher post merely on the basis of his seniority. The amended rule in question has specified a period of eight years of approved service in the grade of Section Officer as a condition of eligibility for being considered for promotion to Grade I post of C.S.S. This rule is equally applicable to both the direct recruit Section Officers as well as the promotees Section Officers. The submission that a senior Section Officer has a right to be considered for promotion to Grade I post when his juniors who have fulfilled the eligibility condition are being considered for promotion to the higher post Grade I, is wholly unsustainable. The prescribing of an eligibility condition for entitlement for consideration for promotion is within the competence of the rule-making authority. This eligibility condition has to be fulfilled by the Section Officers including senior direct recruits in order to be eligible for being considered for promotion. When qualifications for appointment to a post in a particular cadre are prescribed, the same have to

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be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can override it in the matter of promotion to the next higher post. The rule in question which prescribes an uniform period qualified service cannot be said to be arbitrary or unjust violative to be arbitrary or unjust violative of Articles 14 or 16 of the Constitution. It has been rightly held by the Tribunal:

"When certain length of service in a particular cadre can validly be prescribed and is so prescribed, unless a person possesses that qualification, he cannot be considered to be eligible for appointment. There is no law which lays down that a senior in service would automatically be eligible for promotion. Seniority by itself does not outweigh experience."

In other words, the Supreme Court clearly held that if a junior is eligible, he can be considered for promotion. Keeping in view the binding nature of the decision of the Supreme Court, we have no hesitation in rejecting the said argument.

7. As referred to above and repeated for the sake of argument, the applicants are challenging the panels for the years when they did not have the qualifying service. Therefore, it was rightly pointed on behalf of the respondents that the applicants did not have a locus standi to challenge the list that has been prepared. They cannot be described as aggrieved persons.

8. The Supreme Court in the case of **R.K. Jain v. Union of India**, (1993) 4 SCC 119 held that in service

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jurisprudence it is settled law that it is for the aggrieved person, i.e., non-appointee to assail the illegality of the offended action. A third person has no right to do so. More close to the facts is the decision of the Supreme Court in the case of **Dr.Umakant Saran v. State of Bihar and others**, AIR 1973 S.C. 964. Therein Dr.Umakant Saran was not eligible for appointment and, therefore, he had no right to question the appointment. We reproduce para 10 of the judgement which answers the question:-

"10. This court has pointed out in **Dr.Rai Shivendra Bahadur v. The Governing Body of the Nalanda College, 1962 (2) Supp SCR 144 = (AIR 1962 SC 1210)** that in order that mandamus may issue to compel the authorities to do something it must be shown that the statute imposes a legal duty and the aggrieved party had a legal right under the statute to enforce its performance. It is contended on behalf of the State that apart from the fact that respondents 5 and 6 had been validly appointed in accordance with the practice followed by the Government, Dr.Saran, who was not eligible for consideration for appointment at the time had no right to question the appointments since he was not aggrieved."

In other words when the applicants were not eligible for being considered for the panels in question because they did not have the qualifying service in terms of Rule 12(2) of the Rules they must be held to be having no locus standi to file the present applications.

9. Keeping in view the aforesaid, it becomes unnecessary for us to consider the other pleas of the applicants because that would only be embarrassing for either party. We are not thus expressing ourselves in

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that regard.

10. For these reasons, the applications being without merit must fail and are dismissed. No costs.

(Govindar (S. Tampi)
Member (A)

/sns/

(V. S. Aggarwal)
Chairman

Attached
Copy
S. S. Pd. II

NDOH 20.10.2003
DATE

NDT 10/10/03
10/10/03

THE REGISTRAR
HIGH COURT OF DELHI,
NEW DELHI

7857 W

22/10/03

1. Union of India, through its Secretary, Department of Personal & Training, North Block, New Delhi
2. Union Public Service Commission, through its Secretary Dhelpur House Sahajahan Road New Delhi
3. The Registrar, Central Administrative Tribunal, Principal Bench Copernicus Marg Faridkot House New Delhi

5589/2003

CIVIL MISC. PETITION NO.

3269/2003

VINAYA D.

CIVIL WRIT PETITION NO.

Shri R.K. Ojha

PETITION 3/S

vs

Union of India

RESPONDENT/S

Petition against the order dt. 2.5.2003 passed by central Adminn Tribunal
Smt. Principal Bench Faridkot House New Delhi in OA NO 2274/01 with
AN 2467/2001 OA.D.NO 2315/2002.

In continuation of this Court's letter No.

dated 19.5.2003 directed to forward for
information and immediate compliance/necessary action a copy of
order dt. 19.5.2003 passed by Hon'ble Mr. Justice
Division Bench of this Court

in the above noted case alongwith a copy of Memo of Parties.

Please acknowledge receipt.

Yours faithfully,

ANUJ BISWAL
A.O(J)/Asstt. Registrar (W)
for Registrar

Recd on 8/10/03
8/10/03

779
22/10/03

10/10/03
on 22/10/03

PL. put up
by
22/10/03
8/10/03

ANUJ BISWAL
A.O(J)/Asstt. Registrar (W)
for Registrar
2
10/10/03

(2) D CP

IN THE HIGH COURT OF DELHI AT NEW DELHI
CIVIL EXTRAORDINARY WRIT JURISDICTION
CIVIL WRIT PETITION No. 3268 OF 2003

IN THE MATTER OF:

R. K. Ojha & Others

..... Petitioners

Union of India & Others

Versus

..... Respondents

MEMO OF PARTIES

1. Shri R.K.Ojha
14/834, Lodhi Colony
New Delhi.
2. Shri V.K.Gauba
Block No.2, H.No.2,
Lodhi Colony,
New Delhi.
3. Shri K.K.Mittal
1597, Sector - IV,
Urban Estate,
Gurgaon.
4. Shri M.C.Luther,
1311, A/B , Vasant Kunj,
New Delhi.
5. Dr. Parvinder Kaur
20/22 , Lodhi Colony,
New Delhi.

..... Petitioners

VERSUS

Union Of India
Through its Secretary,
Department of Personal & Training,
North Block, New Delhi.

(3) E

(4)

2. Union Public Service Commission
Through its Secretary,
Dholpur House, Sahajahan Road,
New Delhi.

3. Prabhakar
S/o Capt. B.R. Sharma
A-2468, Netaji Nagar,
New Delhi-23.

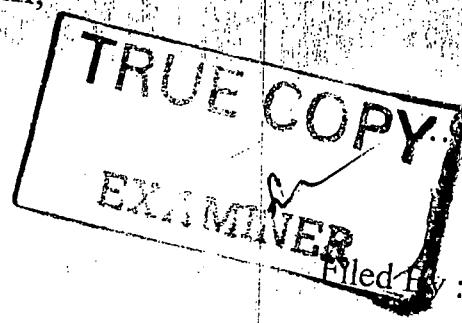
4. A. Narasimha Murty
S/o Late A. Lakshmi Narayan Rao
Sector VII, 237, R.K.Puram,
New Delhi-22.

5. Ishwar Chand Kambhoj
S/o Late N.R. Kambhoj
111- Dhruva Apartments
I.P. Extentsion, Delhi - 110092

6. Sir Suresh Sharma
S/o Late Shri O.P.Sharma
B-538, Sarojini Nagar,
New Delhi-110023.

7. Sri K.John
S/o Shri K.N.John
16-A, Pocket-I,
Mayur Vihar Phase-I,
Delhi - 110091.

8. Ms. V. Saraswathy
D/o Late Shri C.V. Venkataraman
1075, Sector - VIII,
R. K. Puram,
New Delhi - 22.



Respondents

New Delhi

Dated: 9.5.2003

A. Kumar & P. Kumar
(Abhish Kumar & Pankaj Kumar)
Advocates for the petitioners
Ch. No. 323, Delhi High Court
New Delhi.

IN THE HIGH COURT OF DELHI AT NEW DELHI

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CW 3269/2003

R.K.OJHA & ORS

..... Petitioner

Through Mr. G.D. Gupta, Sr. Advocate
with Mr. Abinash Mishra

versus

UOL & ORS

Respondents

Through Mr. Maninder Singh with
Mr. Abhinav Mukerji for

UOL

Mr. Rajinder Nishchal for
R-2.Mr. L.R. Khatana for
R-3 to 5.

CORAM:

HON'BLE MR. JUSTICE D.K. JAIN

HON'BLE MR. JUSTICE MADAN B. LOKUR

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ORDER

19.05.2003

Issue notice to the respondents to show cause as to why rule nisi be not granted. Mr. Maninder Singh, Rajinder Nischal and Mr. L.R. Khatana waive service of notice on behalf of respondents No.1,2 and 3 to 5 respectively and seek time to file reply affidavits. Let a complete set of

Orders

No. Date

paper books be supplied to them. Reply affidavits be filed within six weeks. Rejoinder affidavit, if necessary, may be filed within four weeks thereafter.

List for hearing on 20 October 2003.

CM 5589/03

List the application for disposal on 20 October 2003.

In the meanwhile, we direct that the petitioners shall not be reverted from their present post. However, we clarify that the respondents No. 1 and 2 shall be free to hold DPC for further promotions to the post of Deputy Secretary ^{as} and there is no stay of the impugned order passed by the Tribunal to that extent.

Dasti.

sd/-
D.K. JAIN
JUDGE

sd/-
MADAN B. LOKUR
JUDGE

TRUE COPY
EXAMINER



MAY 19, 2003

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