

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO.3327/2001

New Delhi this the 6th day of February, 2003

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI S.K.MALHOTRA, MEMBER (A)

Shri J.N.Gera  
S/o Late Shri Bela Ram Gera  
R/o Flat No.5  
Malakoff Building  
Harnam Singh Road  
Mussoorie-248179. .... Applicant

( By Dr.D.C.Vohra, Advocate)

-versus-

1. The Union of India through  
The Secretary  
Department of Personnel & Training  
North Block  
New Delhi-110 011.
2. The Director  
Lal Bahadur Shastri  
National Academy of Admn.  
Charleville  
Mussoorie-248179.
3. Mr.Satyabir Singh  
Superintendent  
Lal Bahadur Shastri  
National Academy of Admn.  
Charleville  
Mussoorie-248179. ... Respondents

( Shri Neeraj Goyal, proxy for  
Shri Adish C.Aggarwal, Adovate)

O R D E R (ORAL)

Justice V.S.Aggarwal:

Applicant J.N.Gera had joined the Lal Bahadur Shastri National Academy of Administration, Mussoorie in 1968. He earned his due promotions and was finally promoted on ad hoc basis as

*As Ag*

Assistant from 27.7.1991 and regularised as such from 1.9.1992. He had been promoted as Superintendent from 1.11.2000. Respondent No.3 is a Scheduled Caste candidate. He is junior to the applicant. He was regularly appointed as Assistant only from 1.4.1997.

2. The grievance of the applicant is that respondent No.3 had been promoted as Superintendent on 9.6.2000 despite he having not possessed the required qualifications i.e. completion of five years regular service in the grade of Assistant. He seeks that the appointment of respondent No.3 in this regard should be quashed.

3. In the reply filed, the application has been contested. According to respondents 1 and 2, the promotion of respondent No.3 had been made in accordance the relevant rules and directives of the Government of India. As per the Department of Personnel & Training Office Memorandum No.AB-14017/2/97-Estt. (RR) dated 25.5.1998, it is provided that a period of three years is the qualifying service for the posts in the grade of Rs.5000-8000/- to be upgraded to Rs.5500-9000/- for the post of Superintendent. Respondent No.3 is a reserved category candidate. The post was filled against the quota reserved for Scheduled Caste category candidates as per the roster and accordingly he was appointed.

As Ag

4. Some of the admitted facts, however, can be delineated. Admittedly, respondent No.3 has not contested the present application and that in the cadre of Assistant, he was junior to the applicant. The representation of the applicant had been rejected on 13.6.2001 with the following order:-

"With reference to his representation dated 19.12.2000, Shri J.N.Gera, Superintendent is hereby informed that the Departmental Promotion Committee has considered the case of promotion of Shri Satyabir Singh in accordance with DOPT's instructions conveyed vide O.M.No.AB-14017/2/97-Estt.(RR) dated 25.5.1998 against the reserved point for the S.C.candidate."

It is also not in dispute that there are rules that have been framed under Article 309 of the Constitution for the post of Superintendent, a copy of which is at Annexure A/4 dated 20.2.1986 and that as per the said rules, five years of regular service is required in the grade of Assistant to be promoted as Superintendent.

5. Rules 5 and 6 of the recruitment rules for the post of Superintendent referred to above read as under:-

"5. Power to relax:

Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order and for reason to be recorded in writing, relax any of the provisions of these rules with respect to

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any class or category of persons.

6. Saving :

Nothing in these rules shall affect reservation, relaxation of age limit, and other concessions required to be provided for the Scheduled Castes, the Scheduled Tribes and other special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard.

The Schedule."

The learned counsel for the respondents has argued that the Central Government in terms of Rule 5 can relax any provisions of the said rules with respect to any class or category of persons. Indeed such is the language of the rules reproduced above but our attention has not been drawn to any such order that had been passed. Such an order necessarily has to be passed. Firstly, the Central Government should be of the opinion that it is necessary and expedient so to do and secondly there have to be reasons to be recorded in writing before the rule can be so relaxed. In the absence of any such order, the respondents 1 and 2 cannot take the shelter of the rules referred to above.

6. Faced with this situation, reliance was being placed on Rule 6 of the abovesaid Rules. A reading of the same reveals that nothing in these rules should affect the reservation, relaxation of age limit and other concessions required to be provided for the Scheduled Castes and the Scheduled Tribes in accordance with the orders issued by the

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Central Government from time to time. In other words, there has to be an order that is to be issued by the Central Government from time to time with respect to the concessions to be granted to the Scheduled Castes and Scheduled Tribes. There is no such order that had been passed or brought on the record pertaining to the Scheduled Castes and Scheduled Tribes. Therefore, reference to Rule 6 of the abovesaid Rules will be of little consequence.

7. Furthermore, as per the recruitment rules, under column 12, the following qualifications have been prescribed for promotion to the post of Superintendent:-

"Promotion"

Assistant in the Lal Bahadur Shastri National Academy of Administration with five years regular service in the grade.

Note: Officers holding the post of Accountant and Senior Clerk on the date of publication of these rules, with 6 years regular service in the grade shall also be considered for promotion to the grade of Superintendent."

It prescribes clearly that the Assistant concerned must have five years regular service in the grade. When the respondent No.3 was promoted, he did not have five years regular service in the grade of Assistant. Therefore, the appointment of respondent No.3 could not be made. Our attention



has been drawn to a proposal to amend the recruitment rules but during the course of submissions, it was admitted that the recruitment rules as yet not have been notified. In the absence of any notification having been issued with respect to the <sup>amended</sup> recruitment rules, we hold that no amendment of the rules has been effected; nor the proposal can be used for the benefit of either person.

8. As is apparent from the reply, a strong reliance had been placed on Office Memorandum dated 25.5.1998. On the strength of the same, it was contended that on the upgradation of the posts from Rs.5000-8000/- to Rs.5500-9000/-, the qualifying service has been reduced to three years but paragraph 4 of the said Office Memorandum cannot be ignored and is as under:-

"4. The Recruitment Rules/Service Rules are of statutory nature. Therefore, the changes brought out by other relevant instructions have to be incorporated in the Recruitment Rules/Service Rules by suitable amendments so that necessary steps like holding of DPC etc. are taken to fill the posts carrying the revised scales, particularly merged scales, on regular basis. All the Ministries/Departments are, therefore, requested to effect necessary amendments to the Recruitment Rules/Service Rules notified by them after following the normal procedure of furnishing proposals to the Department of Personnel and Training and the UPSC in the format (Annexure-III) prescribed in the general guide-lines on recruitment rules circulated vide the DOP&T O.M.No.14017/12/87-Estt.(RR) dated the 18th March, 1988 and also in consultation with the Legislative Department."

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It clearly shows that a direction was issued to effect suitable amendments in the recruitment rules. The instructions of the Government of India can only be supplementary to the recruitment rules and cannot override the recruitment rules. Unless there is an amendment made, five years qualifying service would continue to hold the field. There are no instructions that have been brought to our notice giving special concession in this regard to the Scheduled Castes and Scheduled Tribes. When such is the situation, the applicant is justified in stating that promotion of respondent No.3 has been effected contrary to the rules and cannot be thus sustained.


9. For these reasons, the present application is allowed. It is held that the promotion of respondent No.3 at the relevant time when he did not have the necessary qualifying service was not in accordance with the recruitment rules and was illegal. However, respondents 1 and 2 may take steps and promote respondent No.3 from the date, he fulfils the necessary qualifications. The learned counsel did not press for the alternative relief.


10. For these reasons, the application is disposed of in the aforestated terms with no order

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as to costs.

Announced.

  
(S.K. Malhotra)  
Member (A)

  
(V.S. Aggarwal)  
Chairman

/sns/.