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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1335/98

New Delhi, this the 6th day of September, 2000

HON'BLE MR. JUSTICE V.RAJAGOPALA REDDY, VC (J)
HON'BLE MR. GOVINDAN S.TAMPI, M (A)

1. Sh. N.N.Singh, S/O Lt. Sh. Jagdeo Singh, A-167, Pandara Road, New Delhi, S.P.(Adhoc) ACB, C.B.I., New Delhi.
2. Sh. M.M.Rai, S/O Late Sh. Ram Naresh, Q.No.67, Housing Complex, Salt Lake, Calcutta, S.P.(Adhoc) ACB, C.B.I., Calcutta.
3. Sh. K.N.Tewari, S/O Late Sh. R.N.Tewari, 102, Type-IV, Sector-III, Sadiq Nagar, New Delhi, S.P.(Adhoc) ACB, C.B.I., New Delhi.
4. Sh. I.S.Saroha, S/O Lt. Sh. Jai Singh, 35, Type-IV Sector-III, Sadiq Nagar, New Delhi, S.P.(Adhoc) ACB, C.B.I., New Delhi.
5. Sh. Jai Swadesh, S/O Lt. Sh. Dalip Chand, 5, Teg Bahadur Road, Dehradun, S.P.(Adhoc) (ACB), C.B.I., Dehradun, S.P.(Adhoc) ACB, C.B.I., Dehradun.
6. Sh. Narayan Jha, S/O Lt. Sh. Bishwanath Jha, No.3-A/15, Jawahar Nagar Colony, Kanke Road, Ranchi, S.P.(Adhoc) ACB, C.B.I., Ranchi.
7. Kewal Singh Mehrum, S/O Sh. Phuman Singh, S.P.(Adhoc) ACB, C.B.I., Jabalpur.Applicants

(By Advocate: Sh. M.K.Gupta)
VERSUS

1. Union of India, through its Secretary, Deptt. of Personnel & Training, North Block, New Delhi-1.
2. The Director, Central Bureau of Investigation, C.G.O. Complex, Lodhi Road, New Delhi-3.
3. Union Public Service Commission through its Secretary, Shahjahan Road, New Delhi.

....Respondents
(By Advocate: Sh. V.S.R. Krishna).

ORDER

By Mr. Justice V.Rajagopala Reddy, VC (J):-

The applicants are presently working as Superintendents of Police (SP) in Central Bureau of Investigation (CBI for short), on ad hoc basis since 1995. Their only grievance in this OA is that their promotions were not regularised as the DPCs were not held for the last three years, despite the fact that they were eligible for promotion. As per the recruitment rules of 1963 as amended in 1980 vacancies of SP were required to be filled (a) 33-1/3% by promotion, failing which by transfer on deputation and (b) 66-2/3% on transfer on deputation/transfer. A Deputy Superintendent of Police (DSP) in CBI with 8 years of regular service was eligible for promotion. The said rules have been superseded in 1996 and as per the new rules the post of SP Group 'A' gazetted carries a pay scale of Rs.4100-5300 and is to be filled by 50% by promotion and 50% by transfer on deputation. A DSP with 13 years of regular service in the feeder category is eligible for promotion. It is the case of the applicants that though there were 28 vacancies in the promotion quota, which include 5 vacancies for the year 1996, 20 vacancies for 1997 and 3 vacancies for 1998 the respondents had failed to hold the DPC. The present OA is, therefore, filed seeking directions to hold DPC for the vacancies of 1995, 1996, 1997 and 1998 on annual basis and accordingly consider the applicants for regular promotion in the cadre of SPs.

2. The respondents denied the allegations that there was failure on their part for not holding DPC during the relevant years. They had sought to explain the reasons why they could not hold the DPC. It was averred that there

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was no vacancy in 1995 but they admit that there were some vacancies in 1996 but the DPC could not be held as amendment of the recruitment rules became necessary for the posts of SPs and DSPs. In the new rules which came into force in February, 1997, the eligibility criteria for promotion was enhanced to 13 years from 8 years and the posts of DSPs were placed in grade 'A'. Even in 1997 they could not hold the DPC because of certain representations made by some DSPs belonging to SC category and in the meanwhile the recommendations were made by the Fifth Central Pay Commission, resulting in the reduction of the pay scale of SPs in CBI, which necessitated further amendment of the recruitment rules. Hence, it is stated that in view of the above factors the Government could not hold the DPC in 1996, 1997 and 1998 and the recruitment rules have yet to be revised.

3. We have heard the learned counsel for the applicants and the respondents.

4. Shri M.K. Gupta, learned counsel for the applicants vehemently put forth his contentions that it is obligatory on the part of the respondents to hold DPC every year to fill up the vacancies but the respondents had failed in their obligation to hold the DPC till date. It is also his plea that merely on the ground that the recruitment rules were going to be amended the vacancies should not remain unfilled. The vacancies should be filled up in accordance with the existing rules and not in accordance with the amended rules which should be applied only to the vacancies that may arise subsequent to the amendment. Thus

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the action of the the respondents is violative of the Articles 14 and 16 of the Constitution and several instructions issued by the DOPT in this regard.

5. Shri V.S.R. Krishna, learned counsel for the respondents stoutly resisted the contention that there was failure on the part of the respondents to hold the DPC to fill up the vacancies. It was contended that the authorities concerned have taken a 'conscious decision' not to hold the DPC in 1996 in view of the upgradation of the posts of SPs and Dy.SP and the amendment of the Recruitment Rules, which were notified in 1997 and due to other factors which have been clearly stated in the counter-affidavit to which he draw our attention. It is, therefore, contended that the respondents cannot be blamed for not filling up the vacancies till now. It was also argued that the applicants cannot compel the respondents to fill up a vacancy and that the applicants have not suffered any prejudice since they have been working as SPs since 1995.

6. We have given careful consideration to the contentions raised by the both the sides and the issues involved in this case.

7. The short question that arises for our consideration in this case is whether the applicants are entitled for a direction to hold DPC for consideration for promotion as SPs on regular basis and with retrospective effect or in the alternative whether the applicants can compel the respondents to fill up the vacancies as and when they arose? The facts are not in controversy in this case. The applicants who are working as Dy.SP in CBI were

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substantially senior to have been considered for promotion as SPs as all of them had completed 8 years of service as required under the rules. They were also eligible as per 1996 rules all of them having completed 13 years of service. Though the applicants had been promoted on ad hoc basis as SPs in 1995, the vacancies arose only in 1996. Ordinarily the DPC should have been held for filling those vacancies during 1996. But as revealed in the counter on the ground that the recruitment rules were to be amended due to the upgradation of the posts of SPs and Dy.SP w.e.f. 1.1.96 and the scale of Dy.SP has been enhanced from 2000-3500 to 2200-4000 Group 'A' scale and also due to the fact that the eligibility requirement has been enhanced from 8 years to 13 years DPC, they could not be held in 1996 itself. Again since the post has been upgraded to Group 'A' post the question of reservation in favour of SC/ST category employees for promotion to the grade of SP was also to be taken into consideration. It was further averred that several representations have been made in this regard which were pending examination and that a reference from SC/ST Commission was also received in that regard. Hence the DPC could not be held in 1997 also. Meanwhile, in view of the acceptance of the Fifth Pay Commission recommendations awarding the scale of pay of SPs in CBI having been reduced, the Recruitment Rules had to be once again amended to operate the change in the length of service required in the feeder grade for promotion to SP. In view of these circumstances, the Government, it was averred that the vacancies could not be filled up and that could be done only after the recruitment rules are revised once again in consultation with the UPSC.

8. The learned counsel for the applicants places reliance upon the judgment of the Supreme Court in Y.V. Rangaiah v. J. Sreenivasa Rao, 1983 (3) SCC 284, in support of his contention. In that case the respondents were found ineligible due to the amendment of the rules in 1977 though they were eligible as per the existing rules against the vacancies that arose in 1976. The Supreme Court held that there was no reason not to prepare the panel in the year 1976 as the vacancies occurred in that year and that we have not the slightest doubt that the vacancies fell vacant prior to the amended rules would be governed by the old rules and not by the new rules", the proposed amendment cannot be a valid ground for not filling up the vacancies in 1976. The statement of law has been reiterated in the case of State of Rajasthan v. R. Dayal & Others, 1997 (10) SCC 419. The question that arose in that case was whether the selection of the candidates as per the recommendations of the DPC held on 13.4.95 according to the existing rules was valid when the eligibility conditions stood changed in 1997. The Court, following Y.V. Rangaiah's case (supra), held that the vacancies fell vacant prior to the recruitment rules should be governed by the original rules and not by the amended rules. As a corollary, the vacancies that arose subsequent to the amendment of the rules as on the date when the vacancies arose have to be filled up in conformity with amended rules. Thus the selection made in 1995 was valid. In view of the ratio laid down in the above authoritative pronouncements it is clear that the respondents in this case had failed in their obligation. The only reason given in the counter-affidavit for not filling up the posts was as follows:

"Some vacancies occurred in 1996 but the DPC meeting for filling up the same could not be held as amendment of the Recruitment Rules (RRs) became necessary due to the upgradation of the posts of SP and Dy.S.P. (from Rs.3000/-4500/- to 4100/-5300/- and 2000-3500 to 2200-4000 (a Gr 'A' Scale) respectively w.e.f. 1.1.986) in February, 1996. The new RRs were notified in February, 1997. In these RRs, Dy.SP's with 13 years of service were made eligible for being considered for promotion to the post of S.P. instead of the earlier prescribed period of 8 years. The post of Dy.S.P. was mentioned as a Gr. 'A' post therein. The proposal for convening the DPC meeting was initiated in 1997 but there was delay due to representations being made by some Dy.SPs of SC/ST category regarding the applicability of reservation in promotion to the grade of SP in view of the upgradation of the post of Dy.SP (to Group 'A' from Group 'B'), which had to be examined and decided upon.) A reference from the SC/ST Commission was also received in this regard asking for allowing reservations to the Dy.SPs of SC/ST category. In the meanwhile the acceptance of the Vth Central Pay Commission (CPC) was notified in September 1997, resulting in the reduction of the pay scale of the post of S.P. in CBI from Rs.4100-5300 (pre-revised) to Rs.3700-5000(pre-revised). In view of the reduced pay scale of the post of SP, RRs for the post of SP are required to be amended before convening the DPC meeting. The revision of RRs is underway, wherein the pay scale, and the years of service required in the feeder Grade from promotion to the grade of SP, are to be changed. The DPC meeting will be convened in consultation with the UPSC once the revised RRs are notified."

9. It is seen from the above counter that the posts available in the year 1996 were not filled only on account of the upgradation of the posts and the impending amendment of the rules which came into force in 1997. But, it has to be noted that though the posts have been upgraded unless the rules are amended mere upgradation of the posts cannot have any effect. There was no difficulty for the respondents to hold the DPC in 1996 to fill up the posts in accordance with the rules then existing. It is true that in 1997 Rules the eligibility condition of promotion has been

enhanced from 8 years to 13 years and the posts of DSPs were put in Group 'A' and the question of reservation also was to be considered for promotion for SC and ST candidates. It is not in dispute that certain vacancies arose in 1997 and the DPC could have held to fill up the vacancies in 1997 as per the new rules. No satisfactory reason was given for not filling up these vacancies in 1997 as per the new rules after disposing of the representations made by SC/ST employees. Hence no valid ground is made out for not filling up the vacancies. Thus the respondents had failed in their obligation for not filling up the vacancies in 1996 and 1997. Again the respondents have not filled up the vacancies that arose in 1998. The recommendations made by the Fifth Central Pay Commission reduced the scale of the posts of SP in CBI, which necessitated further amendment of the rules. But we find no reason for holding back the filling up the vacancies. They could have resorted to promotion on ad hoc basis as per the existing 1997 rules, which could be subject to review after the revised recruitment rules are framed. It is seen that till date the amended rules have not come into force and the vacancies that arose in 1998 are not being filled up.

10. The learned counsel for the respondents Shri V.S.R. Krishna vehemently contends that the applicants have no right to compel the respondents to fill up the posts, as they are entitled under law to take a 'conscious decision' not to fill up a post in view of the certain special circumstances. In the present case, it is contended that the respondents have taken a 'conscious decision' for not filling up the posts that arose in 1996 till date in view of the reasons given in the counter-affidavit. The learned

counsel placed reliance upon Dr. K. Ramulu and Another v. Dr. S. Suryaprakash Rao and Others, 1997 (3) SCC 59. Having perused the judgement we do not find that it supports applicants' case. In that case the Government had taken a decision in the year 1998 to amend the A.P. Animal Husbandry Service Special Rules, 1977. It had also taken a conscious decision not to fill up any vacancies till the amendment. In the year 1990 a one-man Commission appointed to examine the anomalies in the 1997 Rules submitted its report which was duly considered by the Government and ultimately the Government framed the A.P. Animal Husbandry Service Rules, 1996, repealing the 1977 Rules w.e.f. 12.6.96. The Government had, therefore, not prepared any panel for promotion to the post of Assistant Director for the years 1995-96 in accordance with the 1977 Rules. In view of the facts of that case the Government having taken a conscious decision not to fill up any pending vacancies unless the process of rectifying the anomaly was completed, which they have started on administrative grounds and which process was completed and the 1996 rules came into force, the Court held that the Government was entitled to take a decision not to fill up the existing vacancies on the relevant dates and the reasons given for such a decision were germane. It is, therefore, clear that if for a valid reason the Government has taken a decision not to fill up a vacancy, then it is not open to the applicants to compel the Government to fill up the post as and when it arises. In our view this case is wholly misplaced. It is not at all applicable to the facts of the present case as the respondents in the instant case have not shown that any such 'conscious decision' having been taken by them. We searched in vain in the counter filed by the respondents whether

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indeed such a decision was taken by the Government. The stand of the respondents was only that in view of the impending amendment of the rules and for other reasons the post could not be filled up. They do not say that any decision was taken by the Government. It should also be noted that it is not enough for the Government to take decision not to fill up the vacancies, but it should also give valid reasons in support of such decision. A decision taken arbitrarily and for invalid reasons cannot be held as a valid defence for not filling up the vacancies every year.

11. In view of the foregoing discussion, upholding the contentions of the learned counsel for the applicants, we hold that the respondents being obligated under law to have filled up the vacancies arising from 1996 till date as and when they arose, had failed in their obligation and the respondents could be compelled to fill up the vacancies. The OA, therefore, succeeds. The respondents are directed to hold DPCs to fill up the vacancies that occurred in 1996, 1997, 1998 and thereafter till date, in accordance with the rules existing on the date when the vacancies arose and to consider the cases of the applicants and others for promotion to the posts of SP on regular basis for the vacancies of 1996 and 1997 and ~~regular~~ ^{the} vacancies arising from 1998 onwards on ad hoc basis subject to review after the recruitment rules are amended and pass orders, granting all consequential benefits to the applicants, within a period of three months from the date of receipt of a copy of this order. The O.A. is accordingly allowed with costs of Rs.5,000/- (Rupees five thousand only).

(Govindan S. Tampi)
Member (Admnv)

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Unpublished
(V. Rajagopala Reddy)
Vice-Chairman (J)