

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 1466/1998

New Delhi, this 7th day of September, 1999

Hon'ble Shri Justice V. Rajagopala Reddy, VC(J)
 Hon'ble Shri R.K. Ahooja, Member(A)

1. V. Sreenivas
 779, GI Block
 Sarojini Nagar, New Delhi

2. Konthang Thouthang
 DG 3/87, Vikaspuri
 New Delhi

Applicants

(By Shri A.K. Sharda, Advocate)

versus

Union of India, through

1. Secretary
 DoPT
 North Block, New Delhi

2. Addl. Secretary & EO
 DoPT
 North Block, New Delhi

3. Director (MM)
 DoPT, North Block, New Delhi

4. G. Ganesan
 Gr. I of CSS
 M/Personnel, New Delhi

5. D.K. Kataria
 Gr. I of CSS
 M/Personnel, New Delhi

Respondents

(By Shri V.S.P. Krishna, Advocate)

ORDER

By Reddy, J.-

The applicants, who belong to Scheduled Caste and Scheduled Tribe (SC & ST for short) communities, are aggrieved by the action of the respondents in not promoting them to Grade I of Central Secretariat Service (CSS for short) i.e. Under Secretary but at the same time promoting several others, who are juniors to them. Applicants solely rely upon Proviso 3 to rule 12(2) of CSS (amendment) Rules, 1962.

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2. The applicants joined CSS as direct recruit Section Officers (SO, for short) through Civil Services examination 1990 & 1991 as SC & ST candidates respectively. Rule 12(2) of the CSS Rules provide that "vacancies in Grade I shall be filled by promotion of permanent officers of the SO's grade who have rendered not less than eight years approved service in that Grade and are included in the Select List for Grade I of the service prepared under sub-rule (4)". The third proviso to sub-rule 12(2) as amended by notification dated 29.12.84 (second amendment) provided that any person appointed as SO for promotion to Grade I was considered for promotion to Grade I, then all persons senior to him in SO grade belonging to SC/ST who have rendered not less than four years approved service in that grade shall also be considered for promotion. It is the case of the applicants that they have completed the required service of four years in 1995/96 itself and hence they are entitled for promotion. Though persons junior to them were considered and promoted to Grade I, applicants were not considered for promotion. Representation made to the respondents did not yield any result. Subsequently, however, respondents issued the order dated 20.5.98 rejecting the claims of the applicant which is under challenge in the present OA.

3. The learned counsel for the applicants contends, relying upon the aforementioned Rules, that they are entitled for promotion under law and Article 16 of the Constitution of India since they have rendered the required qualifying service as early as in 1995/96 and when there were sufficient number of clear vacancies in Grade I of CSS.

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4. The stand of the respondents ^{however,} is that ~~under~~ under Rule 12(2) of the CSS Rules, 1962, minimum of 8 years' approved service in the grade of SO is ~~required as~~ ^{the} the eligibility criteria for promotion to Grade I of CSS. Though under the 3rd proviso to Rule 12(2) as amended in 1984 of the said Rules any person appointed to SO grade is considered for promotion to Grade I, all persons senior to him belonging to SC/ST who have rendered not less than four years of approved service in that grade shall also be considered for promotion, the respondents could not give the benefit of this sub-rule to the applicants since the Hon'ble Supreme Court in the case of R. Prabha Devi & Ors. Vs. UOI & Ors. and again in the case of S. Vinod Kumar Vs. UOI JT 1996(8) SC 643 has held that provision for lower qualifying marks/lesser level of evaluation in the matter of promotion to SC/ST is not permissible under Article 16(4) in view of the command contained in Article 335 of the Constitution. In view of the above law laid down by the Supreme Court, the 3rd proviso to sub-rule 12(2) of the abovesaid Rules as amended in 1984 will cease to be operative. It is also stated in the additional reply filed by the respondents that in pursuance with the law laid down by the Supreme Court, the third proviso to Rule 12(2) of the CSS Rules, 1962 has been deleted by a notification dated 8th March, 1999. Hence the respondents passed the impugned order rejecting the representation of the Association of the SOs.

5. Before we proceed further it is useful to look at Rule 12(2) ⁴ as amended in 1984. It reads thus:

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"If any person appointed to the SO's grade is considered for promotion to Grade I under this sub-rule, all persons senior to him in SO's grade belonging to SCs or the STs, who have rendered not less than four years approved service in that grade, shall also be considered for promotion".

6. There is no dispute that under the above Rule the eligibility criteria for promotion to Grade I is 8 years approved service in the grade of SO. Third proviso, however, prescribes another standard for SC/ST for promotion. It provides 4 years qualifying service for promotion. Thus there are two sets of qualifying service, i.e. 4 years for SC/ST candidates and 8 years for general candidates. Relying upon the judgement of Vinod Kumar (surpa), respondents rejected the claim of the applicants. Learned counsel for the applicants, however, submits that as the rule is statutory, it is binding upon the respondents and they have no discretion except to act in consonance with the said rule.

7. Let us now consider the ratio laid down in Vinod Kumar's case. Before that it is useful to examine the law laid down in Indira Sawhney etc. Vs. UOI & Ors. JT 1992(6) SC 273. In this case the Hon'ble Supreme Court declared that Article 16(4) does not contemplate or permit reservations in the matter of promotions. However, the court declared that the reservation should continue for a period of 5 years. The court also held in para 831 as follows:

"We must also make it clear that it would not be impermissible for the State to extend concessions and relaxations to members of reserved categories in the matter of promotion without compromising the efficiency of the administration. The relaxation concerned in State of Kerala V. N.M.Thomas (1976) 2 SCC 310 and the concessions namely carrying forward of vacancies and provisions for in-service coaching/training in A.B.S.K.Sangh V. UOI 1981

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1 SCC 246 are instances of such concessions and relaxations. However, it would not be permissible to prescribe lower qualifying marks for the members of reserved categories since that would compromise the efficiency of administration. We reiterate that while it may be permissible to prescribe a reasonably lesser qualifying marks or evaluation for the OBCs/SC/STs, consistent with the efficiency of administration and the nature of duties attaching to the office concerned - in the matter of direct recruitment, such a course would not be permissible in the matter of promotions for the reasons recorded hereinabove"

8. Following the law laid down in Indira Sawhney's case, in Vinod Kumar's (supra), Hon'ble Jeevan Reddy J (as he then was) speaking for the Court, held as under:

"9.We are, therefore, of the opinion that so far as the provision for lower qualifying marks or lesser level of evaluation in the matter of promotion is concerned, even if it is assumed for the sake of argument that reservation is permitted by Article 16(4) in the matter of promotions, a provision for lower qualifying marks or lesser level of evaluation is not permissible in the matter of promotions, by virtue of Article 335."

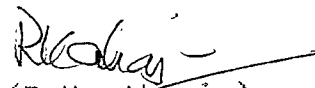
9. Thus, the law is authoritatively laid down that lesser level of evaluation for SC/ST candidates is absolutely impermissible in the matters of promotion. Under Article 141 of the Constitution, the law declared by the Supreme Court shall be binding on all courts in India which are bound to follow the decisions of the Supreme Court even though they are contrary to decisions of the House of Lords or of the Privy Council. Supreme Court decisions are binding on all States and their officers and all persons, whether they are parties thereto or not, and to all pending proceedings, (see Municipal Corpn. V. Gautam (1989) 1 SCC 101 and State of U.P. V. Synthetics (1991) 4 SCC 139). Hence the respondents are bound to follow and act in consonance with the law declared by the Hon'ble Supreme Court. The lesser standard for promotion to the applicants provided

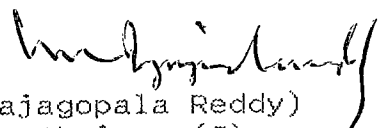
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under the 3rd proviso is undisputedly opposed to the ratio laid by the Supreme Court. If the respondents still act and grant promotion to the applicants, they will do so at their peril. Such ^{course} cause of action would also be contemptuous. Even we cannot give any direction contrary to the ruling of the Supreme Court.

10. The learned counsel for the applicants relies upon the case of A.K. Bhatnagar & Ors. Vs. UOI (1991) 1 SCC 544, in support of his contentions, wherein the apex court has held that Rules framed under Article 309 of the Constitution being statutory, are mandatory and have to be enforced. This position is not disputed. But we are now faced with the ruling of the Supreme Court which has overriding effect, notwithstanding any provision of law contrary to it.

11. In the circumstances, it cannot be said that the impugned order passed by the respondents suffers from any infirmity. The applicants therefore cannot seek any benefit of promotion on the ground that they have put in 4 years of approved service. The OA therefore fails and is dismissed accordingly. No costs.


(R.K. Ahooja)
Member(A)


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

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