

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(14)

O.A./~~XXXX~~ No 216 of 1995

Decided on: 21 4 98

Dr. Vidya Dhar Sharma.....Applicant(s)
Guleri

(By Shri C. Hari Shankar Advocate)

Versus

U.O.I. & Another.....Respondent(s)

(By Shri N.S. Mehta Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE ~~SHRI~~ DR. A. VEDAVALLI, MEMBER (J)

1. Whether to be referred to the Reporter or yes
not?
2. Whether to be circulated to the other Benches
of the Tribunal? x

be
(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 216 of 1995

New Delhi this the 21st day of April, 1998

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Dr. Vidya Dhar Sharma Guleri
R/o 82, Street No.3,
Andrews Ganj,
Delhi-110 056.

...Applicant

By Advocate Shri C. Hari Shankar.

Versus

1. Union of India
Through the Secretary,
Department of Education,
Ministry of Human Resources Development,
Shastri Bhawan,
New Delhi.
2. Union Public Service Commission,
Through its Secretary,
Dholpur House,
Shahjahan Road,
New Delhi-110 011.

...Respondents

By Advocate Shri N.S. Mehta.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Applicant challenges the vires of the Recruitment Rules notified by the respondents for the post of Assistant Educational Officer (Sanskrit) as being violative of Article 14 of the Constitution and has prayed that in view of the above, the advertisement of 22.2.1994 as well as the Recruitment Rules on which it was based, be quashed. He has also sought for a direction to the respondents to consider the applicant for due promotion to the post of Assistant Educational Officer, if he is found suitable by a duly constituted Departmental Promotion Committee.

2. Facts in brief as as follows:-

Applicant in response to the advertisement dated 22.2.1994 was a candidate for the recruitment of the aforesaid post of Assistant Educational Officer (Sanskrit) in the scale of Rs.3000-4500 in the Ministry. Applicant was working as a Education Officer under the respondents. Since he was eligible to be considered for appointment against the above post, he was also called for interview. However, the applicant did not make it and the respondents selected another candidate for the aforesaid post for appointment by transfer on deputation basis. The aforesaid candidate was working as a Lecturer in Rajkeeya Central Pedagogical Institute, Allahabad.

3. The applicant assails the Recruitment Rules on the ground that the aforesaid rules while prescribing two channels of promotion, namely, by promotion/deputation, has provided for a composite selection procedure in which a departmental person, if he is selected will be deemed to have been promoted to the post and if outsider is selected, he will be on deputation. Thus, the Recruitment Rules suffer from inherent defect of treating the departmental people on the same footing by prescribing selection in consultation with the Union Public Service Commission without prescribing a separate Departmental Promotion Committee for the eligible departmental candidates. To this extent, the applicant alleges that the Recruitment Rules are violative of Article 14 since it provides for common consideration by a panel on a common platform which would amount to equal treatment given to unequals. The applicant claims that he was directly recruited as Education Officer in Group 'A' general service in the grade of Rs.2200-4000 and at that time, he was told as

per the advertisement, that there were prospects of promotion to successive higher grades under the respondents upto the level of Joint Educational Adviser in the scale of Rs.5900-6700. He also submits that the procedure as per the rules which provide for a composite selection cannot be upheld for the aforesaid reasons.

4. The respondents in their reply have stated that the recruitment to the post of Assistant Education Officer was made strictly in accordance with the lawful procedure and as per the Recruitment Rules in force. They dismiss the applicant's plea as misconceived inasmuch as the mode of recruitment is prescribed by a judicious blending of several considerations including nature of duties, qualifications and experience required for the post, the availability of suitable personnel possessing the requisite qualifications and the need for ensuring maintenance of an adequate standard of efficiency in the cadre etc. Particularly in the field of education, it was also required that fresh knowledge and experience which would normally be available in a particular service or department, should be made available by providing for recruitment also by transfer on deputation as in this case. However, when the Recruitment Rules were notified in 1972 and were amended subsequently, provision for promotional avenues were also provided in the case of departmental officers for some upward mobility. It is provided in the Recruitment Rules that the composite method of selection is done in consultation with UPSC which considers not only applicants who apply for this post by way of transfer on deputation but also from the departmental officers who are

18

otherwise qualified. The Recruitment Rules also provide that in the event of the respondents not being able to select a proper person either by way of transfer on deputation or by promotion of eligible departmental officers, direct recruitment can be resorted to as per the Recruitment Rules. The respondents have also averred that there is only one post of Assistant Educational Officer (Sanskrit) and it was provided that the promotion may be kept as a method of recruitment depending upon the availability of persons in the field of consideration. The respondents also assert that as per the guidelines laid down by the Department of Personnel and Training when the composite method of recruitment to the post is provided, the consultation may be made with the UPSC and there was no question of any DPC which is available only where recruitment is made by promotion only as an exclusive mode of appointment. There is also no provision in the Recruitment Rules or guidelines issued by the Department of Personnel and Training for giving first consideration to the departmental candidates in preference to outside candidates in the selection. The respondents also assert that if it is a case of only promotion within a department or a cadre, then eligibility will have to be decided by the zone of consideration for determining the number of eligible persons. On the other hand, under the aforesaid Recruitment Rules, the post can be filled by transfer on deputation. In the event of any departmental officer being selected for the aforesaid post, the Recruitment Rules provide that it cannot be treated as on deputation but it will be considered as a deemed promotion.

A

5. The learned counsel for the respondents submits that while the applicant has applied for the post in terms of the Recruitment Rules, he is estopped from pleading that the recruitment Rules are discriminatory.

6. We have heard the learned counsel for the parties and have perused the pleadings on record.

7. The Recruitment Rules provide the mode of recruitment as follows:-

By promotion/transfer on deputation (including short term contract) failing which by direct recruitment. Column 11 provides the grades from which such promotion/deputation on transfer are to be considered. Officers under the Central and State Governments/Universities /Semi-Governments/Autonomous or Statutory Organisations holding analogous posts or with 5 years service in posts in the scale of Rs.700-1300 or equivalent or with 8 years service in posts in the scale of Rs.650-1200 and possessing the prescribed educational qualification and experience as prescribed in Column 7 as for direct recruits. It was also provided that in case of departmental Education Officer (Sanskrit) 5 years regular service will be considered. It is also provided therein that the departmental officers when selected for appointment shall be deemed to have been filled by promotion. There is also a provision for a Departmental Promotion Committee only for considering confirmation in the

(2)

said grade. It is to be noted that there is no specific provision for Departmental Promotion Committee for promotion as in the normal case. It is provided that selection on each occasion shall be made in consultation with the UPSC.

8. From the advertisement inviting applications for the said post (Annexure-I to the O.A.), it is stated that the post of Assistant Educational Officer in the grade of Rs.3000-4500 is proposed to be filled on deputation basis from among the officers holding analogous posts or with 5 years service in the grade of Rs.2200-4000 or with 8 years in the grade of Rs.2000-3500 from the State or Central Government or Universities or Semi-Government Research Institutes or Autonomous or Statutory Organisations. It also gives the essential and desirable qualification for the said post. It is also provided in the advertisement that the departmental Education Officer (Sanskrit) with 5 years regular service in the grade will also be considered and in case he is selected for appointment to the post, the same shall be deemed to have been filled by promotion. Thus, it is seen that the advertisement has been strictly in accordance with the rules. Now we come to the question of rules themselves. Applicant's grievance is that the Recruitment Rules provides for a composite selection method by which both the outsiders who are to be considered on deputation if selected and the departmental officers if selected, to be considered on deemed promotion are treated at par and, therefore, the rule is inherently designed to treat unequals as equals and, therefore, is violative of Article 14 of the Constitution. The counsel for the applicant strongly

h

(21)

argued on this point. We are not impressed by the arguments of the learned counsel. The admitted position is that the post of Assistant Educational Officer. (Sanskrit) is admittedly an ex-cadre post and departmental Education Officers do not have a vested right for such a post as in the normal line of promotion within a cadre. But the Recruitment Rules provide that Education Officers of the department are also eligible for being considered and in case they happen to be selected, they will be deemed to have been promoted and will not be treated as on deputation. This specific provision is virtually intended to protect the interests of such a departmental officer who will not have to revert to his parent post after period of his tenure as in other cases of deputation. This, in our view, does not violate the provisions of Article 14 of the Constitution.

9. The next point that is urged by the applicant is that unequals are treated as equals. This is also not a valid contention. For consideration of eligibility, the educational qualification and experience are prescribed and while in the case of persons who are applying on deputation basis, 7 years experience is required. In the case of departmental Education Officers, 5 years regular service in the grade of Rs.2200-4000 is prescribed. Therefore, if at all, there is some difference, it is in favour of the departmental officers as they require only less number of years of service for being considered and this is deliberately provided as a matter of policy to provide for avenues for departmental officers. There is no material on record to show that the post of Assistant Educational Adviser

h

(Sanskrit) and such other posts of departmental officers are part of the same cadre. The learned counsel for the applicant also admitted that the post of Assistant Educational Officer is an ex-cadre post and, therefore, in filling up an ex-cadre post if the respondents have prescribed recruitment by transfer on deputation or promotion in the event of departmental officers being selected, it cannot be said that there has been any violation of the provisions of Article 14 of the Constitution.

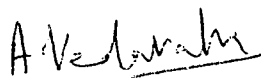
10. The counsel for the applicant strongly relies on Gujarat Housing Board Engineers Association and Another Vs. State of Gujarat and Others, 1994 (2) SCC 24 to stress that when promotion or deputation is prescribed as mode of recruitment, it has to be read to mean that deputation can be resorted to only if promotion fails. We have seen the aforesaid decision. In the aforesaid case it is stated that the concerned regulation provided that an appointment can be made of an Executive Engineer from the State Government's Building and Communication Department to the said post on deputation only if a suitable eligible candidate is not available for appointment by promotion from among the Executive Engineers of the Housing Board (Regulation 33). On the other hand, there is no such stipulation in the Recruitment Rules in this case and, therefore, the aforesaid decision is not directly applicable here. The counsel then referred to some other decisions like Satpal Vs. State of Haryana, 1995 (Supp.) (1) SCC 206 and certain other cases to derive support for his contention that a selection as provided under the rules cannot be based solely on oral

23-

interview. As per the Recruitment Rules it is stated that the recruitment is made by selection in consultation with Union Public Service Commission. We have already noted that the recruitment is to be done by considering the eligible candidates from other Central or State Governments/Universities/Autonomous Bodies etc. and also from among the eligible departmental officers. In such a selection process, it cannot be said that the UPSC is solely guided by the interview as in such cases, confidential reports of all the candidates either applying on deputation basis or from the departmental officers are also considered. The fact that an interview is also arranged cannot be said to be detrimental only to the departmental candidates. After all the other candidates who have applied for, on transfer-on-deputation basis, have also to face the same interview along with the departmental officers.

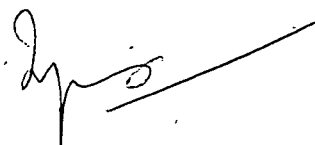
11. In the facts and circumstances of the case, we cannot conclude that selection can be only by promotion. Therefore, the applicant cannot take the plea that the selection has only to be by a Departmental Promotion Committee.

12. In the conspectus of the above discussion, we see no merit in the application and it is accordingly dismissed. There shall be no order as to costs.



(DR. A. VEDAVALLI)
MEMBER (J)

Rakesh



(K. MUTHUKUMAR)
MEMBER (A)