

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2402/95
Tx.Ax.No.

199

(2)

DATE OF DECISION

Dr. M.B. Panari

Petitioner

Shri Jog Singh

Advocate for the Petitioner(s)

Versus

UOI & Ors.

Respondent

Shri V.K. Mehta

Advocate for the Respondent

CORAM

The Hon'ble Mr. S.R. Adige, Member (A)

The Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not?

2. Whether it needs to be circulated to other Benches of the Tribunal?

Lakshmi Swaminathan

(SMT. LAKSHMI SWAMINATHAN)
MEMBER (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO.2402/95

New Delhi, this the 1st day of July 1996

(13)

Hon'ble Shri S.R. Adige, Member (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Dr. M.B. Pahari,
s/o late Shri A.K. Pahari,
Director, Doordarshan Kendra,
r/o Q/14, Andrews Ganj Extension,
New Delhi. ... applicant

By Advocate: Shri Jog Singh

Vs.

Union of India through

1. Secretary,
Ministry of Information & Broadcasting,
Shastry Bhawan,
New Delhi.
2. Director-General Doordarshan,
Mandi House, Copernicus Marg,
New Delhi.
3. Smt. M.S. Rugmini,
Director Doordarsnan Kendra,
Trivendrum. ... Respondents

By Advocate: Shri V.K. Mehta

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

This application has been filed by the applicant
under section 19 of the Administrative Tribunals Act, 1995
stating that the action of the respondents is illegal,
arbitrary and discriminatory, as they have not considered

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his case for promotion to the post of Deputy Director General in the pay scale of Rs.5900-6700 which is a Senior Administrative Grade in the Indian Broadcasting Programme Service Management. He has impugned the promotion order No.11/7/95-E0(SR.II) dated 5.12.95 issued by the DOP&T by which respondent No.3 Smt. M.S. Rugmini and others have been promoted to the Senior Administrative Grade (Annexure A-1).

2. The applicant's case is that Respondent No.3, Smt. M.S. Rugmini is junior to him in the seniority list of officers in the Junior Administrative Grade of Doordarshan Programme Management Cadre as on 1.2.92 (Annexure A-6) and is in inferior scale and ^{has} also denied the fact that she has completed eight years of service as prescribed under the Rules. The main contention of Shri Jog Singh, learned counsel for the applicant is that as per the rules and guidelines dated 18.3.88 issued by the DOP&T in 1988 he was entitled to be considered for promotion, being senior to Respondent No.3.

3. Under the Indian Broadcasting (Programme) Service Rules, 1990 (hereafter referred to as IBPS Rules), in terms of sub rule 5 of rule 7 read with Schedule IV, the promotion to the Senior Administrative Grade i.e. Additional Director General Deputy Director General in the pay scale of Rs.5900-6700 is to be filled by the following methods by promotion by selection among the following officers, namely,

Officers with 8 years regular service in the Junior Administrative Grade (including non-functional selection grade) or with 17 years regular service in Group 'A' post out of which at least 4 years regular service should be in Junior Administrative Grade."

In the case of promotion to the Junior Administrative Grade (Selection Grade),/Director(Production) in the grade of Rs 4500-5700 the method of recruitment is by appointment on the basis of seniority based on suitability taking into account the overall performance, experience and other related matters among the officers in the Junior Administrative Grade (Director) who have entered the 14th year of Group 'A' Service on the cut off date. In the case of appointment to the Junior Administrative Grade in Schedule IV of the relevant rules, a note has been appended which reads as follows -

"The Junior Administrative Grade Officers who entered into the service other than by direct recruitment to Junior Time Scales Grade shall also be considered provided they are senior to the junior most officer who has become eligible for consideration to Junior Administrative Grade (selection grade)."

4. Shri Jog Singh, learned counsel for the applicant contends that like the note inserted below the provisions for appointment to Junior Administrative Grade Officers as above, a similar note ought to have been provided in the case of promotion to the Senior Administrative Grade also. This would mean that even though the applicant ~~may~~ not have the eligibility as provided under the relevant rules, since his junior Smt. M.S. Rugmini was being considered for promotion to Senior Administrative Grade, he would also have been considered as he was senior to her. He claims that this would also be in accordance with

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the DOP&T guidelines of 1988 which has not been followed in his case.

5. Another argument advanced by the learned counsel for the applicant is that he has been discriminated in many ways. Relying on Rule 11(2) of the IBPS Rules, the learned counsel submits that since the applicant belongs to Group 'A' of the Central Civil Services, the same conditions of service as applicable to other Group 'A' officers are applicable to him like the Indian Economic Service in which it is provided that if a junior completes the qualifying service, the senior has also a right to be considered for promotion. He submits that in another similar service in the same department, namely, under the Indian Information Service Group 'A' ^{Services B}, constituted under the Indian Information Service (Group 'A') Rules, 1987, Note III provides that if an officer appointed to any post in the service is considered for the purpose of promotion to a higher post, all persons senior to him in the service shall also be considered notwithstanding that they may not have rendered the requisite number of years of service (Annexure R-2). He, therefore, submits that there has been discrimination against the applicant inasmuch as persons similarly placed in other services as well under the same IBPS Rules have been treated differently, ^{and} ~~and~~ similar provisions should have been provided in accordance with the DOP&T ^{in his case B} guidelines in the IBPS rules. He further submits that when the Indian Broadcasting Programme Service was constituted on 5.11.90, and no officer in the feeder cadre of JAG had the qualifying service as provided

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in the Rules and there were as many as 47 vacancies in SAG, the Respondents had taken the decision to promote some officers to SAG who had only six years of service for promotion against the 1993-94 vacancies by order dated 11.1.1995. The learned counsel states that similarly in future vacancies also the Respondents ought to have relaxed the number of years of applicant qualifying service and considered the/for promotion to SAG as he has six years of service in the feeder cadre in 1995. He, therefore, submits that this is also arbitrary and discriminatory which justifies quashing of the impugned promotion order.

6. Another argument advanced by Shri Jag Singh, learned counsel was that by the time respondent No.3 had in fact assumed the promotion post in the Senior Administrative Grade, the applicant had fulfilled the eligibility condition even though he might not have had that qualification earlier. This argument was, however, not seriously pressed and this argument had to be straightway rejected because the relevant cut-off date when the candidates have to possess the prescribed qualifications will be, at the most, the date when the DPC met and cannot obviously be the date when the promotee assumed office which would be wholly uncertain, fortuitous and unacceptable. He has relied on a number of judgments to support this case. (see Bal Krishan Vs. Delhi Administration (1989 Suppl.(2) SCC 351 at 355) and Laloo Lal Gupta Vs. UOI & Ors. (1994 (3) ATJ 83).

7. Shri V.K.Mehta, learned counsel for the respondents submits that the applicable rules in this case, namely, the Indian Broadcasting (Programme) Service

Rules, 1990 (IBPS) has been made under the provisions of Article 309 of the Constitution after due consultation with the U.P.S.C. He submits that the competent authority has taken into consideration all the relevant factors, including the DOP&T guidelines while framing the rules and laying down the eligibility conditions. He submits that the DOP&T guidelines being only guidelines are purely administrative in nature and cannot be enforced (see B.S. Vaders Vs. UOI (AIR 1969 SC 118) or have overriding effect over the statutory recruitment rules. He has produced the Indian Information Service (Group 'A') Amendment Rules, 1991 which has amended the rules of 1987. Schedule 1 has been substituted by the Amendment Rules by which Note III relied upon by the applicant has been deleted. In other words, after 1991 there is no provision for consideration of the senior person in the grade for promotion merely because the junior has been considered. He, therefore, submits that the eligibility condition prescribed under the relevant rules for promotion to the Senior Administrative Grade has to be fulfilled as an eligibility criteria. Since on the cut off date i.e. 1.10.95 the applicant neither possessed eight years regular service in the Junior Administrative Grade or 17 years regular service in Group 'A' post, he did not fulfil the eligibility criteria. They have also denied the allegations of discrimination stating that applicant's Junior had been promoted in accordance with the Rules. He has further submitted that since the applicant is a member of the Indian Broadcasting Service which is governed by a set of rules, namely, the IBPS Rules, he cannot claim application of any other rules like the Indian

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Broadcasting (Engineering) Service Rules which is a separate organised Group 'A' service. In the circumstances he submits that the application may be rejected. He has also relied on the judgment of the Supreme Court in Prabha Devi Vs. UOI(AIR 1988(2) SCC 233).

8. We have carefully considered the arguments of the learned counsel for the parties and perused the record, as well as the written arguments submitted by the learned counsel for the applicant which is taken on record.

9. From the above it is seen that the main grievance of the applicant is that in the relevant IBPS rules, a provision has not been made in terms of the DOP&T guidelines regarding insertion of a suitable note that seniors who have completed probation period are also to be considered for promotion where the juniors have completed their requisite number of service period and are being considered. It is settled law that the DOP&T guidelines in which such a provision has been indicated is purely administrative in nature and cannot override statutory Recruitment Rules framed under Article 309 of the Constitution. The grievance of the applicant is that the relevant rules do not contain such a provision although the guidelines have indicated the need to make such a provision wherever applicable. It has been rightly pointed out by the learned counsel for the respondents that the relevant Recruitment Rules for the Indian Broadcasting (Programme) Service to which applicant belongs has been made by the competent authority after consultation with the U.P.S.C. under Article 320 of the

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Constitution and after considering all the relevant factors relating to the method of recruitment for the particular posts and other criteria. The decision of the respondents not to include the provision indicated in the DOP&T guidelines being a conscious decision supersedes the provisions in the guidelines and is neither arbitrary or illegal. Further, it is noticed that the provision as contained in the guidelines which was originally provided under the Indian Information Service (Group 'A') Rules, 1987 relied upon by the applicant has been subsequently deleted by the Amendment Rules of 1991. Therefore, even under the Indian Information Service (Group 'A') Rules, 1991, the condition of eligibility in terms of length of service for promotion to Senior Administrative Grade has been retained, as the sole determining factor for promotion. In view thereof the earlier unamended 1987 rules will not assist the applicant.

10. The applicant has also relied upon Rule 11(2) of the relevant rules. His submission is that in respect of conditions of service of members in Group 'A' service for which no provision is made, it shall be the same as are applicable to other Group 'A' officers in the Central Civil Services from time to time. He has sought to rely on a similar provision in the Indian Broadcasting (Engineers) Service Rules, 1981, which is also a Group 'A' service. He, therefore, submits that in terms of Rule 11(2) read with Rule 10 the applicant should have also been considered when his juniors were considered for the promotion post in the Senior Administrative Grade. This argument had already been considered by the Tribunal in its

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order dated 1.1.96 and we see no reason to defer from the same.

As already stated above the relevant rules have been made by the competent authority taking into account all the relevant factors. He cannot claim application of another set of rules applicable to a separate organised Group 'A' service based on Rule 11(2). The Tribunal in its order dated 19.12.95 followed by the order dated 1.1.96 had directed that the appointment of third respondent shall be subject to the outcome of the O.A.

11. Admittedly on the cut off date when the DPC considered the eligible persons for promotion to the Senior Administrative Grade, the applicant did not fulfil the eligibility criteria as provided under the relevant rules. Since the relevant rules do not contain a provision regarding consideration of seniors when juniors are considered for promotion, irrespective of their having fulfilled the eligibility conditions or not and he did not, therefore, come within the consideration zone, the applicant had no right to be considered for promotion. The DOP&T guidelines being advisory in nature cannot override the statutory rules. Therefore, the allegations of discrimination made by the applicant are baseless, as the respondents have acted strictly in accordance with the statutory recruitment rules. There is also no merit in the other arguments advanced by the applicant, ^{including} that the respondents ought to relax the rules in 1995 also in his case when, unlike in the previous years, officers who are qualified under the rules were available for consideration for promotion. We, therefore, find no merit in this application.

12. In the result, the application is dismissed. No costs.

Lakshmi Swaminathan
(SMT. LAKSHMI SWAMINATHAN)
MEMBER (J)

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(S.R. ARULIGE)
MEMBER (A)

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