

(4)

Central Administrative Tribunal

Principal Bench: New Delhi This 15th Day Sept 1995

OA No. 927/95

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)
Hon'ble Mr R.K.Ahooja, Member (A)

K.Neelakandhan
R/o B-12/G3, Dilshad Garden
Delhi-110 095, working in the
Ministry of Law, Justice & Company Affairs
Delhi. ...Applicant
(Applicant in person)

Versus

1. Union of India through
The Secretary
Ministry of Law, Justice &
Company Affairs
4th Floor, Shastri Bhavan
New Delhi-110 001.
2. Shri V.N.S.Asthana
Land & Development Officer
Ministry of Urban Development
Nirman Bhavan, New Delhi.
3. Smt. Shail Kumari Goel
Assistant Legal Adviser
Intelligence Bureau
Ministry of Home Affairs
R.K.Puram, New Delhi-110 022.
4. Shri V.L.Kale
Assistant Legal Adviser
Branch Secretariat
Ministry of Law, Justice & CA
Ajakar Bhavan, Annexe-C
New Marine Line
Bombay.Respondents
5. Shri Mohar Singh
Assistant Legal Adviser
Central Public Works Department
Nirman Bhavan
New Delhi-110001.
(By Advocate: Shri Madhav Panikar)

O R D E R (Oral)

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

The applicant who is working as Superintendent (Legal) in the Ministry of Law, Justice & Company Affairs has filed this application under section 19 of the AT Act, praying that the amendment made in 1987 in the Indian Legal Service Rules, 1957 may be struck down as arbitrary, ultravires and against Article 14 of the Constitution as the classification made has no nexus to the object to be achieved and for a direction to the respondents to extend the benefit accorded to Respondents No. 2 to 5 to the applicant also.

✓

2. The applicant who commenced his service as Assistant (Legal) on 16.12.1974 was promoted to the next higher post of Superintendent (Legal) on 1.9.1987. According to the Indian Legal Service Rules, 1957, as it stood prior to its amendment which was notified on 29.8.1987, a Superintendent (Legal) with 3 years' continuous service was eligible for consideration for promotion to the post of Assistant Legal Adviser. By the amendment, the period of service as Superintendent (Legal) was changed to 7 years from 3 years, further providing with a proviso that officials who were working as Superintendent (Legal) on or before the date of notification of the amendment would be considered for promotion as Assistant Legal Adviser in case they had 3 years' service in the said post. The respondents 2 to 5 enjoyed the benefit of this proviso and they were promoted as Assistant Legal Advisers. Stating that the applicant ^{was} similarly placed as respondents 2 to 5, the applicant made representations in October 1990 and in October 1993 (Annexure D&E) but without any results. It is under these circumstances that the applicant has filed this application.

3. The first respondent in his reply has raised the preliminary issue that the application is barred by limitation. On merits, it has been contended that the recruitment rules were ^{validly} amended requiring a length of service of 7 years in the grade of Superintendent (Legal) as eligibility for promotion to the post of Assistant Legal Adviser. However, the inclusion of the proviso which saves the rights of those who were in the feeder cadre as on the date of amendment, according to the respondent No. 1 ^{it} was incorporated in view of the instructions of the Department of Personnel that the amendment of the recruitment rules should not prejudicially affect the rights of those who were in service as on the date of the amendment. This, according to the respondents, does not violate the equality provisions enshrined in the Article 14 & 16 of the Constitution and therefore challenge to this proviso is without merits.

✓

6

The second respondent, though no relief has been claimed against him, has also filed a reply statement.

4. As pleadings in this case being complete, as agreed to by the parties, we dispose of this application at the admission stage itself finally.

5. The respondents argued that the application is barred by limitation since the applicant should have impugned the amendment within the period specified in the Administrative Tribunals Act, after the date of the amendment. The applicant who is present in person argued that there cannot be any limitation for assailing the vires of statutory rules. The applicant became a Superintendent (Legal) on 1.9.1987 as averred in the application. If that is so, when he became a Superintendent (Legal) on 1.9.87, he was aware that the Recruitment Rules were amended and notified on 29.8.87 which stipulated that for Superintendent (Legal) to be eligible for promotion as Assistant Legal Adviser he should have 7 years regular service in that post and that Superintendents(Legal) who were in position as on the date of amendment of the Rules need have only 3 years regular service. If this amendment was not valid for unreasonable classification or having no nexus to the objective sought to be achieved, the applicant should have made a prompt attempt in 1987 itself to challenge the vires of the Rules. At least when he would have acquired the eligibility for promotion as Assistant Legal Adviser under the erstwhile unamended rule in September 1990, he should have challenged the validity of the amended rules. He did not choose to do that. In the rejoinder, the applicant has stated that he was promoted as Superintendent (Legal) on ad-hoc basis on 7th August 1987 and therefore he should have been given the same benefit as was given to the respondents 2 to 5.


6. ^{As per the Rules} Going by the Recruitment Rules, a Superintendent should have 3 years of regular service to acquire the eligibility for consideration for promotion as Assistant Legal Adviser. The service rendered on ad-hoc basis cannot be considered as regular service unless regularisation is made from the date of ad-hoc service. Therefore, the applicant is not similarly


7

sitated as respondents no.2 to 5. In any case the applicant has made representations claiming extension of the same benefit as was given to the respondents 2 to 5 in October 1990. Since he did not get the relief, he should have, after waiting for a period of 6 months, come up with an application within a period of one year thereafter. Therefore, on this score the claim of the applicant is barred by limitation. His right to challenge the constitutional validity of the amendment also is totally barred by limitation.

7. On merits also, the applicant does not have a case. It is the prerogative of the Administration to amend the Recruitment Rules if such amendments are considered necessary to improve the systems. If the Administration thought that a person to be promoted as Assistant Legal Adviser should have ^{longer} ~~larger~~ experience as Superintendent than three years, the decision cannot be faulted. The proviso to the effect that the amendment would not affect those who have already ^{been} working as Superintendents also is perfectly justified in terms of the instructions of the Ministry of Personnel. There is nothing arbitrary or unreasonable in the amended Rules.

8. In the conspectus of the facts and circumstances of the case, we do not find any merit at all in the case and therefore we dismiss the same leaving the parties to bear their own costs.


(R.K. Ahooja)
Member (A)


(A.V. Haridasan)
Vice Chairman (J)

aa.