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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

ORIGINAL APPLICATION NO.649 OF 1996

New Delhi, this the 26th day of April, 2000

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER(J)
HON'BLE MR.V.K.MAJOTRA, MEMBER (A)

1. Mrs. Veena R. Kant W/o Shri Rama Kant, R/o House No. 2524, Chaman Bara, Tilak Bazar, Delhi-6.
2. Smt. Prem Wati Rana W/o Shri S.S. Rana, 35, The Mall Apartment, Mall Road, Delhi-54.
3. Shri M.S. Yadav, S/o Shri K.L. Yadav, 1414, Gulabi Bagh, Delhi-7.
4. Shri K.N. Mishra W/o Shri Chhabbi Nath Misra, L/36-A, Laxmi Nagar, Delhi-92.
5. Shri D.B. Ambardar S/o Shri D.N. Amarbar, 147, Metri Apartment, 28 I.P. Extension, Delhi-92.
6. Shri S.R. Gupta S/o Late Shri Dharam Chand Gupta, J-107, Main Market, Rajouri Garden, New Delhi-27.
7. Smt. Surjit Bhatia, Wife of Mr. K.L. Bhatia, R/o BL-112, Shalimar Bagh, Delhi.
8. Shri D.N. Gupta, S/o Shri Net Ram Gupta, Welfare Officer, Grade II, Poor House, Kingsway Camp, Delhi-110009..
9. Shri R.P. Sharma, S/o Shri Raj Dev Sharma, R-39, Swatantra Nagar, Narella, Delhi-40.
10. Rajendra Singh, S/o Late Shri Viswanath Singh, Welfare Officer, Grade II, Home for Old & Infirm Beggars, Lampur, Delhi-110040.

...Applicants

(By Advocate: Shri V.S.R.Krishna)

Versus

1. Chief Secretary, Govt. of NCT of Delhi, 5, Sham Nath Marg, Delhi-54.
2. Secretary, Deptt. of Social Welfare, Govt. of NCT of Delhi, 5, Sham Nath Marg, Delhi-54.
3. Director, Deptt. of Social Welfare, Govt. of NCT of Delhi, Canning Lane Old ITI Building, Kasturba Gandhi Marg, New Delhi-1.
4. Shri Jagbir Singh, Ex Supdt. Deptt. of Social Welfare, Govt. of NCT Delhi, 4910/9, Seelam Pur, Delhi.
5. Sh. Mohan Singh Meena, Supdt.,
6. Sh. Mohd. Naseem, Supdt.,
7. Ms. Mithlesh Bhatnagar, Supdt.,

8. Sh. Anand Singh, Supdt.
9. Sh. J.S. Rawat, Dy. Supdt.,
10. Smt. Nirmal Kumari, Dy. Supdt.,
11. Smt. P.K. Bedi, Dy. Supdt./ACDPO
12. Smt. Bimla Chaudhary, Dy. Supdt./ACDOPO
13. Sh. Chhotay Lal, Dy. Supdt.,
14. Smt. Sudesh Kumari, Dy. Supdt.,
15. Shri Niroti Lal, Dy. Supdt.,
16. Smt. Rajina Kujur, Dy. Supdt.,

Through: Director, Social Welfare,
 Canning Lane, Old ITI Bldg.,
 Deptt. of Social Welfare,
 Govt. of NCT of Delhi,
 Kasturba Gandhi Marg,
 New Delhi-1.

- Respondents

(By Advocate Shri Vijay Pandita)

O R D E R (Oral)

Smt. Lakshmi Swaminathan, Member(J) :

The applicants are aggrieved by the order dated 27.7.94 promoting/regularising officers appearing at Sl.Nos.3-15 on the posts of Dy. Supdt./ P.O. Grade.I/ ACDPO etc. w.e.f. 15.6.1994.

2. Shri V.S.R. Krishna, learned counsel for the applicants has submitted that as regards the persons appearing at Sr.Nos.1 & 2 they were stated to be direct recruits who have been regularised by the aforesaid impugned order w.e.f. 11.12.84 and 23.2.84, and the applicants have no grievance. Admittedly, the applicants are promotee officers whereas these two others are direct recruit officers. The case of the applicants briefly stated is that DPC which met on 15.6.94, on the basis of which the aforesaid impugned order has been passed has not followed the settled law as laid down by the Apex court in Y.V. Rangiah Vs. J. Sreenivas Rao, (1983 SCC (L&S) 382) and they have also not followed the relevant procedural rules and instructions as laid down by the DOP&T OM dated 10.4.1989. Learned counsel has submitted that the DPC while making its recommendations

has bunched the vacancies in considering the promotion for the posts in question as according to him the 13 vacancies have been filled with effect from the same date i.e. 15.6.94. This, he submits is not the date when various vacancies have arisen, some as far as back as 1982 and onwards. He has, therefore, contended that in accordance with the aforesaid DOP&T OM dated 10.4.1989 even if the DPC has not been held yearly for whatever reasons, the DPC ought to have considered the vacancies yearwise for which panels have to be prepared separately in accordance with the relevant rules and instructions, for example, in dealing with the number of persons who could be considered within the zone of consideration, the Recruitment Rules which are to apply in respect of the particular vacancies arising in a year and other relevant factors. Admittedly, the Recruitment Rules for promotion to the posts of Dy. Supdt./P.O.Gr.I/ACDPO etc. of 1977 have been amended, first by the Notification dated 10.12.1984 and thereafter by the Notification dated 14.4.1988. He has drawn our attention to Para-1 of the reply filed by the respondents wherein it has been stated, *inter alia*, that "the details of vacancies were proposed in agenda but DPC did not recommend the regularisation of the officials concerned from the dates of vacancy available". According to the learned counsel for the applicants, this, shows that the DPC has wrongly applied the later Notification issued on 14.4.88 to vacancies which arose earlier which ought to have been considered in terms of the 10.12.1984 Rules, which has not been done. He has also submitted that the procedure adopted by the DPC is contrary to the judgment of the Apex court in Y.V. Rangiah's case (supra). In the circumstances

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of the case, learned counsel has prayed that the impugned promotion order issued on the basis of the recommendations of the DPC held on 15.6.94 is illegal and arbitrary and may be quashed and set aside. He has also prayed that a direction may be given to the respondents to hold a review DPC and to consider the eligible candidates, including the applicants, strictly in accordance with the rules and keeping in view the yearwise vacancies and Recruitment Rules prevalent at the particular point of time, as otherwise the recommendation will not be in terms of the settled law and instructions.

3. We have heard Shri Vijay Pandita, learned counsel for the respondents and perused the reply filed by them. He has submitted that prior to the DPC being held on 15.6.94, a DPC had also been held on 19.3.93 when 22 persons were regularised. He has also submitted that the applicants do not have any right for promotion but only have a right to be considered for it by the DPC. According to the respondents, while the applicants have submitted that the DPC has not taken into account the yearwise vacancies of Dy. Superintendents and have regularised them w.e.f. 15.6.94 i.e. the date of holding the DPC Meeting, what the applicants desires is to give them weightage of ad hoc promotion and seniority. We are unable to agree with this contention of the respondents. The main contention of the applicants as seen from the pleadings, is that the DPC has failed to maintain the yearwise panel for the vacancies and accordingly did not consider the persons for promotion in accordance with the relevant Rules and instructions.

4. Shri Pandita, learned counsel, has submitted the relevant records of the DPC proceedings held on 15.6.94. We find from the records that the Agenda for the DPC Meeting prepared by the respondents has given the details of 10 posts which were created, in which the following information has been furnished,

1. Five posts of Inspector were created vide order dated 21.3.88;
2. Two posts of ACDPOs were created vide order dated 22.10.86;
3. One post of ACDPO was created vide order dated 8.9.96 ;
4. One post of ACDPO was created vide order dated 3.8.88 ;
5. One post of Dy. Supdt. was created vide order dated 20.12.89;

From the aforesaid Agenda, it is, however, not clear as to when the remaining vacancies for the posts covered in the impugned order dated 27.7.94 occurred or were created. The DPC held on 15.6.94 in the Minutes has recommended as follows:-

"For appointment to the remaining posts DPC considered the provisions of the R.Rs and decided that all the promotions are to be considered in accordance with the R.Rs inforce now, which were notified on 14.4.88 which provide that the quota of promotion of each feeder cadre will be on the basis of respective strength of each feeder cadre each year" (emphasis added).

5. Learned counsel for official respondents has submitted that the DPC has considered the vacancies in accordance with the Rules inforce at that time namely, the Rules notified on 14.4.88 which is also borne out by the aforesaid paragraph quoted from the DPC Meetings. He has submitted that the applicants, although in the zone of consideration, could not be promoted to the post of Dy. Supdt. etc. because of non-availability of

sufficient number of vacancies. He has also submitted that as the promotions can only be given effect to prospectively and not retrospectively there is nothing wrong in the impugned order dated 27.7.94 promoting the 13 officers w.e.f. 15.6.94.

6. We have carefully considered the pleadings and submissions made by the learned counsel for the parties.

7. From a perusal of the DPC Minutes held on 15.6.94, portion quoted in paragraph 4 above, it is seen that the DPC has considered the provisions of the Recruitment Rules as notified on 14.4.88. The agenda papers prepared by the Department for the DPC shows that there were certain posts which they had indicated, details of which have also been referred to in paragraph 4 above that they have been created by various orders prior to the Notification of the amended Recruitment Rules on 14.4.88. It is not clear from the minutes of the DPC meeting as to how, therefore, they have decided to consider "the remaining posts in terms of the amended Recruitment Rules notified on 14.4.88". The DOPT vide their OM dated 10.4.89 (Annexure A-6) have also laid down the detail procedure to be adopted by DPCs, where for some reasons beyond their control they have not been held within the prescribed year. The instructions provide as follows:-

"Where for reasons beyond control, the DPC could not be held in a year(s), even though the vacancies arose during that year (or years), the first DPC that meets thereafter should follow the following procedure:-

- i) Determine the actual number of vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.

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ii) Consider in respect of each of the year(s) those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.

iii) Prepare a "Select List" by placing the select list of earlier year above the one for the next year and so on".

8. In the facts and circumstances of the case, particularly the minutes of the DPC meeting held on 15.6.94, we are unable to agree with the contentions of the learned counsel for the respondents that the DPC had followed the prescribed norms and procedure in the matter. The remaining posts, whatever the number, if created as per the Agenda papers prior to the Notification issued on 14.4.88, will have to be considered by the DPC in accordance with the Recruitment Rules existing at the time the posts fell vacant and not in terms of amended Rules. If any authority is required for this purpose the judgement of the Supreme Court in Y.V. Rangiah's case (supra) may be seen.

9. In the facts and circumstances of the case, we find force in the submissions made by Shri.VS.R.Krishna, Learned Counsel on behalf of the applicants that the DPC has not strictly followed the relevant Rules and instructions while dealing with the vacancies that were placed before them in its meeting held on 15.6.94. The consequent impugned promotions/regularisation order of the officials in the post of Dy. Supdt./P.O.Gr-I/ACDPO etc. issued vide order dated 27.7.94 which is based on the recommendations of the DPC meeting are, therefore, contrary to law and have to be quashed.

10. In the above circumstances of the case, the impugned order dated 27.7.94 is quashed and set aside.

The respondents shall hold a review of the DPC for the vacant posts in questions in accordance with the relevant law and rules. However, taking into account the facts and circumstances of the case, the persons mentioned in the impugned order who have been promoted to the higher posts shall not be disturbed till the respondents hold the review DPC. Necessary action in this regard shall be taken within three months from the date of receipt of a copy of this order. In case any of the applicants are found fit for promotion by the review DPC, they shall be entitled to the consequential benefits in accordance with law. No order as to costs.

V.K.Majotra

(V.K.MAJOTRA)
MEMBER (A)

Lakshmi Srinivasan

(SMT.LAKSHMI SWAMINATHAN)
MEMBER (J)

cc.