

Central Administrative Tribunal
Principal Bench

O.A. 90/96

New Delhi this the 24 th day of November, 1999

Hon'ble Shri S.R. Adige, Vice Chairman(A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

K. L. Bhardwaj,
42A, Ashok Mohalla,
Nangloi-41. Applicant.

By Advocate Shri M.N. Krishnamani, Sr. Advocate with
Shri Jitender Mahapatra.

Versus

1. Union of India through
the Cabinet Secretary,
Cabinet Secretariat,
Rashtrapati Bhawan,
New Delhi.
2. The Secretary,
Ministry of Science and Technology,
Technology Bhawan,
New Delhi.
3. The Secretary,
Department of Science and Technology,
Mehrauli Road,
New Delhi.
4. Director General of Meteorology
India Meteorology Department
(Bharat Mausam Vigyan Vibhag),
Lodi Road,
New Delhi-110003. Respondents.

By Advocate Shri K.R. Sachdeva.

O R D E R

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

The applicant is aggrieved by the promotion orders passed by the respondents promoting his juniors as Director in Meteorological Department by order dated 4.1.1995.

2. The applicant has challenged the aforesaid order of promotion and the validity of Rule 4 of the Indian Meteorological Service (Group 'A' posts) Recruitment Rules, 1978 (hereinafter referred to as the '1978 Rules'). Shri M.N. Krishnamani, learned Senior Counsel, has submitted that

only in the case of ^{the} Director, the Rules provide that the selection is by way of interview whereas in ^{the} case of recruitment for the other posts, no interview is prescribed. He has also submitted that under the Recruitment Rules, no marks have been prescribed for interview and according to him, the Selection Board has fixed 60% marks for interview and 40% marks for ACRs. He has submitted that 60% marks for interview are excessive which has been done only to favour some undeserving candidates and to harm certain deserving candidates like the applicant. He has contended that the interview marks could not have been prescribed more than 15%, as provided by the Supreme Court in **Ashok Kumar Yadav Vs. State of Haryana and Ors.** (1985 SCR Supp. 657). He has also relied on the judgement of the Supreme Court in **Vikram Singh & Anr. Vs. The Subordinate Service Selection Board Haryana & Ors.** (1991 (1) SLR 176).

3. The other main contention of the learned counsel was that instead of each Member of the Selection Board giving separate marks in assessment of the selection of the applicant and others, they have merely countersigned a sheet of paper in which the Director General had alone arbitrarily given some remarks. These averments have been made in Paragraph 4.9 of the O.A. which he states has not been denied by the respondents. He has, ^{therefore}, submitted that the whole interview was a mere farce. He has, therefore, prayed that the selection proceedings, as a result of which the applicant was superseded for promotion to the post of Director, in the Department of Meteorology by order dated 26.10.1995 should be quashed, including striking down the administrative decision to allocate 60% marks out of a total

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of 100 for interview as being arbitrary and violative of Articles 14 and 16 of the Constitution and the Rules of 1978 requiring an interview for the post of Director alone.

3. The respondents in their reply have controverted the above averments of the applicant. They have submitted that under the Recruitment Rules, Flexible Complementing System (FCS) has been followed for promotion to the higher grades of Meteorologist Grade-I and Director which is by way of selection. The departmental officers who have rendered 5 years as Meteorologist Grade-II and Grade-I are considered for promotion to the post of Meteorologist Grade-I and Directors, respectively on the basis of assessment of the record of service and an interview for evaluating their Scientific contributions, achievements and suitability for the higher grade. They have submitted that the system of interview- assessment is similar to the practice prevalent in other Scientific departments of the Govt. of India where FCS is in operation. In other cadres of Indian Meteorological Department, there is no FCS and the promotion is vacancy based and there is also no interview involved in the promotion. Learned counsel has, therefore, submitted that there is a rational in the Rules and the applicant cannot question the validity of the Rules which have been promulgated by the President under the proviso to Article 309 of the Constitution, which are based on reasonable criteria and classification. Shri K.R. Sachdeva, learned counsel has also submitted that it is not for the applicant to say as to for which post interview is necessary, and the Rule making authority has correctly prescribed an interview for promotion to the cadre of Directors, taking into account the relevant factors. He has submitted that the Assessment Board had made

its recommendations on the basis of the assessment of record of service and interview for evaluating the scientific contributions and achievements of the eligible officers. The applicant has also been so assessed along with the other Meteorologist Grade-I officers by the Board of Assessment on 7.10.1994 for promotion to the cadre of Director under the FCS, but his name was not recommended by the Board and hence he was superseded. Learned counsel has submitted that prior to 1988, the selections were based on the recommendations of the Board of Assessment and interview in consultation with the UPSC. Later on Scientific posts were exempted from the purview of the Commission as per the Notification dated 1.4.1987 and accordingly the Recruitment Rules were amended in consultation with Government/UPSC. He has, therefore, submitted that there is no illegality in the Rules merely because the UPSC is not part of the interview, which is also in accordance with the Rules. He has submitted that as the applicant has been assessed in accordance with the Recruitment Rules, as amended by Notification dated 2.9.1988, which includes interview as part of the selection process in terms of the FCS operating in the case of promotion to the post of Director, there is no infirmity in the procedure of assessment. He has also submitted that the Board's views which consists of senior officers were unanimous and were arrived at after adequate discussion among the Board Members, working under the guidance of the Chairman of the Board. He has contended that the applicant having taken part in the assessment by the Board, he cannot now raise the objections which he has done in the O.A. He has also submitted that the applicant himself has been assessed later on by a similar procedure and promoted as Director by the next Assessment Board and he can, therefore, have no complaints. The learned counsel also relies on the judgement of the Supreme Court in

Union of India and Ors. Vs. N.Y. Apte & Ors. (Civil Appeal No. 881/93), decided on 4.8.1988 (copy placed on record). In this case, the 1978 Rules and the subsequent amendment Rules of 1983 have been considered and upheld by the Supreme Court.

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

5. We do not find any force in the contention of the learned senior counsel for the applicant that the selection proceedings should be struck down merely on the ground that the 1978 Rules provide a different selection process, including an interview, in the case of promotion to the post of Director. It is for the Rule making authority to lay down the eligibility conditions in the Recruitment Rules for promotion to various posts, taking into account all the relevant factors. For promotion to the post of Director, the Recruitment Rules have provided that the promotion will be under FCS from amongst eligible Meteorologist Grade-I officers with five years approved service. In other cadres of the Indian Meteorological Department where the FCS does not apply and promotion is vacancy based, no interview is provided in the process for promotion. Therefore, the provisions of the Rules are based on certain reasonable classifications and criteria and are neither arbitrary nor illegal. The Assessment Board for considering promotion to posts under the FCS as provided under these Rules consists of (1) the Chairman of the Board to be appointed by the Secretary, Department of Science and Technology; (2) one or more departmental officers of appropriate status; and (3) two or more outside experts to be nominated by the Secretary, Department of Science and Technology. This provision is

specifically exempted from the purview of the UPSC which has also been explained by the respondents in their reply that this is so with the consent of the Government and UPSC in respect of certain Scientific posts. Further, in N.Y. Apte's case (supra), the Hon'ble Supreme Court has also dealt with the 1978 Rules together with the amendment Rules of 1983 and observed that looking at the matter from any angle, they did not find any illegality or unconstitutionality in the Rules. In the circumstances, the contention of the learned counsel for the applicant that Rule 4 of the 1978 Rules should be struck down has no merit and is accordingly rejected.

6. We also do not find any force in the contention of the applicant's counsel that the selection process, as a result of which he has been superseded for promotion to the post of Director in 1995 should be quashed. Admittedly, the applicant himself had participated in the selection process and he cannot, therefore, turn ~~around~~^b and question the same very selection process, after he finds himself unsuccessful in that selection. Admittedly, he has also been later on promoted as Director by the same method, on the recommendations of the next Assessment Board. Therefore, this argument also fails and is rejected.

7. The other contention raised on behalf of the applicant that the Assessment Board has allotted excessive marks in the interview, namely, 60%, is not supported by any document on record. Therefore, it is not possible to accept the contention that the duly constituted Assessment Board had adopted an illegal method of allotting excessive marks in the

interview. In the facts and circumstances of the case, the cases relied upon by the applicant will also not assist him. Therefore, this contention is also rejected.

8. In the result, for the reasons given above, the application fails and is dismissed. No order as to costs.

Lakshmi Swamianthan

(Smt. Lakshmi Swamianthan)
Member (J)

S.R. Adige
(S.R. Adige)
Vice Chairman (A)

'SRD'